BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No.
S AND J INTERIORS, INC.	**1643382**
Employer	**DECISION**

Statement of Case

S and J Interiors, Inc. (Employer) is a commercial drywall contractor. From January 12, 2023 to April 11, 2023, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Julie Acee, conducted an inspection of Employer's worksite at 1000 Sarah Place in Ontario, California (the worksite).

On April 11, 2023, the Division issued two citations to Employer, alleging two violations of the California Code of Regulations, title 8.[1] Citation 1, Item 1, classified as General, alleged that Employer failed to provide training in the safe use of ladders in violation of section 3276, subdivision (f). Citation 2, Item 1, classified as Serious with an Accident-Related characterization, alleged that a ladder was placed on a rolling scaffold in violation of section 1646, subdivision (f). Employer timely appealed the citations on the ground that the safety orders were not violated and raised multiple affirmative defenses.

This matter was heard by Administrative Law Judge Ka H. Leung for the California Occupational Safety and Health Appeals Board (Appeals Board) on November 13, 2025, and December 11, 2025. Vasko R. Mitzev, Esq. and Evan Parra-Ryagoza, Esq. of Ferruzzo & Ferruzzo LLP, represented Employer. David Rodriguez, District Manager, represented the Division. The matter was submitted on February 27, 2026.

Issues

1. Did Employer fail to provide employee training on the safe use of ladders as required by section 3276, subdivision (f)?

2. Did Employer violate section 1646, subdivision (f), by placing a ladder on a rolling scaffold to gain greater height?

[1] Unless otherwise specified, all references are to California Code of Regulations, title 8.

Findings of Fact

1. The parties presented a Statement of Stipulated Facts, which is adopted and incorporated into this Decision. (Exh. 50.)

Analysis

1. Did Employer fail to provide employee training on the safe use of ladders as required by section 3276, subdivision (f)?

Citation 1, Item 1, alleged that Employer violated section 3276, subdivision (f), by failing to train employees in the safe use of ladders. Section 3276, subdivision (f), reads:

> (f) Employee Training. Before an employee uses a ladder, the employee shall be provided training in the safe use of ladders, unless the employer can demonstrate that the employee is already trained in ladder safety as required by this subsection. Supervisors of employees who routinely use ladders shall also be provided ladder safety training, unless the employer can demonstrate that the supervisor is already trained in ladder safety as required by this subsection. The training may be provided as part of the employer's Injury and Illness Prevention Program required by Section 3203. The training shall address the following topics, unless the employer can demonstrate a topic is not applicable to the safe use of ladders in the employer's workplace.

The Division's alleged violation description reads:

> Prior to and during the course of the investigation, including, but not limited to, on October 20, 2022, the employer did not provide training in the safe use of ladders before an employee used a ladder.

The Division bears the burden of proving, by a preponderance of the evidence, that a cited safety order was violated. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001).)

The Division contends that Employer failed to provide employees with training in the safe use of ladders. Associate Safety Engineer Julie Acee (Acee) testified that after receiving accident reports indicating that Employer's employee Francisco Martinez (the injured employee) fell from a ladder on October 20, 2022, she requested records from Employer regarding the injured employee's prior ladder safety trainings. Acee testified that Employer's records did not demonstrate that such training had been provided. The Division also introduced Acee's interview notes, in which the injured employee stated that Employer had not provided him with ladder safety training.

Employer presented contrary testimony through its President and Project Manager, Sean Seawright (Seawright). Seawright testified that Employer does not provide ladders to employees and instead rents lifting booms for elevated work. He further testified that, notwithstanding Employer's policy of not using ladders, all employees are given training on the safe use of ladders at the beginning of their employment. Although the Division introduced a photograph of the accident scene depicting a ladder in the vicinity, Seawright testified that the ladder shown in the photograph did not belong to Employer and the ladder could have been from another subcontractor at the worksite. The Division never identified the ladder's owner or inspected the ladder depicted.

The Division did not present testimony from the injured employee or other evidence establishing that Employer failed to provide ladder safety training. The injured employee's statement, as reflected in Acee's interview notes, is hearsay evidence and was not corroborated by other evidence in the record. Neither Title 8 of the California Code of Regulations nor the California Labor Code requires employers to maintain training records showing that employees received training under section 3276, subdivision (f). Accordingly, the mere absence of training records does not establish that training did not occur, particularly where testimony indicates that such training was provided.

Given the conflicting accounts and the limited evidentiary record, the Division has not established by a preponderance of the evidence that Employer failed to provide training in the safe use of ladders. Accordingly, Citation 1, Item 1, is vacated.

2. Did Employer violate section 1646, subdivision (f), by placing a ladder on a rolling scaffold to gain greater height?

Citation 2, Item 1, alleged that Employer violated section 1646, subdivision (f), by placing a ladder on top of a rolling scaffold to gain greater height. Section 1646, subdivision (f), reads:

> (f) Portable Ladders. Ladders or other unstable objects shall not be placed on top of rolling scaffolds to gain greater height.

The Division's alleged violation description reads:

> Prior to and during the course of the inspection, a ladder was place [*sic*] on top of a rolling scaffold to gain greater height. As a result, on or around October 20, 2022, an employee working on a ladder placed on top of a rolling scaffold suffered a serious injury.

The Appeals Board applies a reliability-based evidentiary standard in its proceedings, offering more flexibility than the strict mechanical rules of the Evidence Code. The Appeals

Board must rely on "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs" (§ 376.2), ensuring it meets the necessary reliability standard. (*Sweetheart Cup Company*, Cal/OSHA App. 95-979, Decision After Reconsideration (Nov. 5, 1999).)

Employer's foreman Jesus Villela (Villela) testified at the hearing that he was not with the injured employee at the time of the accident, did not see the injured employee using a ladder, and did not witness the accident. This testimony directly contradicts the injured employee's statement recorded in the Division's interview notes, which asserted that Villela was present, instructed him to use a ladder on scaffold, and held the scaffold for him.

None of the witnesses that testified at the hearing personally observed the accident. The descriptions of the accident in the record are entirely based on secondhand accounts derived from statements attributed to the injured employee or from individuals who spoke with the injured employee after the accident. The accounts of the accident differ significantly and further undermines the hearsay statements in Acee's notes:

1. **Division's Interview Notes.** Acee interviewed the injured employee on February 14, 2023. According to Acee's notes, the injured employee stated that he fell from approximately 18 to 20 feet, that Villela was holding the scaffold for him, that Villela instructed him to place a 12-foot ladder on top of the scaffold, and that Villela was with him the whole time during the accident. (Exh. 18, p. 2-3.)

2. **Fullmer Construction[2] Incident Notification Form.** This handwritten form, prepared by an unidentified author, states that the injured employee was using a 6-foot ladder placed on a rolling scaffold and fell approximately 15 feet to the floor below. (Exh. 8.)

3. **Employer Accident Report (Form C-36).** Acee completed a Division Form C-36 based on an email accident report provided by Cathy Davis, Employer's former project administrator. The report states that the injured employee was hanging drywall from a ladder and fell, breaking his leg. (Exh. 2, p. 1.)

4. **Ontario Fire Department Accident Report (Form C-36).** Acee also completed a Division Form C-36 based on a faxed accident report from Captain Mark Gilman of the Ontario Fire Department. According to that report, the injured employee was on approximately 6 feet of scaffolding, placed a 10-foot ladder on top of the scaffolding, lost his balance, and fell. (Exh. 2, p. 5.)

These accounts present different descriptions of the equipment involved, the height of the fall, and the circumstances of the accident. Each account is derived from unidentified or secondhand sources. Although the accident reports prompted the Division to investigate, the

[2] Fullmer Construction is the general contractor at the worksite.

investigation did not develop additional evidence that rises to the level of reliable evidence upon which responsible persons are accustomed to relying in the conduct of serious affairs. (§ 376.2)

In this case, the Division's evidence of a violation of section 1646, subdivision (f), consists only of inconsistent secondhand accounts. Given the lack of reliable evidence establishing that a ladder was placed on top of a rolling scaffold, or that a ladder was used at all, the Division has not met its burden of proving the alleged violation by a preponderance of the evidence. Accordingly, Citation 2, Item 1, is vacated.

Conclusion

For Citation 1, Item 1, the Division failed to prove that Employer did not train employees on the safe use of ladders. Accordingly, Citation 1, Item 1, is vacated.

For Citation 2, Item 1, the Division failed to prove that a ladder was placed on a rolling scaffold to gain greater height. Accordingly, Citation 2, Item 1, is vacated.

Order

It is hereby ordered that Citation 1, Item 1, is vacated.

It is hereby ordered that Citation 2, Item 1, is vacated.

/s/ Ka H. Leung
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Ka H. Leung
Administrative Law Judge

Dated: 03/27/2026

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.