

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

In the Matter of the Appeal of:

**TTM TECHNOLOGIES
TTM SANTA CLARA DIVISION
407 Mathew Street
Santa Clara, CA 95050**

DOCKET 13-R1D3-3095

DECISION

Employer

Background and Jurisdictional Information

TTM TECHNOLOGIES (“Employer”) is a manufacturer of circuit board assemblies. On July 8, 2013 through September 11, 2013, the Division of Occupational Safety and Health (the Division) conducted an investigation at 407 Mathew Street, Santa Clara, CA 95050. On September 11, 2013, the Division cited Employer for a violation of Section 342(a) of the Occupational Safety and Health Standards found in Title 8, California Code of Regulations¹:

<u>Cit/Item</u>	<u>Alleged Violation</u>	<u>Classification</u>	<u>Penalty</u>
1-1	342(a) [Failure to report serious injury within time limits]	Regulatory	\$5,000

This matter came on regularly for hearing before Mary Dryovage, Administrative Law Judge for the California Occupational Safety and Health Appeals Board, at Oakland, California on February 25, 2014. The Employer was represented by Michael G. Murphy, Esq., Greenberg Traurig. The Division was represented by Paul Guiriba, Associate Safety Engineer, at the Division’s Foster City office. The matter was submitted for decision at the close of the presentation of evidence on February 25, 2014.

Law and Motion

Employer filed a timely appeal of the citation on September 27, 2013. The appeal of Citation 1, Item 1 contested the reasonableness of the penalty proposed under §342(a). At the commencement of the hearing, the Employer moved to amend the appeal to add an issue regarding whether the safety order was

¹ Unless otherwise specified, all references are to Sections of Title 8, California Code of Regulations.

violated. The Division opposed the Employer's motion, based on lack of notice. The motion was granted, as statements by Employer on the appeal form gave adequate notice to the Division that Employer disputed the existence of the violation.

Docket 13-R1D3-3095

Citation 1, Item 1, Regulatory, § 342(a)

Summary of Evidence

Miguel Chacon, an employee of TTM TECHNOLOGIES ("Employer") was injured on Saturday, July 13, 2013 at approximately 11:40 a.m. Chacon is an operator of a SES machine which makes circuit board panels. He was working on the SES machine when he slipped while going down a three step stair case.

The lead employee, Ted Medina, was told about the accident by another employee. He came over, saw Chacon injured his leg, and called an ambulance. At 11:50 a.m., Medina called Mike Selvog, Employer's Environmental Health and Safety Manager (EH&S Manager), and told him about the accident shortly thereafter. Thus, Employer was aware that Chacon was injured on Saturday, July 13, 2013.

Chacon was transported by ambulance to El Camino Hospital and was treated for a knee abrasion and hip fracture. The hospital staff put ice on Chacon's leg and placed it in a brace to hold it straight. They took x-rays of his leg and gave him pain medication. They told Chacon he had a hip fracture and needed surgery. El Camino Hospital transferred him to Kaiser Hospital at 2:00 p.m. that afternoon.

Medina spoke to Chacon by phone later that same day. Chacon testified that he told Medina that he was in the hospital and scheduled for surgery the following morning, but did not know how long he would be in the hospital. Medina testified that he did not recall that Chacon told him about the need for surgery when they talked that day.

Medina conducted the Employer's investigation on July 13, 2013, immediately following the accident. Medina did not know the severity of Chacon's injury or that the employer is required to report a serious injury to the Division when an employee is in the hospital for over twenty-four hours, when he conducted the investigation.

The following day, Sunday, July 14, 2013 at 10:00 a.m., Chacon underwent surgery on his left leg at Kaiser Hospital. At 19:17, Medina and Chacon spoke and Chacon informed him that he was still hospitalized and that the surgery went well. Medina did not relay to Selvog that Medina's surgery was successful but he was still in the hospital until Monday, July 15, 2013. Chacon was discharged on July 16, 2013.

Employer's EH&S Manager Selvog reported the injury to the Division's Inspector, Paul Guiriba on July 15, 2013 at around 10:30 a.m. Guiriba prepared the Accident Report based on that phone call. Selvog testified that the Employer's Emergency Plan requires the Employer to call Cal/OSHA within eight hours after the incident. (Exhibit D, Sections 3.1, 4.1.4, 10.5, and 12.4)

Guiriba testified that Employers are required to report serious accidents within eight hours, even if they occur on weekends. The answering service at Cal/OSHA calls him on Saturdays and Sundays, when there is a report of a serious accident. If the accident involves an imminent hazard or fatality, he goes out to conduct the investigation immediately. An investigation is not done immediately if the facts do not warrant it, which was the case here.

Guiriba conducted an investigation at Employer's facility on August 8, 2013. Guiriba acknowledged that the Employer was cooperative during the investigation, provided the documents he requested and had a good general safety program.

Findings and Reasons for Decision

Employer's employee suffered a serious work-related injury.

Division established a violation of Section 342(a) when the Employer did not timely report a serious work-related injury to the Division which occurred on July 13, 2013 until July 15, 2013.

A reduction of the \$5,000 penalty for Employer's late report of a serious, work-related injury is warranted based on the size and good faith of the Employer.

The factual allegations of Citation 1, Item 1 read as follows: "On or about Saturday, July 13, 2013 an employee suffered a serious injury and was hospitalized for approximately three days. The employer failed to report the serious injury immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health within the required time frame."

The Division cited Employer for failing to report a serious injury to the Division in violation of § 342(a). Section 342(a) provides:

Reporting Work-Connected Fatalities and Serious Injuries.

Every employer shall report immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of

employment or in connection with any employment.

Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

The Division has the burden of proof with respect to each element of an alleged violation by a preponderance of the evidence. *Howard J. White Inc.* Cal/OSHA App. 80-720, Decision After Reconsideration (July 29, 1981). The Division must establish that Employer failed to report the injury beyond the time limit – normally, within eight hours, or in the case of exigent circumstances, within 24 hours after “employer knows or with diligent inquiry would have known . . . of the [serious] injury.”

Section 330(h) provides:

"Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment **which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation. . . .**

Section 342(a) imposes a non-delegable duty on the employer to report a serious-injury accident.) *Silvercrest Western Homes, Corp.* Cal/OSHA App. 03-4305, Decision After Reconsideration (Aug. 20, 2007); *Steve P. Rados, Inc.*, Cal/OSHA App. 97-575, Decision After Reconsideration (Nov. 22, 2000.)

An Employer’s failure to report within the time limit is a serious matter. Employer is not excused from the reporting requirements due to the fact that he did not have all of the details. The Employer was required to exercise due diligence to find out if the employee’s injury was “serious”.

On Saturday July 13, 2013, the injured employee, Chacon testified credibly that he told Leadman Medina that he was still in the hospital and scheduled for surgery the following morning. Medina told EH&S Manager Selvog about the accident on Saturday July 13, 2013. The information provided by Chacon was sufficient to put Medina on notice that due diligence in finding out whether reporting the injury was required. *Silvercrest Western Homes, supra.*

Once an employer has notice of a sufficient likelihood of the injury being serious, additional inquiry is required. (*J & W Walker Farms*, Cal/OSHA App. 09-1949, Decision After Reconsideration (Nov. 2, 2009).) Doubts regarding whether an injury is serious can and should be resolved by reporting the injury to the Division. (*General Truss*, Cal/OSHA App. 06-0782, Decision After Reconsideration (November 15, 2011), citing *Dubug # 7 Inc.*, Cal/OSHA App. 92-1329, Decision

After Reconsideration (Jun. 26, 1995.) The EH&S Manager had a duty to determine the extent of the injuries, even though the extent of the employee's injuries and length of hospital stay was not known on Saturday afternoon.

Employer maintains that *Cox Communication*, Cal/OSHA App. 03-1942, Decision After Reconsideration (Dec. 30, 2008) requires the appeal to be granted. *Cox Communication* involved an injury in which the Employer went to the hospital two days in a row to check on the employee's status. Employer did not know that the employee was scheduled for surgery over the weekend. The hospital staff misinformed the employer that the employee was in the hospital overnight for observation, not medical treatment. Employer reported the injury on Monday morning, immediately after learning that the injury was serious and required surgery. Based on the employer's due diligence shown by visiting the hospital on two consecutive days and the misinformation by the hospital, the appeal was granted in that case.

Cox Communication is distinguishable from the facts of this case. Here, the record does not establish any exercise of due diligence by the EH&S Manager, who did not take any steps to find out the extent of the employee's injury, such as calling or visiting the hospital, contacting the employee or his family or asking whether the injury was serious, or involved an operation. Medina was not trained regarding the reporting requirement, but was trained to inform the EH&S Manager of serious workplace injuries. Chacon told Medina that he was still in the hospital and was going in for surgery on Saturday evening. At this point, there was a sufficient likelihood that this was a reportable injury. Then, on Sunday evening, Medina was told that Chacon was still in the hospital. This was a reportable injury and over twenty four hours of hospitalization had elapsed. By the time Selvog reported the injury to the Division, on Monday at 10:30, it was 40 hours after the time that the Employer, through Medina, knew that Chacon was to have surgery, and therefore, that Chacon's injury was reportable.

The Employer claims the affirmative defense of lack of knowledge, which does not apply to this situation. EH&S Manager knew that the Employer was required to report the injury to the Division. Medina should have been trained on these requirements and the need to communicate the extent of the injury to the EH&S Manager, who was designated to report the injury to the Division.

All California employers have an affirmative duty to stay current with the safety standards, orders, and regulations affecting their operations. (*McKee Electric Company*, Cal/OSHA App. 81-0001 Denial of Petition for Reconsideration (May 29, 1981).) The reporting requirement has been in place since at least 1992.² Ignorance of safety orders by the lead employee is no excuse, especially where the EH&S Manager was well aware of the reporting requirement. (*Nick's Lighthouse*, Cal/OSHA App. 05-3086, Denial of Petition for Reconsideration (June 8, 2007); *S. Kumar & Co., Inc.*, Cal/OSHA App. 93-622, Decision After Reconsideration (Nov. 13, 1996).)

² Labor Code section 6409.1(b) was amended in 2002 to increase the penalty to \$5,000.

The employer points to the fact that the investigation did not begin until August 8, 2013, twenty-four days after the accident as a reason to grant the appeal. A time lag between the accident and the investigation is not a defense to failure to report within the time limit. The Board held in *Silvercrest Western Homes*, Cal/OSHA App. 03-4305, Decision After Reconsideration (Aug. 20, 2007) that even if the Division's investigation does not commence for three weeks after the accident is reported and the Division does not allege its investigation was delayed by Employer's failure to report, the Employer will be found to have failed to fulfill its reporting obligation under section 342(a). The policy behind the 342(a) reporting requirement is to provide for a timely inspection of potentially dangerous conditions or equipment that may pose a safety or health risk to other employees. (*Alpha Beta Company*, Cal/OSHA App. 77-853, Decision After Reconsideration (Nov. 2, 1979); *Welltech Incorporated*, Cal/OSHA App. 90-784, Decision After Reconsideration (Aug. 22, 1991).)

In this case, Guiriba explained that as a result of the information Selvog provided when he called in to report the injury, Guiriba was able to determine that an immediate investigation was not necessary and the Division's resources were devoted to other investigations. The regulations do not require the Division's investigation to be initiated quickly, provided that the citations are issued within six month statute of limitations.³

The Division established a violation of § 342(a) by a preponderance of the evidence.

The Reasonableness of the Penalty

Employer appealed the reasonableness of the penalty. The Director's regulations require the Division to assess a \$5,000 penalty for a violation of § 342(a). Section 336(a) states as follows: For Failure to Report Serious Injury or Illness, or Death of an Employee—Any employer who fails to timely report an employee's injury, illness, or death, in violation of § 342(a) of Title 8 of the California Code of Regulations, shall be assessed a minimum penalty of \$5,000.

Although the Division is required to assess a \$5,000 penalty, the Appeals Board has the power to approve, modify, or vacate the penalty. (Labor Code § 6602) In *Central Valley Engineering & Asphalt, Inc.*, Cal/OSHA App. 08-5001, Decision After Reconsideration (December 12, 2012) and *SDUSD-Patrick Henry High School*, Cal/OSHA App. 11-1196, Decision After Reconsideration (Dec. 4, 2012), the Board held that Labor Code section 6409.1(b) allows for modification to the proposed \$5,000 gravity based penalty, for factors of size, history and good faith in the case of a late report. The Appeals Board will modify the penalty based on the size, good faith and history of the employer, pursuant to Section 336.

Section 336 provides:

³ Labor Code section 6317 provides: "No citation or notice shall be issued by the division for a given violation or violations after six months have elapsed since occurrence of the violation."

(d) Further Adjustment of Regulatory, General, and Serious Violations - Subject to the provisions of parts (5) through (9) of this subsection, the Gravity-based Penalty established under either subsection (a), (b) or (c) of this section, shall be appropriately adjusted by giving due consideration to the following factors:

- (1) **The Size of the Business** - If the Size of the Business (as provided under §335(b) of this article) is: over 100 employees, no adjustment shall be made.
- (2) **The Good Faith of the Employer** - If the Good Faith of the Employer (as provided under section 335(c) of this article) is: GOOD, 30% of the Gravity based Penalty shall be subtracted.
- (3) **The History of the Employer** - If the employer's History of Compliance (as provided under section 335(d) of this article) is: GOOD, 10% of the Gravity-based Penalty shall be subtracted.

Employer requests a penalty reduction, based on the analysis of a late report case in which the violation was found. (*Safeway* #951, Cal/OSHA App. 05-1410, Decision After Reconsideration (July 6, 2008).) Applying the adjustment factors in Section 336, based on the "size" of the Employer, which was over 100 employees, at the time of the accident, Employer will not be given any reduction in the penalty. Based on the testimony of Guiriba that the employer was very cooperative and had a good safety program and the proposed penalty worksheet, the Employer should be given 30% penalty adjustment due to the "good faith". (Exhibit 2) Employer had not been cited for any serious violations, and therefore, a 10% penalty adjustment is warranted based on the Employer's "history". (Exhibit 2) A reasonable penalty for the violation is \$3,000, applying a 40% penalty adjustment based on good faith and history.

Decision

For the reasons stated above, that the proposed penalty for Citation 1, Item 1 is reduced and assessed, as set forth in the attached Summary Table.

IT IS SO ORDERED.

DATED: March 28 , 2014

MARY DRYOVAGE
Administrative Law Judge

APPENDIX A
SUMMARY OF EVIDENTIARY RECORD
TTM TECHNOLOGIES, TTM SANTA CLARA DIVISION
DOCKET 13-R1D3-3095
DATE OF HEARING: February 25, 2014

Division's Exhibits – Admitted

Exhibit Number	Exhibit Description
1.	Jurisdictional Documents
2.	Proposed Penalty Worksheet
3.	Division's document request (August 8, 2013)
4.	Photo of the steps/machine involved in the accident
5.	Chacon's medical records (under seal)
6.	Statement of Chacon, (August 15, 2013)
7.	Notes of Ted Medina
8.	Employer's incident investigation report (July 13, 2013)
9.	Labor Code Section 6409.1
10.	Cal OSHA Accident report (July 15, 2013)

Employer's Exhibits – Admitted

Exhibit Number	Exhibit Description
A.	Employer's Injury and Illness Prevention Program, (November 11, 2011)
B.	Training attendance records (June – July 2013)
C.	Training records (October 23, 2013)
D.	Employer's emergency plan
E.	Chart - disciplinary actions taken by Employer (2013)

Witnesses Testifying at Hearing

1. Miguel Chacon
2. Ted Medina
3. Mike Selvog
4. Paul Guiriba

CERTIFICATION OR RECORDING

I, MARY DRYOVAGE, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hearing the above-entitled 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.

MARY DRYOVAGE

DATE

SUMMARY TABLE DECISION

In the Matter of the Appeal of:
TTM TECHNOLOGIES, TTM SANTA CLARA DIVISION
DOCKET 13-R1D3-3095

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

DOCKET	C	I	SECTION	T	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	A	V	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT PRE- HEARING	FINAL PENALTY ASSESSED BY BOARD
	I	T		Y		F	A			
	T	E		P		I	C			
	A	M		E		R	A			
	T	I		R		M	T			
	I	O		E		E	E			
	O	N		D		D	D			
13-R1D3-3095	1	1	342(a)	Reg	[Failure to report serious injury w/in time limits.] Citation sustained; ALJ reduced penalty based on the Employer's good faith and history.	X		\$5,000	\$5,000	\$3,000
Sub-Total								\$5,000	\$5,000	\$3,000
Total Amount Due*										\$3,000

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: Payment of final penalty amount should be made to:

Accounting Office (OSH)
 Department of Industrial Relations
 PO Box 420603
 San Francisco, CA 94142
 (415) 703-4291, (415) 703-4308 (payment plans)

*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: MD
POS: 03/28/14