

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

In the Matter of the Appeal  
of:

**KEY ENERGY SERVICES, LLC**  
5080 California Avenue, Suite 150  
Bakersfield, CA 93276

Employer

DOCKET 14-R4D7-4157

**DECISION**

**Statement of the Case**

Key Energy Services, LLC (Employer) provides services for oil rigs. Beginning June 30, 2014, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Daniel Pulido, conducted an accident inspection at a place of employment maintained by Employer at Elk Hills Road and Skyline Road, Tupman, California (the site). On November 21, 2014, the Division cited Employer for failure to have a safety valve and coupling designed or secured to minimize the hazard of loosening and falling<sup>1</sup>.

Employer filed a timely appeal contesting the existence of the alleged violation, its classification, the reasonableness of the proposed penalty and alleging multiple affirmative defenses.

This matter came on regularly for hearing before Dale A. Raymond, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at Bakersfield, California on May 10, 2016. John F. Martin, Esquire, of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and William A. Bruce, Esquire, of Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, represented Employer. William Cregar, Staff Counsel, represented the Division. The matter was submitted on July 6, 2016.

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<sup>1</sup> Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

## Issues

1. Were a coupling and safety valve designed and secured to minimize hazards caused by loosening and falling from the tubing it was attached to?

## Findings of Fact

1. On June 7, 2014, employer was engaged in removing steel tubing from an oil well by turning the tube to unset the anchor. On top of the tubing was a new coupling<sup>2</sup> screwed on by the manufacturer. A safety valve was screwed on top of the coupling. Employer's employees tested the tubing, coupling, and safety valve for tightness before they were hoisted approximately 20 to 30 feet in the air.
2. When the tubing was being turned, the coupling unscrewed from the tubing and fell approximately 24 feet onto an employee. The coupling and safety valve presented a falling hazard.
3. This type of accident had never occurred before. Test results following the accident indicated that the manufacturer incorrectly torqued the coupling, which allowed the coupling to become loose.
4. Employer did not mark the junction with chalk or paint or periodically lower the coupling and safety valve assembly to the ground to make sure the fittings remained tight.

## Analysis

- 1. Were a coupling and safety valve designed and secured to minimize hazards caused by loosening and falling from the tubing it was attached to?**

The Division cited Employer for a violation of section 3328, subdivision (e), which reads as follows:

Machinery and equipment components shall be designed and secured or covered (or both) to minimize hazards caused by breakage, release of mechanical energy (e.g., broken springs), or loosening and/or falling unless the employer can demonstrate that to do so would be inconsistent with the manufacturer's recommendations or would otherwise impair employee safety.

The alleged violation description reads as follows:

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<sup>2</sup> Also referred to by the parties as a "collar."

Prior to and during the course of inspection, the Employer failed to minimize the hazard of a full opening safety valve and coupling loosening from the tubing it is attached to. As a result, on or about June 7, 2014, an employee working in rig #0010109 (Model 500 Key Cooper) suffered a serious injury when the coupling and safety valve loosened and fell approximately 32 feet onto the employee who was on the rig floor below.

The Division has the burden of proving the applicability of the safety order by a preponderance of the evidence. (*Ja Con Construction*, Cal/OSHA App. 03-441, Decision After Reconsideration (Mar. 27, 2006); *Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).)

In order to establish a violation, the Division must show that 1) the components were not designed to minimize hazards caused by loosening and falling, or 2) the components were not secured to minimize hazards caused by loosening and falling.

In 2011, the Legislature amended the language of section 3328, subdivision (e)<sup>3</sup> to “designed *and* secured or covered...” from “designed, secured, or covered... .” [emphasis added] Before the amendment, the words “designed or secured” were used in the disjunctive, which meant only one condition would satisfy the safety order requirement; both were not required. (*Brunton Enterprises Inc. dba Plas-Tal Mfg. Co.*, Cal/OSHA App. 08-3445, Decision After Reconsideration (Aug. 26, 2009) p. 25; *E. L. Yeager Construction Company, Inc.*, Cal/OSHA App. 01-3261, Decision After Reconsideration (Nov. 2, 2007) p. 4.) The amendment caused the words “designed and secured” to be used in the conjunctive, which shows that the Legislature deliberately changed the safety order to require both conditions to be satisfied.

When a safety standard includes two or more distinct requirements, a violation of the safety standard occurs if an employer violates any one of the requirements. (*California Erectors Bay Area Inc.*, Cal/OSHA App. 93-503, Decision After Reconsideration (July 31, 1998); *Golden State Erectors*, Cal/OSHA App. 85-0026, Decision After Reconsideration (Feb. 25, 1987).)

First, the Division must show that the design did not minimize the hazard of loosening and falling. In the instant proceeding, the record is void of any evidence that the tubing, coupling, or valve design failed to minimize the hazard of falling. The Division did not allege any flaw in the design of the

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<sup>3</sup> The amendment was filed March 7, 2011, and became operative April 6, 2011.

tubing, coupling, or safety valve.<sup>4</sup> At hearing, Associate Safety Engineer Daniel Pulido testified that the tubing, coupling, and safety valve did not have any design flaws. Therefore, they were designed to minimize loosening and falling hazards.

Second, the Division must show that the components were not secured to minimize the hazard of loosening and falling. The coupling came screwed on and certified by the manufacturer. In the past, this was sufficient to secure the components against loosening. In fact, the valve did not loosen from the coupling. Before being put into use, Employer inspected the components, and had no way to discover that the coupling was incorrectly torqued<sup>5</sup>. This was not a design defect, but rather an assembly error. The hazard was not foreseeable with the exercise of reasonable diligence; therefore no violation lies<sup>6</sup>.

The Division focused on Employer's failure to detect that fact that the coupling became loose. The Division maintained that (1) Employer failed to place a chalk mark on the coupling and tubing to easily see that that the coupling was loosening; and (2) Employer did not periodically lower the assembly to check for tightness. These are secondary measures, which section 3328, subdivision (e) does not require. (*E.L. Yeager Construction Company, Inc.*, Cal/OSHA App. 01-3261, Decision After Reconsideration (Nov. 2, 2007).) Additionally, neither action helps secure the components.

It was the Division's burden of proof to show that Employer failed to minimize the hazard of the valve and coupling loosening and falling through either the way the components were designed or the way the components were secured. It did not meet its burden of proof and Employer's appeal must be granted.

### **Conclusion**

The Division failed to establish that the tubing, coupling, or valve were not designed and secured to minimize hazards caused by loosening and falling.

### **Order**

Citation 1, Item 1, is vacated and the penalty is set aside.

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<sup>4</sup> It was not disputed that the tubing, coupling and valve were equipment components subject to section 3328, subdivision (e) or that the coupling loosened and fell.

<sup>5</sup> Testimony of Supervisor Marvin Ibarrola and Laborer Santiago Ayala.

<sup>6</sup> No violation lies where the facts do not establish a foreseeable exposure to inherent hazards. (*Rialto Concrete Products, Inc.*, Cal/OSHA App. 98-413, Decision After Reconsideration (May 24, 2000); *Louisiana-Pacific*, Cal/OSHA App. 85-449, Decision After Reconsideration (Sept. 1, 1987).) A standard of reasonable prudence applies. (*Id.*)

It is further ordered that no penalty, as indicated above and set forth in the attached Summary Table, be assessed.

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**DALE A. RAYMOND**  
Administrative Law Judge

DAR: ao

Dated: August 1, 2016

**APPENDIX A**

**SUMMARY OF EVIDENTIARY RECORD  
KEY ENERGY SERVICES, LLC  
Docket 14-R4D7-4157**

Date of Hearing: May 10, 2016

**Division's Exhibits**

<b>Number</b>	<b>Description</b>	<b>Admitted</b>
1	Jurisdictional Documents including 1BY	Yes
2A	Photo—End of tubing	Yes
2B	Photo—End view of coupling	Yes
2C	Photo—Safety valve and collar on rig floor	Yes
2D	Photo—Tubing and elevators	Yes
2E	Photo—Overall view of rig	Yes
2F	Photo—tubing	Yes
2G	Photo—close up of elevator and ties for blocks	Yes
2H	Photo—assembly from below	Yes
3	Root Cause Analysis	Yes
4	Proposed penalty worksheet	Yes
5	Hand drawing of assembly	Yes

**Employer's Exhibits**

<b>Letter</b>	<b>Description</b>	<b>Admitted</b>
A-1	Photo—overview of demonstrative assembly of safety valve, collar, tubing and elevator	Yes
A-2	Photo—top of assembly in A-1	Yes

A-3	Photo—middle of assembly in A-1	Yes
A-4	Photo—base of assembly in A-1	Yes
A-5	Photo—base of assembly in A-1	Yes
A-6	Photo—farther view of assembly in A-1	Yes
B-1	Photo—outside of collar	Yes
B-2	Photo—inside of collar	Yes
B-3	Photo—outside of collar	Yes
B-4	Photo—inside of collar	Yes
B-5	Photo—inside of collar	Yes
C	Work Plan	Yes
D-1	Photo—safety valve components	Yes
D-2	Photo—safety valve components	Yes
D-3	Photo—safety valve components	Yes
D-4	Photo—outside view of safety valve ball	Yes
D-5	Photo—inside view of safety valve ball	Yes
D-6	Photo—safety valve control plate	Yes
D-7	Photo—base of safety valve ball	Yes
D-8	Photo—assembled safety valve ball	Yes
E	1BY response	Yes
F	Texas Couplings certification	Yes
G	Results of test on collar	Yes
H	WNCO Safety valve—3 photos	Yes
I	WNCO safety valve manual	Yes

**Witnesses Testifying at Hearing**

Miguel Larios  
Santiago Ayala  
Marvin Ibarrola  
Daniel Romero  
Mike Harrington

**CERTIFICATION OF RECORDING**

*I, Dale A. Raymond, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above 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.*

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**DALE A. RAYMOND**

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Date

## SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**KEY ENERGY SERVICES, LLC**  
**Docket 14-R4D7-4157**

Abbreviation Key: Reg=Regulatory	
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division

IMIS No. 316982222

DOCKET	C I T A T I O N	I T E M	SECTION	T Y P E	MODIFICATION OR WITHDRAWAL	A F F I R M E D	V A C A T E D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
14-R4D7-4157	1	1	3328(e)	S	ALJ vacated violation		X	\$18,000	\$18,000	\$0
<b>Sub-Total</b>								\$18,000	\$18,000	\$0

**Total Amount Due\***

**\$0**

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: *Please do not send payments to the Appeals Board.*

**All penalty payments should be made to:**

Accounting Office (OSH)  
Department of Industrial Relations  
P.O. Box 420603  
San Francisco, CA 94142

\*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: DR/ao  
POS: 08/01/2016

## DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is Occupational Safety and Health Appeals Board, 100 North Barranca Street, Suite 410, West Covina, California, 91791.

On August 1, 2016, I served the attached **Decision** by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at West Covina, California, with first-class postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

John Martin, Esq.  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.  
1909 K Street N.W., Suite 1000  
Washington, DC 20006

District Manager  
DOSH - Bakersfield  
7718 Meany Avenue  
Bakersfield, CA 93308

Chief Counsel  
DOSH - Legal Unit  
1515 Clay Street, 19<sup>th</sup> Floor  
Oakland, CA 94612

William Cregar, Staff Counsel  
DOSH – Legal Unit  
320 W. Fourth Street, Suite 400  
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 1, 2016, at West Covina, California.

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Declarant

/ao

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

**In the Matter of the Appeal  
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**KEY ENERGY SERVICES, LLC  
5080 California Avenue, Suite 150  
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**Employer**

**DOCKET 14-R4D7-4157**

**TRANSMITTAL**

The attached Decision was issued on the date indicated therein. If you are dissatisfied with the Decision, you have thirty (30) days from the date of service of the Decision in which to petition for reconsideration. The petition for reconsideration must be sent to:

**Occupational Safety and Health Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833**

Your petition for reconsideration must fully comply with the requirements of Labor Code Sections 6616, 6617, 6618, and 6619 and with Title 8, California Code of Regulations, section 390.1.

For further information, call: (916) 274-5751