

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

In the Matter of the Appeal of:

**SUN BELT RENTALS  
3860 SHERMAN STREET  
SAN DIEGO, CA 92110**

**Employer**

**Inspection Number  
1465119**

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken Sun Belt Rental's (Employer) Petition for Reconsideration (Petition) under submission, renders the following decision after reconsideration.

**JURISDICTION**

Employer operates a facility in Northridge, California, from which it rents various types of equipment, including three or more types of pressure washers. On January 10, 2020, a Shark brand pressure washer exploded and seriously injured one of Employer's employees who was using it.

The California Division of Occupational Safety and Health (Division) commenced its investigation of the accident on February 25, 2020, and issued two citations alleging violations of workplace safety regulations to Employer on July 10, 2020. Citation 1, Item 1, alleged a general violation of section 3203, subdivision (a)(7), for failing to effectively train an employee in proper operation of the pressure washer.<sup>1</sup> Citation 2 alleged a serious violation of section 3328, subdivision (a)(2), for operating a machine or equipment in a manner contrary to the manufacturer's instructions. Employer timely appealed.

Administrative proceedings before an administrative law judge (ALJ) of the Board followed, among them a contested evidentiary hearing in August 2022. The matter was submitted for decision on June 27, 2023, and the ALJ issued a decision (Decision) on July 18, 2023. The Decision held that Employer had violated the safety orders as alleged and imposed civil penalties.

Employer timely petitioned the Board for reconsideration (Petition), and the Board took the Petition under submission. In making this decision, the Board has engaged in an independent review of the entire record. The Board additionally considered the pleadings and arguments filed by the parties. The Board has taken no new evidence.

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<sup>1</sup> References are to California Code of Regulations, title 8, unless otherwise noted.

## **ISSUES**

1. Did Employer properly train the injured employee in the operation of the pressure washer?
2. Did the ALJ err in admitting the manufacturer's report into evidence?
3. Did the ALJ err in giving more credit to the manufacturer's report than to the injured employee's testimony?
4. Did the injured employee operate the pressure washer contrary to the manufacturer's instructions?
5. Was the serious classification of Citation 2 established?

## **FINDINGS OF FACT**

1. Employer operates a facility in Northridge, California, from which it rents equipment.
2. Among the items of equipment available to the public to rent are Shark brand power washers.
3. On January 10, 2020, Louis Reyes (Reyes), one of Employer's employees, started a Shark power washer in a garage bay at the Northridge facility after it had been returned by a rental customer.
4. The power washer began to emit smoke when Reyes started it.
5. After becoming concerned about the volume of smoke the power washer was producing, Reyes used a forklift to tow it out of the garage bay.
6. Reyes observed that a gauge on the power washer indicated a rapidly rising internal temperature, but the power washer exploded before Reyes could turn it off.
7. The explosion caused Reyes to be burned and struck by shrapnel, resulting in serious injuries and hospitalization.
8. Reyes was not properly trained to operate the power washer.
9. After the accident, Employer began its investigation to determine the cause of the explosion and engaged the services of the power washer's manufacturer to assist in the investigation.
10. The manufacturer produced a report explaining what caused the explosion.
11. In brief, a buildup of steam pressure from overheated water in the pressure washer caused the explosion.
12. Employer adopted that report as its own.
13. Employer had instructed Reyes to read the operator's or owner's manual for the power washer, and Reyes had done so.
14. Reyes did not turn the power washer off when it began to emit smoke after he started it.
15. The manufacturer's operating manual for the power washer instructs that the washer should be turned off immediately if it begins to emit white smoke.
16. Failure to follow the instructions to turn off the power washer immediately creates a realistic possibility of death or serious physical harm.

## DISCUSSION

### 1. Did Employer properly train the injured employee in the operation of the pressure washer?

Section 3203, subdivision (a)(7), provides that an employer's IIPP "shall, at a minimum:"

(7) Provide training and instruction: (A) When the program is first established; [...] (B) To all new employees; (C) To all employees given new job assignments for which training has not previously been received; (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard; (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and, (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

Citation 1 alleged Employer did not effectively train Reyes in the operation of the washer.

The evidence established that Employer gave Reyes the operator's manual for the washer and told him to read it, and he testified he did so.

Employer apparently assumed Reyes understood the information in the operator's manual. Indeed, one of its witnesses testified that Reyes did nothing wrong in handling the incident. However, there is no evidence in the record that Reyes absorbed the information in the operator's manual or was able to apply the information when needed, as he should have when the pressure washer began to emit smoke. This is made clear in the accident report (Exhibit 11) which includes Reyes's statement that the pressure washer started emitting white smoke after he started it.<sup>2</sup> Given that the manual explicitly warns, "If white smoke appears from burner exhaust vent during start-up or operation, discontinue use and readjust air bands[.]" Reyes' failure to recognize the hazard is striking and indicative of a lack of understanding of how to operate the pressure washer properly. (Ex. 10, p. 22.) Notably, this is the only warning in the manual repeated in Spanish. Moreover, Reyes testified that he was not familiar with how to adjust the air bands. (Tr. Vol. 1, at 90:7-13.)

We have held that employer-provided training, in the context of section 3203, subdivision (a)(7), means providing employees with the knowledge and ability to make them proficient or qualified in the operation or work involved. (See *Siskiyou Forest Products*, Cal/OSHA App. 01-1418, Decision After Reconsideration (Mar. 17, 2003).) As the Decision held, the totality of the evidence here shows that Employer did not effectively train Reyes in the operation of the pressure washer. The violation of section 3203, subdivision (a)(7) was proved.

Employer's instruction to Reyes to read the operator's manual also amounted to an improper delegation of its own safety obligation. We have long held that an employer may not fulfill its safety obligations by merely instructing an employee to learn how to work or operate

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<sup>2</sup> Reyes testified at hearing that the smoke was not white, a discrepancy discussed below in detail.

equipment safely, or by relying on another to satisfy those obligations. (*Ferro Union, Inc.*, Cal/OSHA App. 96-1445, Decision After Reconsideration (Sep. 13, 2000).)

## **2. Did the ALJ err in admitting the manufacturer's report into evidence?**

Citation 2 alleges a serious violation of section 3328, subdivision (a)(2), which provides:

All machinery and equipment: [. . .] (2) shall not be used or operated under conditions of speeds, stresses, loads, or environmental conditions that are contrary to the manufacturer's recommendations or, where such recommendations are not available, the engineered design.

Citation 2 alleges that Employer did not ensure that Reyes operated the Shark pressure washer in accordance with the manufacturer's instructions. Specifically, the Division contends that Employer violated the manufacturer's directions in the operator's manual when Reyes continued to operate the washer even though it was emitting white smoke.

After the accident Employer contacted the manufacturer of the washer soliciting the manufacturer's assistance “. . . in determining the cause of the explosion.” (Ex. 11, p. 1.) Employer stated that the manufacturer's expertise “would assist us in getting to the root cause - and any contributing factors in a timely manner.” (*Id.*) The bulk of Exhibit 11 contains photographs provided by Employer, information, and the manufacturer's analysis of the accident.

Employer had the obligation under its IIPP and section 3203, subdivision (a)(5), “to investigate [the] occupational injury [. . .]” which involved Reyes. To fulfill that duty Employer sought the assistance and expertise of the manufacturer to complete the investigation. (Decision, p. 7.) Afterward, it produced the investigation report to the Division, showing it had adopted it as its own. (*Id.*) There is no evidence that Employer performed a separate investigation or produced a separate report or came to other or different conclusions than those in the report. Although Employer's petition asserts that it “produced its own accident investigation report” to the Division during discovery, it failed to offer such a report into evidence. (Petition, p. 8.) The Board may not decide on facts not in evidence and may not assume the existence of facts not in evidence. (*Gary Bothun dba Bothun Turkey Farm*, Cal/OSHA App. 15-0137, Denial of Petition for Reconsideration (Mar. 15, 2016).) In any event, the portion of Employer's Petition quoted is argument, not evidence. The absence of any alternative report reinforces the conclusion that the investigation report submitted into evidence was Employer's even though it had been developed in part by the manufacturer. (*Id.*) The Decision was correct in holding that the report was Employer's. Since Employer was required to investigate the accident and Exhibit 11 is the only report offered as evidence showing that that Employer fulfilled that duty, it was appropriate to so rule.

Employer devotes much of its Petition to argue the report is inadmissible hearsay. To the contrary, since it constitutes Employer's own report, albeit one which was the product of a joint effort with the manufacturer, it would be admissible in a civil action over a hearsay objection. (Board regulation § 376.2.)

“Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” ([Evid. Code] § 1200, subd. (a).) An established exception to the hearsay rule is an admission by a party opponent. [Evidence Code] Section 1220 provides: “Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity.” [Evidence Code] Section 1221 defines an adoptive admission as a statement “of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth.”

*Kincaid v. Kincaid* (2011) 197 Cal. App. 4th 75, 83.

The investigation report was provided to the Division and no other report concerning the accident was offered in evidence. In such circumstances the report was, at the very least, adopted by Employer, making it the “declarant” of the report, and it was offered in this administrative action to which Employer is a party. Thus, it is a party admission which “is not made inadmissible by the hearsay rule[.]” (Evid. Code § 1220; *Jane IL Doe v. Brightstar Residential Inc.* (2022) 76 Cal. App. 5th 171, 178-180.))

Also, Employer by its conduct adopted the report as its own or manifested its belief that it is true. Why else did it submit the report to the Division without qualification and also why not at least offer its own investigative report, if there were one, into evidence to contradict the one prepared in conjunction with the manufacturer?

Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth. The theory of adoptive admissions expressed in [Evidence Code] section 1221 is that the hearsay declaration is in effect repeated by the party; his conduct is intended by him to express the same proposition as that stated by the declarant.

*In re Automobile Antitrust Cases I & II* (2016) 1 Cal. App. 5th 127, 149. (Internal quotation marks and citations omitted.) Thus, the investigation report is here admissible over the hearsay objection as an adoptive admission by the terms of Evidence Code section 1221.

Even if we were to agree with Employer that the accident report was hearsay, it would still be admissible under our rules to supplement or explain other evidence. (Board regulation § 376.2.) The evidence that the washer exploded is undisputed and uncontradicted. The explosion was an event which raises the reasonable inference that the washer was being operated under conditions contrary to the manufacturer’s recommendations at the time it exploded. (See § 3328, subdivision

(a)(2) and Citation 2.) Further, the manufacturer’s operating manual for the washer emphasizes that it is to be turned off immediately if it emits white smoke. It is undisputed that the washer was emitting smoke prior to the explosion, though the color of the smoke is disputed. In addition, Reyes testified that he was going to turn the washer off, but the explosion occurred before he could do so. Thus, the circumstances leading up to the explosion caused Reyes to realize that preventative action was required, further indicating that the washer was not being operated properly.

Considering the facts and circumstances just mentioned, the accident report commissioned by Employer provides the technical postmortem for how the washer was operated contrary to the manufacturer’s recommendations, thus supplementing and explaining evidence already in the record.

Regarding Reyes’ testimony that the smoke was not white, we agree with the ALJ that his statement was not credible given that he had the operating manual in front of him when he so testified. (See section 3 below.)

**3. Did the ALJ err in giving more credit to the manufacturer’s report than to the injured employee’s testimony?**

Employer contends the ALJ erred in giving greater weight to the accident investigation report discussed above than to Reyes’s testimony at the hearing. The dispute centers on the question of the color of the smoke emitted by the pressure washer.

The investigation report states that Reyes “mentioned” there was white smoke when he started the pressure washer. (Ex. 11, p. 6.) It goes on to state that Reyes towed the washer out of the garage because of the smoke, and had he turned it off the explosion would not have occurred. (Ex 11, p. 6.) In contrast, during his testimony Reyes stated that he “believe[d]” the smoke was black, and “I know it wasn’t white, but at the time I couldn’t tell.” (Decision, p. 8, citing hearing transcript.) The ALJ stated in the Decision, “At the time of this testimony, Reyes was viewing the manufacturer’s recommendation that states to discontinue use if white smoke appears.” (*Id.*)

The ALJ explained that more weight was given to the report than Reyes’s testimony because of the specificity of the report and corroborating details in it, and because Reyes could not remember the color of the smoke and was looking at the operator’s manual, which warned against continued operation if white smoke was emitted, when he testified. The Board has held that it will give “great weight” to a credibility determination only if it identifies specific evidence of demeanor, manner, or attitude of the witness. (*Hamilton Iron Works*, Cal/OSHA App. 1497263, Decision After Reconsideration (June 12, 2024).) The ALJ’s explanation of why he gave greater weight to the report than Reyes’s testimony satisfies that standard. In addition, we agree with the ALJ’s credibility determination.

**4. Did the injured employee operate the pressure washer contrary to the manufacturer’s instructions?**

There was no dispute that the pressure washer suffered a catastrophic failure. The explosion itself is evidence that it was operated in a manner which exceeded its limitations. As the investigation report explains in detail, Reyes failed to turn the pressure washer off immediately which allowed excessive pressure to develop and cause the explosion. The report also explains what Reyes could have done to prevent the explosion. Therefore, the pressure washer was operated in a manner that did not follow the manufacturer's recommendations. Further, a safety device in the pressure washer, a pressure relief disk, failed to function as designed because the aperture leading to it was clogged, indicating a failure to maintain the pressure washer. The violation of section 3328, subdivision (a)(2), is affirmed.

## **5. Was the serious classification of Citation 2 established?**

Citation 2 classified the violation as serious, and the undisputed evidence was that the explosion seriously injured Reyes. The rebuttable presumption of a serious violation in Labor Code section 6432, subdivision (a) was established. Employer contends it rebutted that presumption, as provided in Labor Code section 6432, subdivision (c).

Labor Code section 6432, subdivision (c) provides that the employer may rebut the presumption “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.”

To rebut the presumption, the employer must demonstrate both:

- (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.

Labor Code section 6432, subdivision (c).

Labor Code section 6432, subdivision (b), provides that the following factors may be taken into account: (A) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards; (B) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards; (C) Supervision of employees exposed or potentially exposed to the hazard; and (D) Procedures for communicating to employees about the employer's health and safety rules and programs.

The evidence summarized above shows that Reyes had not been properly trained in operating the pressure washer. He failed to grasp the significance of the pressure washer emitting white smoke and failed to act appropriately by shutting down the washer immediately. Also, he testified that he sometimes had to deal with unfamiliar situations, further supporting the conclusion that his training had not been sufficiently thorough or effective.

Therefore, Employer did not rebut the serious classification.

### **DECISION AFTER RECONSIDERATION**

The violations alleged in the Citations are affirmed.

#### **OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**

/s/ Ed Lowry, Chair  
/s/ Judith S. Freyman, Board Member  
/s/ Marvin Kropke, Board Member

FILED ON: 07/10/2025

