

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

**CRANEVEYOR CORP
1524 North Potrero Avenue
South El Monte, CA 91733**

Employer

**DOCKETS 13-R3D2-1396
and 1397**

DECISION

Statement of the Case

CraneVeyor Corp., (Employer) fabricates and installs structural iron and steel rails and other projects. From November 16, 2012, through April 5, 2013, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Louis Vicario conducted an accident investigation at the Westfield UTC Mall, 4545 La Jolla Village Drive, San Diego, California (the site). On April 5, 2013, the Division cited Employer for one general violation, failure to implement an IIPP to effectively identify and evaluate work place hazards,¹ and one accident-related serious violation, failure to guard an opening on roof floor over 12 inches.²

On April 26, 2013, Employer filed a timely appeal contesting whether the safety order was violated and the proposed penalty was reasonable for Citation 1, Item 1 and Citation 2, Item 1. The employer also raised a number of affirmative defenses.

This matter came on regularly for hearing before Mary Dryovage, Administrative Law Judge for the California Occupational Safety and Health Appeals Board, at San Diego, California on October 15, 2014, and February 12, 2015. The Employer was represented by Randall S Guritzky, Esq. The Division was represented by Melissa Peters, Staff Counsel. Each party presented oral and documentary evidence. The parties requested and were granted leave to file briefs. The matter was submitted on March 16, 2015. The Administrative Law Judge extended the submission date to June 26, 2015, on her own motion.

Issues

- A. Did the employer fail to implement the element of its IIPP requiring that it effectively identify and evaluate work place hazards?

¹ Referencing section 1509, subdivision (a). Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

² Referencing section 1632, subdivision (b)(1).

- B. Did Employer fail to guard a roof opening in violation of Section 1632, subdivision (b)(1)?
- C. Was the violation of Section 1632, subdivision (b)(1) properly classified as serious?
- D. Did the employer establish that it exercised reasonable diligence to anticipate and prevent the violation and took effective action to eliminate employee exposure to the hazard of unprotected roof openings, so as to rebut the presumption that the violation properly classified as serious?
- E. Was the proposed penalty reasonable?

Findings of Fact

- 1. The employer implemented the IIPP when Foreman Christopher Lee Sanchez (Sanchez) conducted a planned systematic daily survey of the worksite on the day of the accident, November 10, 2012.
- 2. The employer effectively identified and evaluated work place hazards including unprotected roof openings.
- 3. On November 10, 2012, Robert Maclean (Maclean), the injured employee, stepped into a rooftop opening that was not guarded by either temporary railings, toeboard or covers because there was no plywood cover and the opening was covered with opaque visqueen.³
- 4. A serious injury is a realistic possibility in the event of a fall through an unguarded opening on a roof in violation of Section 1632.
- 5. Employer exercised reasonable diligence to anticipate and prevent the violation before it occurred. CraneVeyor Corp's President Bischoff and Safety Manager Ewing met with Westfield's Santo and Tanner to discuss the open holes on the roof, prior to commencing work. The Employer specified that Westfield would layout and cut roof openings and had responsibility to cover all holes with water proofing and plywood.
- 6. Employer took effective action to eliminate employee exposure to the hazard of unprotected roof openings.
- 7. A penalty of \$750 is reasonable.

Analysis

A. Did the employer fail to implement the element of its IIPP requiring that it effectively identify and evaluate work place hazards?

The Division cited employer for a violation of section 1509, subdivision (a) of the Construction Safety Orders:

³ "Visqueen" is polyethylene plastic sheeting used as a moisture barrier or tarp to cover the roof on a temporary basis.

Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program [IIPP] in accordance with section 3203 of the General Industry Safety Orders.

Section 3203 subdivision (a)(4) provides:

The Program shall be in writing and, shall, at a minimum:

Include procedures for identifying and evaluating workplace hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.

(A) When the Program is first established;

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

The Division has the burden of proving a violation by a preponderance of the evidence. (*Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).) The Division must make some showing that each element of the violation occurred. (*Lockheed California Company*, Cal/OSHA App. 80-889, Decision After Reconsideration (July 30, 1982).)

Citation 1, Item 1 alleges:

On or about November 10, 2012, the employer had not implemented the Program to effectively identify and evaluate work place hazards. Employees working on the rooftop at the Westfield UTC Mall did not identify the safety hazards at the job site prior to lifting and installing a 600 lb section of tube steel. Supervisors at the job site did not follow procedures to identify and evaluate workplace hazards. An employee was seriously injured when he stepped into an unguarded roof opening.

To establish the violation, the Division must prove that Employer failed to implement its IIPP, which is a question of fact. (*Ironworks Limited*, Cal/OSHA App 93-024, Decision After Reconsideration (Dec. 20, 1996).) The Board has previously held that merely having a written IIPP is insufficient to establish implementation. (*Los Angeles County Department of Public Works*, Cal/OSHA App. 96-2470, Decision After Reconsideration (Apr. 5, 2002).) A single, isolated failure to implement a detail within an otherwise effective program does not necessarily establish a violation for failing to maintain an effective program where that failure is the sole imperfection. (*GTE California*, Cal/OSHA App. 91-107, Decision After Reconsideration (Dec. 16, 1991); *David Fisher, dba Fisher Transport, A Sole Proprietorship*, Cal/OSHA App. 90-762, Decision After Reconsideration (Oct. 16, 1991).) On the other hand, the Board has also held that an IIPP can be proved not effectively maintained on the ground of one deficiency, if that deficiency is

shown to be essential to the overall program. (*Keith Phillips Painting*, Cal/OSHA App. 92-777, Decision After Reconsideration (Jan. 17, 1995).)

Employer was hired to install steel supports for a canopy structure on the roof of the Westfield UTC Mall. On October 18, 2012, CraneVeyor Corp's President, Gregory Bishoff (Bishoff), and its' safety manager, Jerry Ewing (Ewing), inspected the worksite on which they would be constructing the shade structure and provided photographs depicting the condition of the roof. (Exhibit C, Employer's response to 1-B-Y letter, Appendix A, Contractor's Site-Specific Safety Plan, p. 7-9.) They discovered there were exploratory holes depicted in Exhibit 16, which they referred to as "ankle breakers". As discussed, *infra*, they met with representatives from Westfield, the general contractor, and discussed additional precautions needed to prevent accidents caused by hazards associated with unprotected roof openings. A Construction Change Order was negotiated and F.J Willert was hired to stop, cover and uncover holes.

Employer's Injury and Illness Prevention Program, Section VIII. Hazard, A. Assessment and Control (Exhibit 9, page 12) states:

It is each supervisor's responsibility to make a planned systematic daily survey of his/her area for hazard diction (sic) and control. . . Periodic inspections are performed according to the following schedule: ...

4. When new, previously unidentified hazards are recognized...
7. When workplace conditions warrant an inspection.

Employer designated Foreman Christopher Lee Sanchez (Sanchez) as the Project Safety Representative, whose duty shall be the prevention of accidents; Adam Schultz was designated as the Alternate Project Safety Representative. (Exhibit C, *supra*, p. 12-15.)

Two weeks prior to the accident, a Weekly Safety Meeting for the U.T.C. Westfield was held on October 26, 2012 (Exhibit 10, page 1). Employer documented the topics discussed at that meeting and the fact that the hazard of roof openings was specifically identified:

Delineate area when hoisting. Keep everyone clear. Fire protection extremely important 100% cont stores open below work area. Extreme caution must be taken. Tie off tools, clamps, bolts, etc. when working over stores. Wear all P.P.R. All roof openings must be covered or delineated. Use caution.
Site specific reviewed.

On November 5, 2012, the employer's Safety Meeting Report noted that the hazard of "hole openings – always cover any hole and mark appropriate" was discussed. (Exhibit 10, page 2.) This meeting was attended by four CraneVeyor Corp. employees, as shown the attendance sheet. (Exhibit 10, page 3.) Employer also provided the daily record showing the work performed on the Westfield Project on November 10, 2012. It noted that Maclean was "hospitalized with

fracture rib cage and lung injury”. (Exhibit 10, page 4.) No evidence was presented that “previously unidentified hazards” were involved in this accident. The records provided to the Division established that the planned systematic daily survey of the worksite was done.

These documents were corroborated by testimony by Sanchez, who testified that he held a safety meeting and check-in with the employees on his crew at 3:30 a.m. on November 10, 2012. Following that meeting, he went upstairs to the roof and did an on-site inspection of the worksite. He followed this inspection with other inspections of the worksite later that day, prior to installing the steel beam.⁴ He testified credibly that there were no openings in the roof which he could detect which were not covered with visqueen and plywood as of 2:30 p.m. that afternoon, when they started to install the tube steel.

The employer’s supervisors did follow procedures to identify and evaluate workplace hazards by conducting inspections at the worksite. It is found that employer complied with the cited safety order, Section 3203, subdivision (a)(4).

B. Did Employer fail to guard a roof opening in violation of Section 1632, subdivision (b)(1)?

The Division cited employer for a violation of section 1632, subdivision (b)(1) of the Construction Safety Orders:

Floor, roof and skylight openings shall be guarded by either temporary railings and toe boards or by covers.

Opening. An opening in any floor or platform, 12 inches or more in the least horizontal dimension. It includes: stairway floor openings, ladderway floor openings, hatchways and chute floor openings.

Citation 2, Item 1 alleges:

On or about November 10, 2012, an employee of CraneVeyor Corp. was seriously injured while in the process of installing a heavy piece of tube steel on a rooftop at the Westfield UTC Mall at 4545 La Jolla Village Drive, San Diego, California. The employee was injured when he stepped into a roof opening that was not guarded by either temporary railings and toeboard or by covers.

The Division has the burden of proving that the roof openings were not guarded by either temporary railings and toe boards or by covers. It is undisputed that Maclean, an Ironworker employed by CraneVeyor Corp., fell through an unguarded opening in the roof. He took a step backwards while installing an 800 pound piece of tube steel through a parapet wall. He fell through a four foot by

⁴ The beam that was being put into position at the time of the accident was fifteen to twenty feet long, six inches by six inches wide and was estimated to weigh approximately 800 pounds. It was part of the shade structure.

four foot hole, covered with opaque visqueen, but which had no plywood underneath it. (Exhibits 4, 17 and 17-A.)

Efraim Martinez, a water-proofer for the subcontractor Anning Johnson on the Westfield Shopping Center was helping move the tube steel at the time of the accident. His position entailed installing plywood and visqueen on the openings on the roof to weather-proof the roof. On November 10, 2012, he was working on another part of the roof. Five Ironworkers were trying to position the 600 to 800 pound tube and more people were needed. Martinez testified that he came over to assist with the installation of the tube steel. He stood next to Maclean when he fell through the visqueen. Martinez circled in red marker on Exhibit 2 the places on the roof where he and Maclean stood immediately prior to the accident. The shards of ripped plastic visqueen where Maclean fell through the opening is depicted in Exhibit 17-1. Martinez was not aware that there were any openings which were not covered with plywood and visqueen in that area. He could not detect that there was no plywood under this opening, even though he was standing a few feet from it, because the visqueen was taunt and opaque.

It is undisputed that there were no guardrails, no temporary railings, toe boards or covers around the opening where Maclean fell. Division established a violation of section 1632, subdivision (b)(1).

C. Was the violation properly classified as “serious”?

To sustain a serious violation of Labor Code section 6432, subdivision (a) provides:

There shall be a rebuttable presumption that a “serious violation” exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm⁵ could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:

⁵ Labor Code section 6432, subdivision (e) provides as follows:

“Serious physical harm” as used in this part, means any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment that results in any of the following:

- (1) Inpatient hospitalization for purposes other than medical observation.
- (2) The loss of any member of the body.
- (3) Any serious degree of permanent disfigurement.
- (4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

Division classified the violation as “serious”. It must present evidence to show 1) a realistic possibility that death or serious physical harm, 2) could result from the actual hazard created by the violation and 3) in a place of employment, in order to create a rebuttable presumption that the citation was correctly classified as serious. The employer has the statutory right to contradict or rebut the evidence that a serious violation was established.⁶

The term “realistic possibility” means that it is within the bounds of reason, and not purely speculative. (*International Paper Co.*, Cal/OSHA App. 14-1189, Decision After Reconsideration (June, 2015), citing *Langer Farms, LLC*, Cal/OSHA App. 13-0231, Decision After Reconsideration (Apr. 24, 2015).) In *Oliver Wire & Plating Co., Inc.*, Cal/OSHA App. 77-693, Decision After Reconsideration (April 30, 1980), the Appeals Board determined that it is unnecessary for DOSH to “present actual proof of hazardous splashing if a realistic possibility of splashing exists.” They explained, “[c]onjecture as to what would happen if an accident occurred is sufficient to sustain (a violation) of the existence of unsafe working conditions if such a prediction is clearly within the bounds of human reason, not pure speculation.” This definition was again utilized in *Bellingham Marine Industries, Inc.*, Cal/OSHA App. 12-3144, Decision After Reconsideration (Oct. 16, 2014), citing *Janco Corporation*, Cal/OSHA App. 99-565, Decision After Reconsideration (September 27, 2001).

Here, it is undisputed that Maclean sustained serious physical harm, including several cracked ribs and was hospitalized for seven days. (Exhibit 12) The “realistic possibility that death or serious harm could result” prong was established. Similarly, prong two and three, that there was an exposure to an actual hazard created by the violation and that the violation occurred in a place of employment were not disputed. Louis Vicario’s opinion⁷ was that not only was there a realistic possibility of serious injury, “inpatient hospitalization for other than observation” occurred here.

The Division established that there was a realistic possibility of a serious physical harm. The actual hazard caused by the failure to guard openings on the rooftop caused the injury to Maclean. The Division established a presumption that the citation was properly classified as “serious”, pursuant to Labor Code section 6432.

⁶ Labor Code Section 6432, subdivision (a) provides Employer with an opportunity to rebut the presumption that a serious violation exists. Employer’s untimely motion to amend the appeal to raise “lack of employer knowledge” as an affirmative defense or check the box for “classification” is denied as moot.

⁷ Vicario’s opinion was based upon a reasonable evidentiary foundation consisting of his education, experience and training. See *Wright & Associates, Inc.*, Cal/OSHA App. 95-3649, Decision After Reconsideration (Nov. 29, 1999.) Prior to working for the Division as an Associate Safety Engineer, he worked for State Fund as a claim adjuster (1992-1995) and in loss control (1995 to 2011). He earned a BA degree from San Diego State University in 1985, served in the U.S. Navy (1987 – 1991) and is current in his Division mandated training.

D. Did the employer establish that it exercised reasonable diligence to anticipate and prevent the violation and took effective action to eliminate employee exposure to the hazard of unprotected roof openings, so as to rebut the presumption that the violation properly classified as serious?

Once the Division produces enough evidence to create a presumption of a serious violation, the burden of proof shifts to the employer to rebut the presumption. (*International Paper Co.*, Cal/OSHA App. 14-1189, Decision After Reconsideration (June, 2015).) Labor Code section 6432, subdivision (c) provides that Employer may rebut the presumption:

If the division establishes a presumption pursuant to subdivision (a) that a violation is serious, the employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer may accomplish this by demonstrating both of the following:

- (1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b).
- (2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

1. Employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred.

To establish that it could not have known of the violative condition by exercising reasonable diligence, an employer must establish that the violation occurred at time and under circumstances which could not provide the employer with a reasonable opportunity to have detected it. (*Vance Brown, Inc.*, Cal/OSHA App. 00-3318, Decision After Reconsideration (April. 1, 2003).) Reasonable diligence includes the obligation of foremen or supervisors to oversee the entire work site where safety and health hazards are present if exposure to an unsafe condition exists. (*Robert Onweller dba Pacific Hauling & Demolition*, Cal/OSHA App. 14-1087, Decision After Reconsideration (June 15, 2015); *A. A. Portonova & Sons, Inc.* Cal/OSHA App. 83-891, Decision After Reconsideration (March 19, 1986).)

In order to determine if the employer established this prong, it is necessary to review the steps taken by the employer in this case, prior to the accident. Westfield and CraneVeyor Corp. negotiated a detailed contract for the Westfield UTC Mall, set forth in Exhibit B, which included General Contract Provisions, Appendix A, Scope of Work, Appendix C, Special Contract Provisions, Appendix D, and Construction Safety Standards, Appendix E. By the terms of the contract and documents referred to therein, CraneVeyor Corp. was required to submit a complete copy of their firm's Safety Program to Westfield and comply with the detailed instructions set out in the contract (*Id.*, p. 42); Westfield was responsible for coordinating the work of subcontractors (*Id.*, p. 65).

CraneVeyor Corp's President, Gregory Bischoff (Bischoff) testified to the additional steps he took prior to beginning the project, namely, he negotiated additional precautions to prevent accidents caused by hazards associated with unprotected roof openings. He met with Tony Santo and Ken Tanner, representatives of the general contractor, Westfield, on October 18, 2012. They discussed "the safety issues regarding open inspection holes, approx. 8 holes that were on the roof prior to commencing work. Westfield guaranteed the other subcontractor responsible for those holes would have full responsibility to cover all holes with water proofing and plywood. It was also agreed that the other subcontractor would not get ahead of CraneVeyor Corp's erection crew and if they did all holes would be secured with plywood and waterproofed." (Exhibit C, Employer's response to 1-B-Y letter, Letter to OSHA, dated April 4, 2013, p. 5.)

Westfield and CraneVeyor Corp. negotiated a Construction Change Order for Project No. 20108600 whereby it was agreed that "Westfield [was required] to layout and cut roof openings as required for installation of our work" set forth in Exhibit D.⁸ Another subcontractor, F. J. Willert, was hired to spot the holes, and cover the openings when employer's employees were no longer working in the openings. CraneVeyor Corp. was not responsible for creating or covering any holes on this jobsite, as this was the responsibility of the F. J. Willert crew, which was supervised by Steve Guiliano (Guiliano).

Foreman Sanchez, who was designated as the Project Safety Representative, conducted the Weekly Safety Meeting for the U.T.C. Westfield project on October 26, 2012 (Exhibit 10, page 1). Employees were instructed "All roof openings must be covered or delineated. Use caution." On November 5, 2012, the hazard of "hole openings – always cover any hole and mark appropriate" was discussed at the Safety Meeting. (Exhibit 10, page 2.)

The daily job hazard analysis was done by Jerry Ewing, Safety Manager. CraneVeyor Corp. employees were trained to look out for unguarded holes as part of their duties. Sections of the roof were opened so that the employees could attach steel supports to the building's structural beams. The holes were covered

⁸ It should be noted that the fact that the general contractor may also have been citable, but was not cited, does not relieve Employer of its responsibility under the multiemployer worksite provisions of the Labor Code and the Director's regulations. (*Robert Onweller dba Pacific Hauling & Demolition, supra.*)

in order to waterproof the roof by the following procedure: the Willert crew installed plywood over each opening and then covering the plywood with visqueen. The proper procedure involved placing the visqueen on top of the plywood. (Martinez, Guiliano, Sanchez and Bischoff.) Bischoff provided photographs taken on October 18, 2012, prior to beginning the work on this project, which showed the condition of the roof, when covered with visqueen. (Exhibit C, p. 7-9) He testified credibly that he could not detect an opening once visqueen was installed over an opening which was not properly covered with plywood because the visqueen was opaque.

Guiliano testified that he inspected the roof at 5:30 or 6:00 a.m. and did not see any open holes on November 10, 2012, on the day of the accident. He returned to “make his rounds”, and conducted an inspection five or six times that day. He did not realize that the opening involved in the accident was covered with visqueen, but without plywood under it, until his deposition, which was long after the accident occurred.

Vicario testified that in his opinion, the employer did not know and could not have known of the existence of the condition which resulted in the accident: an opening which was covered with visqueen and had no plywood under it to effectively close the opening.⁹ Maclean told Vicario that the unguarded opening was a trap, which could not be detected by a visual inspection because the visqueen on top of the roof area where they were working looked uniform. Martinez testified that the visqueen ripped because there was no plywood under it and described this condition as “a trap” and “camouflaged”. Five CraneVeyor Corp. employees helped to position the tube steel. Martinez and Sanchez were standing near Maclean immediately prior to the accident. They were in a position to observe the hazard, if it could be detected by a visual inspection. While they were moving the heavy tube steel, they were immediately adjacent to the site of the accident. They could not detect that plywood was missing from a section of the roof they were working on because the roof was covered with opaque visqueen. Thus, employer could not have known of the hazardous condition prior to the time of the accident.

Based on the preponderance of the evidence, it is found that the employer took all of the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation.

2. Employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

Employer must also establish that it took effective action to eliminate the hazard created by the violation as soon as the violation was discovered.

⁹ Vicario’s opinion was based on his investigation, which included interviews of Shaun Burke, Westfield’s Regional Safety Manager, Tony Santo, Westfield; Chris Sanchez, CraneVeyor Corp., Maclean, and the injured employee, as well as documentary evidence, some of which was obtained long after the citation had issued.

Sanchez, the supervisor and designated Project Safety Representative, was present at the time of the accident. He testified that after Maclean was pulled out of the hole by Martinez, the opening was immediately covered up. The Supervisor's Report of Injury, Exhibit 19 described the actions which have been or will be taken to prevent recurrence of the accident: "safety implementation will remain. Plank/plywood to cover any holes will continue. Only uncover holes being worked in."

Employer rebutted the presumption of serious classification by establishing that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation because 1) it regularly and frequently inspected the worksite and 2) it took all reasonable and responsible steps to prevent the violation, once it was discovered. The citation was not properly classified as serious and must be reclassified as a general violation.

E. Was the proposed penalty of \$18,000 in Citation 2 reasonable?

The Division calculated the penalty of \$18,000 for Citation 2 based on the classification of "accident-related serious". As discussed above, this citation will be reclassified as "general". Division Exhibit 14, the proposed penalty worksheet calculated the penalty for the general violation in Citation 1, Item 1 as follows: the gravity based penalty of \$2,500 based on high "severity" and high "extent" was reduced to an adjusted penalty of \$1,500. Division rated the employer's good faith as "good", a 30 percent reduction and employer's history as "good", a 10 percent reduction, resulting in a 40 percent penalty adjustment. (\$2,500 minus \$1,000 = \$1,500.) (§ 336, subd. (b).) When the 50 percent abatement credit is applied, the penalty is further reduced to \$750. (§ 336, subd. (e).) The parties stipulated that the penalty for that citation was correctly calculated based on the regulations. The record supports the same analysis for Citation 2, based on the evidence here that high "severity" and high "extent" ratings are appropriate as well as the 40 percent penalty reduction.

A penalty of \$750 for Citation 2 is reasonable and is assessed.

Conclusion

The employer identified and evaluated work place hazards prior to lifting and installing a 600 to 800 pound section of tube steel. The employer failed to guard a roof opening resulting in serious injury. However, employer rebutted the presumption that the citation was properly classified as serious.

Decision

It is hereby ordered that the Employer's appeal of Citation 1, Item 1 is granted. The penalty for Citation 1, Item 1 is vacated. Citation 2, Item 1 is re-classified from serious to general, and the penalty is recalculated, as set forth in the attached summary table.

DATED: July ____, 2015
MD:sp

MARY DRYOVAGE
Administrative Law Judge

**APPENDIX A
SUMMARY OF EVIDENTIARY RECORD**

**CRANEVEYOR CORP. CORP. CORP.
DOCKET 13-R3D2-1396 and 1397**

DATES OF HEARING: October 16, 2014 and February 12, 2015

Division's Exhibits

Exh. No.	Exhibit Description	Admitted
1	Jurisdictional Documents	Yes
2	Photo of Roof Structure taken on 11/16/12 at 10:14	Yes
3	OSHA Compliance Message regarding Accident from Jerry Ewing -11/12/12	Yes
4	OSHA Accident Report - 11/10/12	Yes
5	Photo of Roof Structure taken on 11/16/12 at 10:26	Yes
6	Photo of Steel Beams on Roof Structure taken on 11/16/12 at 10:15	Yes
7	Photo of Tape Measurements of Hole on Roof Structure taken on 11/16/12 at 10:15	Yes
8	Document Request (11/16/12 and 12/5/12)	Yes
9	CraneVeyor Corp. Injury and Illness Prevention Program	Yes
10	Weekly Safety Meeting records for 10/26/12, 11/15/12, 11/10/12, 11/11/12, 11/12/12, 11/13/12 (9 pages)	Yes
11	1-B-Y letter and fax cover letter (3/21/13) (4 pages)	Yes
12	Maclean's Medical Records from Scripps Mem. Hospital (15 pages)	Yes (under seal)
13		withdrawn
14	Proposed Penalty Worksheet	Yes
15	Westfield Accident Report re: Incident on 11/10/12	No

16	Photo of exploratory hole on roof (undated)	Yes
17	Photo of hole after accident – black and white	Yes
17-1	Photo of hole after accident – color	Yes
18	Photo of workers erecting steel structure – B&W	Yes
19	Incident Procedure Checklist, and Supervisor’s Report of Injury, 11/10/12 (2 pages)	Yes

Employer’s Exhibits

<i>Exhibit Letter</i>	Exhibit Description	Admitted
A	Questionnaire for Multi-Employer Worksite Inspections (3 pages)	Yes
B	Standard Construction Contract between Westfield Development, Inc. and CraneVeyor Corp. with Westfield, LLC (Nov. 18, 2011)	Yes
C	Attachments to Employer Response to 1BY letter	Yes
D	Construction Change Order re: UTC – Rob May Redevelopment between Westfield Development Inc. and CraneVeyor Corp. (Nov. 29, 2012)	Yes

Witnesses Testifying at Hearing

1. Efraim Martinez
2. Louis Vicario
3. Steven James Guiliano
4. Jerry A. Ewing
5. Christopher Lee Sanchez
6. Gregory Bischoff

CERTIFICATION OF RECORDING

I, MARY DRYOVAGE, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hearing the above-entitled matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge the electronic recording equipment was functioning normally.

MARY DRYOVAGE

DATE

Site: 4545 La Jolla Village Drive, San Diego, CA 92122

IMIS No. 315346825

Date of Inspection: 11/16/12 - 04/05/13

Date of Citation: 04/05/13

DOCKET	CITATION	SECTION	TYPE	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	AFFIRMED	REVOKED	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT PRE-HEARING	FINAL PENALTY ASSESSED BY BOARD	
13-R3D2-1396	1	1509(a)	G	[Failure to identify and evaluate work place hazards prior to lifting and installing 600 lb section of tube steel.] ALJ vacated citation.		X	\$750	\$0	\$0	
13-R3D2-1397	2	1632(b)(1)	S	[Failure to guard a roof opening resulting in serious injury.] ALJ affirmed violation and re-classified from serious to general and recalculated penalty.	X		\$18,000	\$750	\$750	
Sub-Total								\$18,750	\$750	\$750
Total Amount Due*										\$750

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: Please do not send payments to the Appeals Board.
All penalty payments must be made to:
 Accounting Office (OSH)
 Department of Industrial Relations
 P.O. Box 420603
 San Francisco, CA 94142
 (415) 703-4291, (415) 703-4308 (payment plans)

*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4291 if you have any questions.

ALJ: MD
 POS: 07/____/15