BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1404375**
CONCEPTUAL MANAGEMENT, INC. **dba TRITON CONSTRUCTION CO.** **15602 S. AVALON BLVD.** **COMPTON, CA 90220** **Employer**	**DECISION**

Statement of the Case

Conceptual Management. Inc. dba Triton Construction Co. (Employer) performs construction services, including plastering and erection of scaffolds. Employer maintained a worksite located at 167 Sawbuck Street, in Camarillo, California (the worksite). On May 24, 2019, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Lorenzo Zwaal (Zwaal), commenced an inspection of the worksite following the report of an accident.

On August 12, 2019, the Division cited Employer for three violations of California Code of Regulations, title 8.[1] Citation 1, Item 1, asserted a Regulatory violation of section 14300.29, subdivision (a), alleging Employer failed to complete Column F on its Form 300 logs; Citation 1, Item 2, asserted a General violation of section 1637, subdivision (k), alleging that Employer failed to erect a scaffold in accordance with good engineering practices; and Citation 2 asserted a violation of section 1644, subdivision (a)(6), alleging a failure to securely attach railings to a scaffold.

Employer filed timely appeals of the citations contesting the existence of the violations. Employer also contested the reasonableness of the penalties as to Citation 1, Item 1, and Citation 2. For Citation 2, Employer also appealed on the ground of incorrect classification. Employer asserted affirmative defenses for each citation.[2]

This matter was heard by Rheeah Yoo Avelar, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board (Appeals Board) via Zoom on April 15, 2022, and June 22 and 23, 2022. Lisa Wong, Staff Counsel, represented the Division. Kevin Bland

[1] Unless otherwise specified, references are to sections of California Code of Regulations, title 8.
[2] To the extent that Employer did not present evidence in support of its affirmative defenses said defenses are deemed waived. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

and Jennifer Yanni, of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., represented Employer. The parties submitted closing briefs. The matter was submitted for decision on October 6, 2022.

Issues

1. Did Employer fail to complete Column F on its Form 300 logs?

2. Did Employer fail to securely attach the railing to a scaffold?

3. Did Employer fail to erect a scaffold in accordance with good engineering practices?

4. Did the Division establish a rebuttable presumption that Citation 2 was properly classified as Serious?

5. Did Employer rebut the presumption that Citation 2 was properly classified as Serious?

6. Was there a "causal nexus" between the violation of the cited safety order and the accident?

7. Was the proposed penalty for Citation 2 reasonable?

Findings of Fact

1. Employer did not completely fill out Column F on its Form 300 logs. On more than one occasion, Employer failed to describe the object or substance that directly injured or made the person ill.

2. On May 20, 2019, a work-related accident occurred involving Sergio Bugarin-Banuelos (Banuelos).

3. At the time of the accident, Banuelos was an employee of Employer.

4. Banuelos had been working atop a small roof outcropping above a bay window, located approximately 19 feet above the ground.

5. The roof outcropping was surrounded by scaffolding and guardrails.

6. Banuelos lost his footing on the roof outcropping and slipped. Banuelos

grabbed the top guardrail to arrest his fall, but the guardrail failed.

7. Banuelos fell from a height of approximately 19 feet and landed on a fence.

8. The guardrails were ten feet in length, measured horizontally.

9. The top guardrail relied on a mechanism at each end called an "auto-lock" for securement to the scaffold frame.

10. Employer inserted "No. 12" gauge wire (wire) through a hole in the auto-lock to secure the top guardrail.

11. Inserting wire through an aperture in the auto-lock did not constitute a proper use of that auto-lock mechanism.

12. The manner in which the wire tied the top guardrail to the scaffold allowed for excess movement of the guardrail.

13. Banuelos fell because the top guardrail was not securely attached.

14. Banuelos sustained injuries that meet the definition of serious physical harm.

15. The penalties for Citation 1, Items 1 and 2 are reasonable.[3]

16. The penalty for Citation 2 is reasonable.

Analysis

1. Did Employer fail to complete Column F on its Form 300 logs?

Citation 1, Item 1, alleges a Regulatory violation of section 14300.29, which requires:

> Basic requirement. You must use Cal/OSHA 300, 300A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The Cal/OSHA Form 300 is called the Log of Work-Related Injuries and Illnesses, the Cal/OSHA Form 300A is called the Summary of Work-Related Injuries and Illnesses, and the Cal/OSHA Form 301 is called the Injury and Illness Incident Report. Appendices A through C give samples of the Cal/OSHA forms. Appendices D through F provide elements for development of equivalent forms

[3] The parties stipulated to the reasonableness of these penalties.

> consistent with Section 14300.29(b)(4) requirements. Appendix G is a worksheet to assist in completing the Cal/OSHA Form 300A.

The alleged violation description states:

> Prior to and during the course of the investigation, including but not limited to May 20, 2019, the employer's OSHA Form 300 for calendar years 2018 and 2019 did not have Column F completely filled out.

The Division carries the burden of proving a violation by a preponderance of the evidence. (*United Parcel Service*, Cal/OSHA App. 1158285, Decision After Reconsideration (Nov. 15, 2018).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighed with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence. (*Ibid*.)

"Section 14300.29 is part of a regulatory scheme which requires employers to record or log workplace injuries and illnesses of certain types." (*Key Energy Services, LLC*, Cal/OSHA App. 13-2239, Denial of Petition for Reconsideration (Dec. 24, 2014).) The Appeals Board has interpreted the phrase "[y]ou must use Cal/OSHA 300" to mean the Employer must fill in all the information called for on the form. (*Ibid*.)

Employer responded to the Division's document request for its Cal/OSHA Form 300 logs by producing logs for the years 2017 through 2019. Zwaal testified Employer failed to fully complete column F on its Form 300 logs, which requires an employer to "[d]escribe the injury or illness, parts of body affected and objects/substance that directly injured or made person ill." The record supports Zwaal's assertions. In several instances, Employer did not fully complete Column F with all required information.[4] On more than one occasion, Employer failed to describe the "object/substance that directly injured or made person ill." The Employer's Form 300, itself, constitutes evidence of the violation.

Citation 1, Item 1, is thus affirmed.

2. Did Employer fail to securely attach the railing to a scaffold?

Citation 2 is considered next, both for ease of analysis and to avoid redundancy. It alleges a Serious, Accident-Related violation of section 1644, subdivision (a)(6), which requires:

[4] Although Employer's closing brief does not address a statute of limitations defense, such a defense would have been futile. Deficiencies on the Form 300 existed for the six-month period preceding issuance of the citations.

(6) Securely attached railings as provided by the scaffold manufacturer, or other material equivalent in strength to the standard 2- by 4-inch wood railing made from "selected lumber" (see definition), shall be installed on open sides and ends of work platforms 7 1/2 feet or more above grade. The top rail shall be located at a height of not less than 42 inches nor more than 45 inches measured from the upper surface of the top rail to the platform level. A midrail shall be provided approximately halfway between the top rail and the platform.
Note: Toeboards or side screens may also be required. (See Section 1621.)
(A) "X" bracing is acceptable as a toprail if the intersection of the "X" occurs at 45 inches (plus or minus 3 inches) above the work platform, provided a horizontal rail is installed as a midrail between 19 and 25 inches above the work platform. The maximum vertical distance between the "X" brace members at the uprights shall not exceed 48 inches.
(B) "X" bracing is acceptable as a midrail if the intersection of the "X" falls between 20 inches and 30 inches above the work platform.

The alleged violation description states:

> Prior to and during the course of the investigation, an employee was working on a scaffold that did not have securely attached railings. As a result, on or about May 20, 2019, the employee was seriously injured when he grabbed the rail and it detached and he fell approximately 19’3” to the ground.[5]

The relevant safety order requires railings “on open sides and ends of work platforms 7 1/2 feet or more above grade.” Thereafter, where railings are required, the relevant safety order lists several requirements for such railings: 1) they must be “[s]ecurely attached;” 2) the railings must be “provided by the scaffold manufacturer, or other material equivalent in strength to the standard 2- by 4-inch wood railing;” 3) the top rail shall be located at a height of not less than 42 inches nor more than 45 inches measured from the upper surface; and 4) a midrail shall be provided approximately halfway between the top rail and the platform. A violation of the safety order exists if an employer does not have the required railings. Alternatively, a violation exists where railings are both required and provided, if the provided railings fail to comply with any of the aforementioned requirements.

[5] Employer asserts that the alleged violation descriptions were not sufficiently specific. However, it is well-settled that administrative proceedings are not bound by strict rules of pleading. As long as an employer is informed of the substance of the violation and the citation is sufficiently clear to give fair notice and to enable it to prepare a defense, the employer cannot complain of technical flaws. (*DSS Engineering Contractors*, Cal/OSHA App. 99-1023, Decision After Reconsideration (Jun. 3, 2002).) The citations here are all sufficient.

There is no dispute that railings were both required and provided at the location where Banuelos had been working. However, the Division asserts the railings did not comply with all requirements set forth in the relevant safety order. Specifically, the Division alleges the top railing was not "securely attached" at the location where Banuelos' accident occurred.

When ascertaining the meaning of the term "securely attached," the Appeals Board follows established rules of construction.[6] The Appeals Board first looks to the plain language of the regulation itself. (*Shimmick Construction Company, Inc.,* Cal/OSHA App. 1192534, Decision After Reconsideration (Aug. 26, 2022).) Words are given their ordinary and usual meaning and construed in context. (*Ibid*.) The ordinary meaning of a word may be found by looking at the dictionary definition. (*Ibid*.) However, the plain meaning rule does not prohibit the Appeals Board from determining whether the literal meaning of the regulation comports with its purpose. (*Ibid*.) Furthermore, where a word of common usage has more than one meaning, the one which will best attain the purposes of the regulation should be adopted to avoid absurdity or injustice. (*Ibid*.)

In the context of scaffolding, the term "attached" means "connected or joined to something."[7] Again, within this context, the term "secure" means "free from danger" and "affording safety."[8] Therefore, a securely attached guardrail must be connected or joined in a manner rendering it free from danger and affording safety. Following the plain meaning of the foregoing terms, the evidence shows that at least one guardrail at the location where Banuelos worked was not securely attached.

Zwaal met with Eduardo "Lalo" Rodriguez (Rodriguez), Employer's Superintendent. Rodriguez told Zwaal the details of the accident involving Banuelos. There is no dispute that it was a work-related accident. According to Rodriguez, Banuelos was working atop a small section of roof when he fell. The Division presented a photograph showing the location where Banuelos had been working prior to the accident. It depicts a small roof outcropping above a bay window, approximately 19 feet above the ground. The Division presented another photograph showing scaffolding and guardrails around the roof outcropping. It shows that wire tied the top guardrail to the scaffold frame at this location.

Rodriguez told Zwaal that Banuelos fell from a height of approximately 19 feet. Although guardrails existed at Banuelos' work location, the evidence demonstrates the top guardrail failed when Banuelos attempted to use it to arrest his fall. During Zwaal's investigation and interview, Rodriguez admitted one of the guardrails failed stating "[Banuelos] grabbed the rail" and "gone

[6] The same rules of construction and interpretation that apply to statutes govern the construction and interpretation of administrative regulations. (*Auchmoody v. 911 Emergency Services* (1989) 214 Cal.App.3d, 1510, 1517.)

[7] Merriam-Webster Dictionary (Online) <https://www.merriam-webster.com/dictionary/attached> [accessed on October 3, 2022].

[8] Merriam-Webster Dictionary (Online) <https://www.merriam-webster.com/dictionary/secure> [accessed on October 3, 2022].

over when the rail failed."

Other evidence supports the conclusion that the guardrail failed. Employer's Accident Report states that Banuelos "slipped, went underneath the lower guardrail and grabbed the top rail. The top rail did not hold, and he fell between the scaffold and the screen to where he landed on the chain link fence[.]" Further, Zwaal's interviews of both Banuelos and Tomas Salcido, Employer's foreman, also support the conclusion that the top guardrail failed when the accident occurred.[9] Zwaal testified that Banuelos said "he lost his footing, slipped, and fell through the rail. He pushed through the rail and down to the – landed on the fence." Salcido witnessed that one of the guardrails had failed. The photograph of the outcropping shows the top guardrail had fallen on one end.

Properly secured railings are required to withstand a force of at least 200 pounds applied to the top rail within two inches of the top edge, in any outward or downward direction, and at any point along the top edge. (§ 1620, subd. (c).) Rodriguez said that the wire used to secure the rail could withstand 600 pounds. Here, absent any credible evidence or argument that Banuelos caused the rail to fail by exceeding those requirements (or any other credible evidence demonstrating another cause for the failure[10]), the failure of the guardrail at the time of the accident supports the inference that the guardrail had not been "securely attached." The conclusion that the guardrail was not securely attached is further supported by Rodriguez's assertion that the use of wire did not create a 100 percent connection; he noted "we would prefer [sic] being connected 100 percent."

For all of the foregoing reasons, Citation 2 is affirmed.

3. Did Employer fail to erect a scaffold in accordance with good engineering practices?

Citation 1, Item 2, alleges a General violation of section 1637, subdivision (k)(2), which requires:

> Erection and dismantling of scaffolds shall be performed in accordance with good engineering practice. Where engineering design is required by these orders, the engineering drawings shall be

[9] The conclusion that the top guardrail failed is supported notwithstanding Employer's numerous hearsay objections. First, the Division correctly points out that Rodriguez's statements to Zwaal regarding the accident, including his assertion the rail failed, constitutes an admission. (Division Closing Brief, p. 3.) The statement constitutes an authorized admission under Evidence Code section 1222, which is an exception to the hearsay rule. Second, Employer's Accident Report, also corroborates the finding that the guardrail failed, and that was entered into evidence without objection. Finally, there is other ample evidence throughout the record showing that the rail failed. Although some of it may be hearsay, it can be used to supplement and explain the other evidence. (§ 376.2)

[10] Employer briefly notes that other employers may have had access to the scaffold at the worksite, perhaps asking the trier of fact to draw an inference that these other trades were responsible for the failure of the guardrail. However, such a finding would be grossly speculative, and unsupported, as there was scarcely any testimony on these points.

> made available at the job site during erection or upon request by the Division.

The alleged violation description states:

> Prior to and during the course of the investigation, including but not limited to May 20, 2019, the employer has erected scaffold for plastering and it was not done in accordance with good engineering practices.

To establish a violation, the Division must demonstrate that Employer failed to erect a scaffold in accordance with good engineering practice. The term "good engineering practice" is not specifically defined in this regulation; however, it has been defined by the Appeals Board, in other regulatory contexts, as follows:

> "Good engineering practice" would include practices developed through experience and other means and generally accepted within an industry as prudent, information about product limitations supplied by product manufacturers and standards developed through research and application by ANSI and other highly regarded and accepted industry and professional societies.[11]

Conflicting testimony exists in the record as to whether Employer was permitted to use No. 12 gauge wire to secure the top guardrail.

Zwaal testified that a mechanism at each end of the guardrail, called an "auto-lock," secures the guardrail to a scaffold frame. Describing the auto-lock, Zwaal said the guardrail itself features a half-circle groove, which is visible when the auto-lock is in an open position. The groove is placed on a pin or other appropriate location on the scaffold, and then the auto-lock comes down to secure the rail in place.[12] Zwaal explained the auto-lock secures the scaffold, and prevents it from tipping, swaying, and collapsing. Zwaal noted that the auto-lock could have, and should have, been used, instead of lacing wire through a hole in the auto-lock. Zwaal testified that auto-lock was not designed for connecting with wire, noting the wire "could potentially get pushed out, even disconnect."[13]

Zwaal also noted that the guardrail was attached in a manner that allowed for excessive movement at its connection to the scaffold. Zwaal identified a small bar on the scaffold frame

[11] *Crop Production Services*, Cal/OSHA App. 09-4036, Decision After Reconsideration (May 28, 2014) citing *Valley Crest Landscape, Inc.*, Cal/OSHA App. 86-171, Decision After Reconsideration (Oct. 29, 1987).
[12] An example of the proper use of an auto-lock with a pin is circled in blue within Exhibit 17, Mod. No. 1.
[13] The evidence, including statements by Rodriguez, demonstrates that both sides of the top guardrail—i.e., the side that failed and the side that did not—had originally been attached in substantially the same manner with wire prior to the accident.

estimated to be six inches in length. He said that the top rail could move horizontally along the small bar and noted that a securely attached rail should not be able to move by several inches. Zwaal also testified that the use of wire was inappropriate because the rail served a support function, in addition to fall protection. Finally, Zwaal testified that the guardrail that failed appeared too short, indicating it was not the same length as the other guardrails.[14]

Rodriguez testified to having 28 to 30 years of experience in scaffold erection and assembly, noting that he had assembled and disassembled thousands of scaffolds, conducted innumerable safety inspections, and had participated in repeated training. Rodriguez testified to specific training and knowledge concerning different manufacturer's scaffold requirements. He also said he was familiar with safety requirements as it relates to the use and assembly of scaffolding. He was offered and accepted, without objection, as an expert witness regarding the safety issues related to scaffold use, installation, and disassembly.

Rodriguez testified that the manufacturer's recommendations permitted use of wire to secure the guardrail for certain connections. The technical manual for the relevant scaffold manufacturer states:

> Occasionally, guard rails must be installed where a standard size railing is not available to fit in place between uprights. In this situation it is appropriate for the erector to attach guard rails via a double wrap of No.12 gauge wire. However, it is imperative that wire bays are not part of the structural strength of the legs. The practice of wiring on rails is only acceptable for purposes of fall protection.

Rodriguez also opined that title 8 regulations permit use of wire. However Employer did not identify any specific regulation, either through testimony or argument.[15]

Rodriguez testified that the top guardrail did not serve a structural function, rather it solely constituted fall protection. Rodriguez testified that attaching the top guardrail with No. 12 gauge wire constituted a safe and effective means of securement, since the guardrail was not being used for structural support. He testified the use of wire was necessary to ensure the guardrail was placed at the correct height above the working surface. He noted that the wire is strong, capable of supporting more than 600 pounds, and equivalent in strength to 2x4 wood railing. Rodriguez also said there would be little movement of the guardrail because it was ten feet long, and if the guardrail was pressed outward it would push up against the scaffold frame uprights, preventing further movement.

---

[14] Zwaal speculated that the top guardrail might have been shorter than the other guardrails, which may explain why Employer used wire to tie it, although he did not perform a measurement.

[15] Notably, there is an exception allowing use of wires for end railings openings less than 3 feet, but that would not apply here. (§ 1644.)

The record provides two reasons to support a conclusion that Employer did not perform good engineering practices, either of which would be sufficient on its own to support the finding.

First, as noted above, Zwaal offered detailed testimony regarding the use and function of the auto-lock. Zwaal testified that the wire should not have been attached through the hole in the auto-lock. He noted that the auto-lock had not been designed for such a use. He said, "You just have wire through this like auto lock, which could potentially get pushed out, even disconnect." Although Rodriguez broadly testified that use of wire was an acceptable means to secure guardrails used solely for fall protection, he did not specifically address Zwaal's assertion that the wire should not have been wound through the auto-lock. Further, Rodriguez's assertion that use of wire was acceptable in this instance was called into question when he indicated that it did not create a 100 percent connection; he noted "we would prefer being connected 100 percent."

Second, Zwaal offered testimony demonstrating that the top guardrail was attached with wire in a manner that allowed the guardrail to move several inches along the length of the bar to which it was attached. He noted the manner of securement did not provide sufficient support, resulting in a guardrail that was not securely attached. Zwaal's testimony, which was again more specific on this particular point than that of Rodriguez, is found reasonable and it is credited. It is thus found that this method of securement did not demonstrate a good engineering practice. [16]

As such, it is found that Employer selected a method or technique for erection of scaffold that did not constitute a good engineering practice. Citation 1, Item 2, is thus affirmed.[17]

4. Did the Division establish a rebuttable presumption that Citation 2 was properly classified as Serious?

The Division classified Citation 2 as Serious. Labor Code section 6432 sets forth the evaluative framework for determining whether a citation has been properly classified as Serious. 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 harm could result from the actual hazard created by the violation." As used therein, the term "realistic possibility" means that it is within the bounds of reason, and not purely speculative. (*Langer Farms, LLC*, Cal/OSHA App. 13-0231, Decision

[16] Further, although the Decision need not resolve the issue, Employer's claim that the manufacturer permitted the use of wire ties at this location is dubious. Even assuming the subject guardrail served only a fall protection function, the manufacturer's recommendations contemplated use of No. 12 gauge wire in a situation where "guard rails must be installed where a standard size railing is not available to fit in place between uprights. [Underline added.]" Here, Rodriguez indicated that a standard size railing was both available and used by Employer. Rodriguez, stated the top guardrail was ten feet in length, which is a relatively standard length.

[17] This conclusion also adds further support to the conclusion that the guardrail had not been "securely attached," as discussed in the preceding section.

After Reconsideration (Apr. 24, 2015).)

The actual hazard consists of employees working at an elevation of 19 feet with unsafe guardrails, which could lead to an employee falling. Zwaal testified, based on his training and experience, that a fall of 19 feet can result in death or serious injury, noting that, in most cases, a survivor will spend several days in the hospital.[18] The parties stipulated that Banuelos sustained injuries meeting the definition of serious injury under title 8 and serious physical harm under the Labor Code. Here, Zwaal's testimony, the facts surrounding the accident, and the parties' stipulations, establish a rebuttable presumption that a Serious violation exists.

5. Did Employer rebut the presumption that Citation 2 was properly classified as Serious?

Labor Code section 6432, subdivision (c), provides a mechanism for Employer to rebut the presumption of a Serious violation. It states:

> 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.

Employer argues it exercised reasonable diligence to discover any defects in the scaffolding. Rodriguez testified that management personnel performed daily scaffold inspections each morning before work commenced, reviewing, without limitation, the cross-braces, straight rails, end rails, and connections. Employer noted that the wire connections would have been

[18] Although Zwaal's Division-mandated training is not up to date, his testimony is credited. First, a sufficient experiential foundation existed for his testimony, based on his background and training. (*Shimmick Construction Company, Inc.*, *supra*, Cal/OSHA App. 1192534.) It is noted that the opinion given was not particularly complex or novel. (*Ibid.*) Further, his testimony is supported by common sense and human experience. (*Ibid*.)

inspected daily. Further, Employer produced evidence that an inspection had been conducted on the day of the accident.

However, Employer's safety inspections, while assuredly a good practice, did not demonstrate reasonable diligence in this specific instance because Employer did not recognize that the wire should not have been attached through the hole in the auto-lock. With the exercise of reasonable diligence, Employer both should have known of the problem, and should have uncovered the defect during its inspection since it was in plain view. Likewise, Employer should have observed that the manner of connection allowed for excess movement. The Appeals Board has long held that hazardous conditions in plain view constitute Serious violations since the employer could detect them by exercising reasonable diligence. (*Home Depot USA, Inc*., Cal/OSHA App. 1011071, Decision After Reconsideration (May 16, 2017); *Fibreboard Box & Millwork Corp*., Cal/OSHA App. 90-492, Decision After Reconsideration (Jun. 21, 1991).)

The Serious classification is therefore affirmed.

6. Was there a "causal nexus" between the violation of the cited safety order and the accident?

The Division characterized Citation 2 as Accident-Related. The Appeals Board requires a showing of a "causal nexus between the violation and the serious injury" to sustain an Accident-Related characterization.(*HHS Construction*, Cal/OSHA App. 12-0492, Decision After Reconsideration (Feb. 26, 2015).) The violation need not be the only cause of the accident, but the Division must make a showing that the violation more likely than not was a cause of the injury. (*MCM Construction, Inc*., Cal/OSHA App. 13-3851, Decision After Reconsideration (Feb. 22, 2016).)

The violation in Citation 2 occurred because Employer failed to securely attach the top guardrail. As discussed herein, when Banuelos slipped and grabbed the top rail, the top rail became unattached. The top guardrail was not securely attached to the scaffold, in violation of section 1644, subdivision (a)(6), which requires installation of securely attached railings. The unsecured top guardrail failed to arrest Banuelos's fall, causing him to sustain serious injuries. Therefore, the violation is found to have been a cause of the injuries. The Accident-Related characterization is sustained.

7. Was the proposed penalty for Citation 2 reasonable?

The initial base penalty for a Serious violation is $18,000, which was assessed by the Division. (§ 336, subd. (c)(1).)

As set for the above, the Serious, Accident-Related classification is affirmed. Due to the Accident-Related characterization, Employer is entitled to no reductions except for Size. (§ 336, subds. (c)(2) and (d)(7).) Zwaal testified that Employer had over one hundred employees, and is, therefore, entitled to no further reductions. The penalty of $18,000 was appropriately calculated by the Division and it is assessed against Employer.

Conclusion

The evidence supports a finding that Employer violated section 14300.29 for failure to provide all the information on its Form 300. Employer failed to complete entries in Column F on its Form 300 for calendar years 2018 and 2019. The proposed penalty is reasonable.

The evidence supports a finding that Employer violated section 1637, subdivision (k)(2), for failure to erect scaffolds in accordance with good engineering practices. Employer joined a rail to the scaffold frame with wire inserted through the auto-lock instead of using the auto-lock mechanism itself, and manner in which the wire tied the rail to the scaffold permitted for several inches of movement. The proposed penalty is reasonable.

The evidence supports a finding that Employer violated section 1644, subdivision (a)(6), for failure to attach railings securely. Properly secured railings must support a 200-pound force. The wire used to secure the railing could withstand 600 pounds. No evidence shows that the injured employee exceeded these requirements, and the failure of the guardrail supports the conclusion it was not securely attached. The proposed penalty is reasonable.

Order

It is hereby ordered that Citation 1, Item 1, is affirmed and the penalty of $400 is found reasonable.

It is hereby ordered that Citation 1, Item 2, is affirmed and the penalty of $600 is found reasonable.

It is hereby ordered that Citation 2 is affirmed and the penalty of $18,000 is found reasonable.

Dated: 11/03/2022

Rheeah Yoo Avelar
Administrative Law Judge

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.**