

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

CLP RESOURCES, INC.
PO Box 2910
Tacoma, WA 98401

Employer

DOCKET 15-R1D4-2889

DECISION

Statement of the Case

CLP Resources, Inc. (Employer) is an employment staffing company. Beginning March 11, 2015, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Fernando Costa Martins (Martins), conducted an investigation at a place of employment maintained by Employer at 1605 Bay Street, Alameda, California (the site). On July 13, 2015, the Division cited Employer for a violation of California Code of Regulations, title 8, section 342, subdivision (a), failure to report to the Division a serious injury suffered by an employee.¹

Employer filed a timely appeal of the citation, contesting the existence of the violation, and the reasonableness of the proposed penalty.

This matter was heard by Kevin J. Reedy, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at Oakland, California, on April 27, 2016. Chris Hickok, Field Safety Specialist, and Nolan Lim, Attorney, represented Employer. Carl Paganelli, Staff Counsel, represented the Division. The parties submitted Post-Hearing Briefs. The ALJ, on his own motion, extended the submission date to August 17, 2016.

Issues

1. Did Employer fail to report to the Division a serious injury suffered by an employee?

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

2. Was the proposed penalty reasonable?

Findings of Fact²

1. The injured employee, Allan Debolt (Debolt), was an employee of CLP Resources, Inc., on the day of the accident.
2. The injury occurred on January 30, 2015.
3. The injured employee cut his left index finger while using a table saw. Debolt sustained a serious injury to his left index finger when it came in contact with the table saw blade.
4. Employer did not report the injury to the Division.
5. Employer consented to the Division's inspection of the accident.
6. Debolt sustained a partial amputation to his left index finger.
7. Debolt sustained bone loss in his left index finger as a result of the accident.
8. Debolt's left index finger is permanently disfigured.
9. Employer failed to engage in a diligent inquiry in order to determine the extent of Debolt's injury.
10. The proposed penalty of \$5,000 is reasonable.

Analysis

1. Did Employer fail to report to the Division a serious injury suffered by an employee?

Section 342, subdivision (a), under "Reporting Work-Connected Fatalities and Serious Injuries," provides the following:

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

² Findings of Fact items 1, 2, 4, 5, and the first sentence of item 3 are factual stipulations of the parties.

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.

Serious injury or illness is defined in section 330(h), Title 8, California Administrative Code.

Section 330, subdivision (h), under "Definitions Under California Occupational Safety and Health Act of 1973," in relevant part, provides the following:

"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 or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement,

Appeals Board decisions have recognized that partial amputation of a fingertip constitutes a serious injury. (*Southern California Edison*, Cal/OSHA App. 06-2062, Denial of Petition for Reconsideration (June 20, 2008); *Brydenscot Metal Products*, Cal/OSHA App. 03-3554, Decision After Reconsideration (Nov. 2, 2007); *Ferro Union, Inc.*, Cal/OSHA App. 96-1445, Decision After Reconsideration (Sep. 13, 2000).)

In *Burbank Recycling, Inc.*, Cal/OSHA App. 10-0562, Decision After Reconsideration (June 30, 2014), the Appeals board held that "... a citation for failure to report a serious injury may be upheld where the Board finds that the Employer knew of the serious injury, or should have known of the serious injury had it engaged in a diligent inquiry." The Board also cited *Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (Apr. 24, 2003), to offer the following discussion regarding measuring whether the employer had "constructive knowledge" of an employee's serious injury:

We find that in addressing the constructive knowledge requirement in section 342(a), the circumstances must be examined in order to

determine whether Employer would have known in the exercise of reasonable diligence the nature of the injury as being serious. Facts which are relevant include, but are not limited to, the type and location of the injury or illness suffered by the employee, Employer's knowledge of the cause of the injury or illness, Employer's observations of the employee following the injury or illness, steps taken to obtain or provide medical treatment, Employer's efforts to determine the nature of the hospitalization (e.g. for observation, tests, treatment, duration, etc.) and the timeline and events following Employer learning of the injury or illness. Thus, the facts in a particular case must be examined to determine if an employer knew or with diligent inquiry would have known of the nature of the serious injury that requires the hospitalization described in section 330(h).

The Appeals Board, also in *Burbank Recycling, Inc., supra*, held:

The purpose of the reporting requirement is to allow the Division to quickly respond to injuries or illness on the job. A rapid response is necessary to inspect potentially dangerous conditions close to the time of the accident or illness and to examine any equipment that may have caused an injury or illness, or which may pose a safety or health risk to other employees. (*Benicia Foundry & Iron Works, Inc., Cal/OSHA App. 00-2976, Decision After Reconsideration (Apr. 24, 2003).*)

In the citation, the Division alleges the following:

The employer failed to timely report to the Division a serious injury suffered by an employee while operating a table saw on or about January 30, 2015.

The Employer disputed whether Debolt's injuries, which resulted in a partial amputation of the left index finger were serious, and, therefore, reportable. In order to establish a violation the Division must first establish whether the injured worker sustained an injury described in Section 330, subsection (h).

Debolt testified that his finger accidentally got caught in a table saw, cutting through the bone, and taking everything off except some skin between the finger and his thumb. The saw blade went through his knuckle and chewed up everything inside his finger except the skin near the thumb. Robert Cruz (Cruz), the owner-operator of the construction business where Debolt was

assigned, took him to the emergency room, where his finger was cleaned and stitched up. Debolt was then referred to Buncke Clinic where, the week following the accident, the finger was reattached, which included having the bone fused, and the veins and arteries reattached.

Debolt testified that he spoke with someone at CLP on the day of the injury, possibly Matt Rosano (Rosano), CLP Service Representative, advising him that his finger had got caught in the table saw, and that he needed reconstructive surgery. Debolt spoke with Rosano the week following the injury, at a time before the reconstructive surgery. He advised Rosano that he had sustained an amputation³ and that it would have to be reattached.

Debolt sent an email to Toby Karlitz (Karlitz), Market Manager for CLP, dated December 31, 2015⁴, advising him that his finger was “only being held on by a little bit” (Exhibit A). The email also advised Karlitz that if he could get treatment fast there would be a better chance of saving the finger. The email also advised Karlitz that the hospital wanted him to go to the Buncke Clinic for treatment as soon as possible, and that the finger had been stitched closed. Debolt testified that the physicians at Buncke Clinic told him he had sustained a near amputation, with multiple bone fragments, and nerve damage.

Dr. Paul Papanek (Papanek) testified for the Division.⁵ Papanek reviewed the Diagnostic Imaging report, dated January 30, 2015 (Exhibit 3). Dr. Papanek also reviewed the Emergency Care Report, dated January 30, 2015 (Exhibit 4). Based on Exhibits 3 and 4, Dr. Papanek concluded that Debolt sustained a partial amputation of the left index finger, that the cut went through the middle of the distal phalanx, and that the cut involved bone. Exhibit 3 indicates a partially severed/amputated digit, and that half of the distal phalanx was cut off. Exhibit 4 indicates a near complete amputation of the fingertip proximal to the nail fold.

Papanek opined that Debolt lost bone as a result of the accident. Papanek explained that a partial amputation does not involve the loss of an entire digit. In this case the operator's finger was almost entirely severed while operating a table saw. The saw blade cut entirely through the bone. Employee Debolt sustained a partial finger amputation, which is precisely the type of injury the Appeals Board contemplated in *Southern California Edison, supra*. As

³ It is not clear on the hearing recording whether Debolt used the term “amputation” or “near-amputation.”

⁴ The date does not seem to coincide with date of the injury, but the information does appear to reflect electronic communications which occurred shortly after the accident on January 30, 2015.

⁵ Exhibit 2 is Papanek's Curriculum Vitae. Papanek has been a Public Health Medical Officer at Cal/OSHA for four years.

such, the amputation injury sustained by Debolt meets the definition of a serious physical injury pursuant to section 330, subdivision (h).

Permanent disfigurement also meets the definition of a serious physical injury pursuant to section 330, subdivision (h). According to Debolt, the saw blade went through his knuckle and chewed up everything inside his finger. After the reattachment surgery, Debolt's left index finger is one quarter of an inch shorter than his right index finger, or approximately the width of the saw blade. Debolt's finger is scarred, the fingernail is disfigured, and the finger now turns in toward the other fingers. Associate Safety Engineer Martins took photos of Debolt's injured finger on April 8, 2015. Debolt's injuries are depicted in Exhibits 6 and 7. Debolt's left index finger is now permanently disfigured. Therefore, the Division also established that Debolt sustained a serious physical injury based on the permanent disfigurement to his finger.

A citation for failure to report a serious injury may be upheld where the Board finds that the Employer knew of the serious injury, or should have known of the serious injury had it engaged in a diligent inquiry. (*Burbank Recycling, Inc., supra*).

Karlitz, Market Manager for CLP, testified that he first heard of Debolt's injury on January 30, 2015. Karlitz was informed that Debolt had sustained an injury to his finger using a table saw, and was taken to the emergency room. At that time Karlitz was not aware of the extent of Debolt's injury. Karlitz contacted CLP's Field Safety Specialist, Chris Hickok (Hickok), to apprise him of the accident, because a table saw and finger were involved in the accident. Karlitz testified that he contacted the hospital on the evening of January 30, 2015, to learn that Debolt had been discharged, and, at that time, he knew "full well" that the hospital would provide no information regarding Debolt's injury.

Karlitz testified that he received a text message from Debolt on Saturday, January 31, 2015, containing, in relevant part, the following language: "The fast it's reattach the better chances are of saving it [sic]." Karlitz, in relevant part, replied as follows: "Reattach? I thought you said no loss of any part of the finger." Debolt responded to Karlitz as follows: "Only being held on by a little part. That is why the hospital wants me to see buncke clinic as fast as possible. Which aren't open till Monday. They stitched it closed to help [sic]."

Rosano is a CLP Service Representative, whose duties include field site visits, checking in with customers' employees, and doing site evaluations for safety, and any related concerns. This is a sales/service/safety type role. Karlitz advised Rosano of Debolt's "cut to his finger" on January 30, 2015, and

that he was taken to the hospital by the customer. Rosano testified that Debolt brought papers in to the CLP office on February 4, 2015, but that he could not recollect the contents of those papers. On that same visit Debolt showed Rosano a picture on his phone of his cut finger before it was wrapped. Rosano took a look at the picture and looked away after a second or two, as he explained that he is not a “big fan” of other peoples’ wounds. According to Rosano, the finger appeared to be attached. Rosano knew that Debolt’s injury was the result of a table saw accident. Rosano did not ask Debolt for a copy of his medical records. During Rosano’s investigation on February 2, 2015, Cruz told Rosano that Debolt’s finger got “chewed up pretty good.”

As early as the day of the injury, January 30, 2015, both Karlitz and Rosano were made aware that Debolt had sustained an injury in a table saw accident, and that the injury warranted a trip to the emergency room. Debolt made Karlitz aware on January 31, 2015, that the finger was only being held on by a little part and that reattachment would be necessary to save the finger. During Rosano’s accident investigation on February 2, 2015, Cruz advised him that Debolt's finger had been “chewed up.” On February 4, 2015, Debolt showed Rosano a picture of his injured finger. Employer had all this information available to it within a week of the accident and failed to follow through to ascertain the extent of its employee’s injury. If Employer had made a diligent inquiry into the matter it would have discovered the extent of Debolt’s injury. It is found that Employer failed to engage in such a diligent inquiry, and failed to report the serious injury to the Division. “Any doubts about Employer’s duty to report would properly have been resolved in favor of making a timely report to the Division.” (*Burbank Recycling, Inc., supra*). As such, the Division has met its burden of proof, and the violation of section 342, subdivision (a), is established.

2. Was the proposed penalty reasonable?

Employer stipulated that the proposed penalty of \$5,000 was calculated correctly if the Division was able to prove the violation. The Division established the violation. Therefore, the proposed penalty of \$5,000 is found to be reasonable.

Conclusions

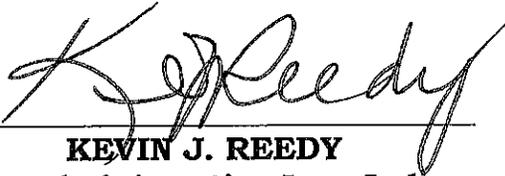
The evidence supports a finding that Employer violated section 342, subdivision (a), by failing to report to the Division a serious injury suffered by an employee. The assessed penalty is reasonable and correctly calculated.

ORDER

It is hereby ordered that Citation 1, Item 1, is upheld and the associated penalty is affirmed as indicated above and as set forth in the attached Summary Table.

It is further ordered that the penalty indicated above and set forth in the attached Summary Table be assessed.

Dated: Sept 13, 2016
KR:mfr


KEVIN J. REEDY
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 Section 6616, 6617, 6618 and 6619, and with Title 8, California Code of Regulations, Section 390.1.

For further information, call: (916) 274-5751.

APPENDIX A
SUMMARY OF EVIDENTIARY RECORD
CLP RESOURCES, INC.
DOCKET 15-R1D4-2889
Date of Hearing: April 27, 2016

Exh. No.	<u>Exhibit Description</u>	
	<u>Division's Exhibits</u>	
1	Jurisdictional documents	ADMITTED
2	Curriculum Vitae of Paul Joseph Papanek, Jr.	ADMITTED
3	Diagnostic Imaging Report	ADMITTED
4	Emergency Care Report	ADMITTED
5	Letter dated April 22, 2016, indicating that Fernando Costa Martins is current on his Division-mandated training	ADMITTED
6	Photo depicting injured worker	ADMITTED
7	Photo depicting injured worker's left hand	ADMITTED
	<u>Employer's Exhibits</u>	
A	Email chain from Toby Karlitz	ADMITTED
B	Treating Physicians Progress Report	ADMITTED
C	Trueblue Accident Investigation Report	ADMITTED
D	Email from Paul Papanek	ADMITTED

Witnesses Testifying at Hearing

Alan Debolt
Paul Joseph Papanek, Jr.
Fernando Costa Martins
Toby Karlitz
Matt Rosano

CERTIFICATION OF RECORDING

I, **Kevin J. Reedy**, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above 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.



Signature



Date

SUMMARY TABLE

DECISION

In the Matter of the Appeal of:

**CLP RESOURCES, INC.
DOCKET 15-R1D4-2889**

ABBREVIATION KEY:

Reg=Regulatory
G=General
S=Serious
ER=Employer

DOSH=Division
W=Willful
R=Repeat

IMIS No. 1045533

DOCKET NO.	CIT. NO.	ITEM NO.	SECTION NO.	TYPE	MODIFICATION OR WITHDRAWAL	A F F I R M	V A C A T E	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
15-R1D4-2889	1	1	342(a)	Reg	ALJ affirmed violation	X		\$5,000	\$5,000	\$5,000
Sub-Total								\$5,000	\$5,000	\$5,000
Total Due										\$5,000

**NOTE: Please do NOT send payments to the Appeals Board.
All penalty payments must be made to:**

Accounting Office (OSH)
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

(INCLUDES APPEALED CITATIONS ONLY)

*You will owe more than this amount if you did not appeal one or citations or items containing penalties.
Please call (415) 703-4291 if you have questions

**ALJ: KR
POS: 09/13/16**

