BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1716045**
VAN-G TRUCKING, INC. **dba VAN-G LOGISTICS** **Employer**	**DECISION**

Statement of Case

Van-G Trucking, Inc. (Employer) is a logistics company that provides transportation and warehouse services. From December 12, 2023, to April 23, 2024, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Michael Burgess, conducted an inspection of Employer's worksite at 8000 E. Manning Avenue in Fowler, California (the worksite).

On April 23, 2024, the Division issued two citations to Employer, alleging eight violations of the California Code of Regulations, title 8.[1] Citation 1, Items 1 through 7, were settled at a settlement conference on November 13, 2024. Administrative Law Judge Leslie E. Murad, II issued an Order Memorializing Partial Settlement (Exhibit 2), which is incorporated into this Decision.

Citation 2, Item 1, classified as Serious with an Accident-Related characterization, alleged that Employer failed to ensure that employees did not place any part of their bodies outside the running lines of a forklift. Employer timely appealed the citation on the ground that the safety order was 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 September 3, 4, and 26, 2025. Tracy A. Agrall, Esq. of Wild, Carter and Tipton, represented Employer. Javier J. Castro, Esq., Staff Counsel, represented the Division. The matter was submitted on January 30, 2026.

Issues

1. Did the injured employee place his foot outside of a forklift's running lines?

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

Findings of Fact

1. On September 18, 2023, the injured employee was operating a forklift.
2. While reversing, the forklift struck a pallet.
3. After the impact, the injured employee sustained a crushing injury to his foot.
4. At the time of the injury, the employee's foot was outside the forklift's running lines.

Analysis

1. Did the injured employee place his foot outside of a forklift's running lines?

Citation 2, Item 1, alleged that Employer violated section 3650, subdivision (t)(5), by failing to ensure that an employee did not place a body part outside the running lines of a forklift. Section 3650, subdivision (t)(5), reads:

> (t) Industrial trucks and tow tractors shall be operated in a safe manner in accordance with the following rules:
> […]
> (5) Employees shall not place any part of their bodies outside the running lines of an industrial truck or between mast uprights or other parts of the truck where shear or crushing hazards exist.

The Division's alleged violation description reads:

> Prior to and during the course of the investigation, including, but not limited to, on 12/12/2023, the employer failed to ensure an employee did not place their foot outside the running lines of an industrial truck where shear and or crushing hazards existed. As a result, on 9/18/2023, an employee sustained a serious crushing/shearing injury to his foot while operating a powered industrial truck.

It is a well-established rule of statutory construction that statutory language should be given its ordinary and usual meaning and interpreted in its regulatory context. (*Papich Construction Company, Inc.*, Cal/OSHA App. 1204848, Decision After Reconsideration (Oct. 18, 2019).) A plain reading of the phrase "Employees shall not place any part of their bodies outside the running lines of an industrial truck..." in section 3650, subdivision (t)(5), requires evidence that the employee's own action to move a body part outside the running line. The text does not address situations in which an external force causes the body part to move beyond the running lines. Based on the regulation's text, the mere fact that a body part was later found outside the running lines, without evidence of how it came to be there, is insufficient to establish a violation.

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 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).)

The injured employee, Martin Rodriguez (Rodriguez), testified that on September 18, 2023, he was operating a stand-up forklift while moving pallets. While reversing, the forklift struck a pallet, causing his foot to slip outside the operator compartment and resulting in a crushing injury. Rodriguez testified that he was unsure whether his foot was run over by the forklift or pinned between the forklift and pallets. Although he did not clearly recall the precise sequence of events, he consistently maintained that he did not place his foot outside the forklift and that his foot slipped out only when the forklift struck the pallet.

Associate Safety Engineer Michael Burgess (Burgess) explained that a forklift's "running lines" are imaginary lines along the forklift's frame. Burgess opined that Rodriguez's explanation was unlikely because stand-up forklift operators commonly and inadvertently place a foot outside the operator compartment. Based on the fact that Rodriguez's foot was injured, Burgess concluded that Rodriguez must have placed his foot outside the forklift's running lines. However, even if stand-up forklift operators commonly and inadvertently place a foot outside the operator compartment, that general observation does not establish that Rodriguez placed his foot outside the running lines, as opposed to his foot being forced outside by the impact.

In its closing brief, the Division argued that the mere fact Rodriguez's foot exited the forklift is sufficient to establish a violation. Although the Appeals Board liberally construes safety regulations to promote workplace safety, it will not read into a safety order requirements that are not stated in the text. *(Webcor Construction LP dba Webcor Builders*, Cal/OSHA App. No. 07-5150, Denial of Petition for Reconsideration (June 24, 2009).)

To establish a violation of section 3650, subdivision (t)(5), the Division must prove that a preponderance of the evidence shows Rodriguez placed his foot outside the running lines of the forklift. The Division presented no evidence establishing that Rodriguez's own positioning or movement caused his foot to extend beyond the running lines. Therefore, the Division failed to prove by a preponderance of the evidence that Rodriguez placed his foot outside the running lines. Accordingly, Citation 2, Item 1, is vacated.

Conclusion

For Citation 2, Item 1, the Division failed to prove that the injured employee placed any part of his body outside the running lines of the forklift.

Order

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: 02/12/2026

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.