

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

KEY ENERGY SERVICES, LLC.
5080 California Avenue
Bakersfield, California 93309

Employer

DOCKETS 15-R4D7-0255
and 0256

DECISION

STATEMENT OF THE CASE

On July 17, 2014, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Greg Clark conducted an accident inspection at a place of employment maintained by Key Energy Services, LLC (Employer) at a location identified by the Division as northeast of Highway 46 and Brown Material Road in Lost Hills, California (the site). On December 23, 2014, the Division cited Employer for the following alleged violations of the occupational safety and health standards and orders found in California Code of Regulations, title 8¹: for failure to fully complete the Cal/OSHA Form 300 for the year 2011; failure to conduct an accident investigation in accordance with Employer's Injury Illness Prevention Program (IIPP); and for failure to ensure the hoist drum brake system was designed, installed and maintained to control the load being handled.

Employer filed an appeal contesting the violation of the safety orders, the classification, abatement and the reasonableness of the proposed penalties. Employer pleaded affirmative defenses as indicated in Employer's Appeal filed with the Occupational Safety and Health Appeals Board (See Exhibit 1).

The matter came on regularly for hearing before Clara Hill-Williams, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at West Covina, California on January 13, 2016. Employer was represented by Attorneys Gregory John Martin and Lauren Moreno of Ogletree, Deakins, et al., and Attorney Jeff Martin of Klein Denatale, Goldner, et al. The Division was represented by Staff Counsel, William Cregar.

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

The matter was submitted on February 29, 2016. The submission date was extended by the ALJ to April 20, 2016.

ISSUES

1. Did Employer fail to fully complete Column “F” of the Cal/OSHA Form 300, Log of Work-Related Injuries and Illnesses for the year 2011 by failing to describe the object or substance that directly caused the injury or illness?
2. Did the Division correctly classify the violation of failing to describe the object or substance that caused the injury on Form 300’s Column “F”?
3. Was the Division’s proposed penalty for Employer failing to complete Form 300’s Column “F” reasonable?
4. Did Employer fail to follow its Injury and Illness Prevention Program (IIPP) procedures in investigating a June 24, 2014 accident that was not in compliance with the requirements of section 3203, subdivision (a)(5)?
5. Did Employer fail to ensure the hoist drum brake system on Service Rig 414 was maintained to control the load being handled?

FINDINGS OF FACT

1. Column “F” of Employer’s Log 300 did not contain the required elements because Column “F” did not describe the object or substance that directly injured or made the person ill with respect to injuries occurring in 2011.
2. Employer completed all of the seven steps required by its IIPP, in completing an accident investigation in compliance with section 3203, subdivision (a)(5), which included: 1) Visiting the incident scene as soon as possible; 2) Interviewing injured employees and witnesses; 3) Conducting post-accident drug testing; 4) Examining the workplace for factors associated with the incident/exposure; 5) Determining the root cause of the incident/exposure by conducting root cause incident analyses within a pre-determined time schedule for specific kinds of incidents; 6) Taking corrective action to prevent the incident/exposure from reoccurring; and 7) Recording the findings and corrective actions taken.
3. A prior accident involving Employer’s Rig 414 in 2011 was unrelated to the December 23, 2014 citation issued to Employer for violating section 6626, subdivision (a), regarding Rig 414’s brake handle (Exhibits 1 and 5).
4. As a certified rig operator, Isaac Guerrero (Guerrero) operated several rigs during his nine years of employment with Employer and was responsible for controlling the brakes of Rig 414. The June 24, 2014, accident

occurred during the process of unscrewing the production tree² at the work site. Guerrero removed his hand from the brake handle for approximately 15 to 30 seconds.

5. As a certified operator, Guerrero received training for operating the brakes and was given a handbook that included Employer's policy, warning employees to keep their hands on the brake handle.
6. Employer's test results found the brake system on Rig 414 was properly adjusted and the brake handle did not rise. Employer's test results concluded Rig 414's brake handle was adjusted too high that did not mean probable brake failure but rather the brake handle was set high.
7. Marty Shephard, a mechanical shop foreman for Global Fabricators³, independently inspected Rig 414 at Employer's request on July 8, 2014, a few days after the June 24, 2014 accident occurred and found the brakes to be properly adjusted. Shephard also determined that the Rig 414 brake handle did not rise by itself.
8. The high brake handle's adjustment only related to the comfort of the rig operator that could be adjusted, depending upon the operator's height and was not connected to brake failure. The Division did not establish that Employer failed to maintain the hoist drum brake system on Service Rig 414, which controlled the load being handled.

ANALYSIS

- 1. Did Employer fail to fully complete Column "F" of the Cal/OSHA Form 300, Log of Work-Related Injuries and Illnesses for the year 2011 by failing to describe the object or substance that directly caused the injury or illness?**

Section 14300.29, Occupation Injury or Illness Reports and Records Forms subdivision (a) provides:

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,

² A "production tree" is a "T" shaped pipe, which connects the well to the pipes transporting the drilled oil to its destination.

³ Shephard testified that Global Fabricators builds oil field equipment and constructs workover rigs, including Hoppers (which manufactured Rig 414), IDECO, SKYTOP, Taylors and Coopers workover rigs.

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 consistent with Section 14300.29(b) (4) requirements⁴. Appendix G is a worksheet to assist in completing the Cal/OSHA Form 300A.

The Division Alleged:

Prior to and during the course of the investigation, the employer did not fully complete column F of the Cal/OSHA Form 300 for the year 2011. The Employer failed to describe the object or substance that directly injured or made the person ill in column F.

The Division has the burden of proving a violation, including the applicability of the safety order, by a preponderance of the evidence. (*Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighted 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

⁴ Appendix D - Required Elements for the Cal/OSHA 300 Equivalent Form I. California employers who are required to record work-related injuries and illnesses on the Cal/OSHA Form 300 may use an equivalent form that includes all of the following instructions and information. Log of Work-Related Injuries and Illnesses Instruction: You must record information about every work-related death and about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 8 CCR 14300.8 through 14300.12. Feel free to use two lines for a single case if you need to. You must complete an Injury and Illness Incident Report (Cal/OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, contact the nearest office of the Division of Occupational Safety and Health for assistance.

Establishment Name & Address

Identify the Person (A)-(C)

A. Case Number

B. Employee's Name

C. Job Title

Describe the Case (D)-(F):

D. Date of Injury or illness

E. Where the event occurred

F. Describe the injury or illness, part(s) of the body affected, and object/substance that directly injured or made the person ill

Classify the Case (G)-(M)

drawn from both kinds of evidence. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001), citing *Leslie G. v. Perry & Associates* (1996) 43 Cal. App. 4th 472, 483, review denied.)

As described above, an employer utilizing a form equivalent to Form 300 must: (1) Describe the injury or illness, (2) part(s) of the body affected, and (3) object/substance that directly injured or made the person ill. Here, the Division requested Employer's "Cal/OSHA Log 300 (Log 300)" and summary for the previous years: 2011, 2012 and 2013 (Exhibit 3 – Document Request Sheet). Employer submitted the Log 300 for 2011 (Exhibit 6). However, Associate Safety Engineer, Greg Clark (Clark) testified that the Log 300 Column "F" Employer submitted did not contain the required elements because Column "F" did not describe the object or substance that directly injured or made the person ill. Employer's Health and Safety Environmental trainer, Frank Dorado (Dorado) testified that he is familiar with the Log 300 form and completes the Log 300 form whenever a reportable injury takes place. Dorado further stated that while the 2011 Log 300 did not include the object/substance that directly injured or made the person ill, Employer listed the cause of the injury/illness on Cal/OSHA's Form 301 for 2011 (Exhibit A-3), which according to Dorado, meets the third element of the safety order as defined above.

The same rules of construction and interpretation that apply to statutes govern the construction and interpretation of administrative regulations. (*California Highway Patrol* citing *Auchmoody v. 911 Emergency Services* (1989) 214 Cal.App.3d 1510, 1517; *Webcor Builders, Inc.*, Cal/OSHA App. 06-3031, Denial of Petition for Reconsideration (Jan. 11, 2010).) The rules of regulatory construction require courts and this Board "to give meaning to each word and phrase and to avoid a construction that makes any part of a regulation superfluous." *California Highway Patrol*, Cal/OSHA App. 09-3762, Decision After Reconsideration (Aug. 16, 2012) citing *Donley v. Davi* (2009) 180 Cal. App. 4th 447, 465.) The Board construes the regulations by according words their common sense meaning based on the evident purpose for which the enactment was adopted. (*California Highway Patrol* citing *In re Rojas* (1979) 23 Cal. 3d 152, 155.)

Here, Column "F" of the 2011 Log 300, submitted by Employer meets the first and second element in describing the injuries for the three work-related injuries and illnesses of its employees in 2011: Laceration, pain of left hand; laceration, fracture to nose; and right knee strain. Employer presented Form 301A (Exhibit A-3), which met the third element of describing the object or substance that directly injured or made the person ill. However, the plain language of section 14300.29, subdivision (a) required Employer to describe the "object/substance that directly injured or made [the] person ill" on the Log 300. Therefore, Employer did not meet all three elements in completing Column "F"

because Employer's 2011 Log 300 did not indicate the object or substance that directly injured or made the person ill, which is a violation of the safety order⁵.

The evidence presented at the hearing established that Employer failed to complete all of the required information in Column "F". Employer's failure to complete the information in Column "F" is a violation of the safety order. Since the Board has not adopted the federal court's reasoning regarding a recordkeeping violation, and the Board is not required to follow federal OSHA precedent, the Employer's violation of section 14300.29, subdivision (3)(b) is affirmed.

2. Did the Division correctly classify the violation of failing to describe the object or substance that caused the injury on Form 300's Column "F"?

Clark classified the violation as a regulatory violation. Pursuant to section 334, subdivision (a), a regulatory violation is a violation, other than one defined as serious or general that pertains to permits, posting, recordkeeping and reporting requirements as established by regulation or statute. Here, the violation involved Employer's failure to list the cause of the injury or illness on the Log 300, which is a reporting requirement, satisfying the definition of a regulatory violation. Thus, the safety order was properly classified as a regulatory violation.

3. Was the Division's proposed penalty for Employer failing to complete Form 300's Column "F" reasonable?

Pursuant to section 336, subdivision (a)(1), any employer who commits any Regulatory violation as defined above, shall be assessed a civil penalty of up to \$7,000 for each such violation. Except as set forth in subdivisions (2) through (4) of this subsection,⁶ a minimum proposed penalty of \$500,

⁵ Employer's closing brief challenged the issuance of the citation alleging a violation of Log 300, Column "F". Specifically, Employer argued that under Labor Code section 6317, the Division's citation is barred. Labor Code section 6317 states:

No citation or notice shall be issued by the division for a given violation or violations after six months have elapsed since the occurrence of the violation.

Employer asserted that the Division's issuance of Citation 1, Item 1, section 14300.29, subdivision (a) is barred under California Labor Code section 6317 in its affirmative defense, however, Employer failed to raise this issue at the hearing. Employer did not assert this affirmative defense and did not present any evidence. "An issue not properly raised on appeal is deemed waived. (See section 361.3 ("Issues on Appeal") and *Western Paper Box Co.*, Cal/OSHA App. 86-812, DDAR (Dec. 24, 1986).)

⁶(2) For Carcinogens – A minimum proposed penalty of \$1,000

(3) For Carcinogens failure to report use shall be assessed a minimum proposed civil penalty of \$2,500

representing the gravity of the violation, shall be assessed against employers who commit Regulatory violations. Severity, extent and likelihood are not evaluated on Regulatory violations. The penalties for Regulatory violations start at \$500. The proposed penalty shall be adjusted for size, good faith and history; however, an abatement credit shall not be granted.

At the hearing Clark acknowledged preparing the “C-10” proposed penalty worksheet (Exhibit 1), which indicates how the proposed penalties were calculated. Pursuant to section 336, subdivision (a)(1) the gravity of the penalty assessed shall be adjusted for size, good faith and history, without an abatement credit. Here, Clark correctly assessed the gravity of the penalty at \$500, rated extent and likelihood as low and gave “good faith” and abatement credit reducing the penalty to \$185. However, pursuant to section (a)(1) the Division should not have adjusted the penalty for extent, likelihood and abatement credit. Applying subdivision (a)(1), the adjustment factor as shown on the C-10 was zero percent for size because Employer had over 100 employees at the time of the Division’s inspection; 15 percent for good faith cooperation with the Division’s investigation and 10 percent history for lack of previous violations. The total 25 percent credit for history and good faith result in a penalty of \$375.

Pursuant to the California Code of Regulations, there is a rebuttable presumption that the proposed penalties are reasonable once the Division establishes that the penalties were calculated in accordance with the Division’s policies, procedures and regulations (*Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).) Since Employer did not present any evidence disputing the reasonableness of the proposed penalties, a penalty of \$375 is assessed.

4. Did Employer fail to follow it’s Injury and Illness Prevention Program (IIPP) procedures in investigating a June 24, 2014 accident that was not in compliance with the requirements of section 3203, subdivision (a)(5)?

Section 3203, subdivision (a)(5) provides:

Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

- (b) Include a procedure to investigate occupational injury or occupational illness.

(4) For Violation of Permit Registration Requirements. Any employer who violates the permit requirements of article 2, Permits-Excavations, Trenches, Construction and Demolition, shall be assessed a minimum proposed civil penalty of \$1,250.

The Division Alleged:

Prior to and during the course of the investigation, including, but not limited to, on July 17, 2014, the employer did not conduct an accident investigation in accordance with the requirements of this subsection. An employee suffered a serious injury on June 24, 2014 while working on Service Rig 414 necessitating an accident investigation.

Here, Employer's IIPP's accident investigation included a seven step procedure as listed in its IIPP, which provided a procedure for investigating occupational injuries and illnesses as required by the Board in its safety order and acknowledged by the Board in *Tomlinson Construction*, Cal/OSHA App. 95-2268, Decision After Reconsideration (Feb. 18, 1998). Here, Employer's accident investigation procedure was at least as good as the procedure found to be adequate by the Appeals Board in *Sentinel Insulation Inc.*, Cal/OSHA App. 92-030, Decision After Reconsideration (July 22, 1992). In *Sentinel Insulation*, the employer's safety program met at least the minimum requirement in Section 3203, subdivision (a)(5) for including a procedure to investigate occupational injury or occupational illness. The Board held that the Division was correct in its belief that a more comprehensive IIPP would have included step-by-step investigation techniques, as well as incorporated accident investigation report forms for witness statements. Nonetheless, the Board found that the employer's safety program met at least the minimum requirement of section 3203, subdivision (a)(5) for including a procedure to investigate occupational injury or occupational illness.

The Board has held in *Tomlinson*, *supra* that the investigation procedure must specify someone who is responsible for conducting the investigation and the IIPP must provide a procedure of some kind for investigating occupational injuries and illnesses. Dorado credibly testified that Employer completed all of the seven steps required by its IIPP, which included: 1) Visiting the incident scene as soon as possible; 2) Interviewing injured employees and witnesses; 3) Conducting post-accident drug testing; 4) Examining the workplace for factors associated with the incident/exposure; 5) Determining the root cause of the incident/exposure by conducting root cause incident analyses within a pre-determined time schedule for specific kinds of incidents; 6) Taking corrective action to prevent the incident/exposure from reoccurring; and 7) Recording the findings and corrective actions taken.

At the hearing Clark stated Employer did not comply with its Injury Illness Prevention Program (IIPP) requirements and failed to provide an effective procedure for conducting an accident investigation, based upon the Division only receiving a one page document and photos of the serious accident that occurred on June 24, 2014. Clark testified that Employer claimed an attorney

client privilege⁷ for failing to turn over investigation documents the Division requested in its Documents Request Form given to Employer on July 18, 2014, which ordered compliance by July 24, 2014 (Exhibit 3).

In its closing brief, the Division asserted that the Request for Production of Documents requested that Employer submit an Incident /Accident report that included photos and statements from the injured employee and witnesses. Employer's incident report was not submitted until December 4, 2014 (Exhibit 4), approximately six months after the June 24, 2014 accident and only a couple of weeks before a citation was issued on December 23, 2014. Clark testified that Employer submitted photos, but did not submit the victim and witnesses' statements and did not explain the absence of the injured employee and witnesses' statements in a timely manner. While the evidence shows corrective action was taken and an analysis of a root cause for the incident was conducted these corrective actions were not documented in Employer's response to the Division's Request for Production of Documents.

The weight of the evidence shows the Division did not establish that Employer failed to implement and maintain its accident investigation procedures in conducting the investigation of the June 24, 2014 accident at the work site in accordance with its IIPP procedures. Here, Employer failed to produce requested victim and witnesses' statements as requested in the Division's Request for Production of Documents (Exhibit 3). However, Employer complied with section 3203, subdivision (a)(5) in following its procedure to investigate an occupational injury or illness as described by Dorado's testimony above by completing the seven-step procedure outlined in its IIPP (Exhibit 5). In applying the Board's holdings in *Thomlinson* and *Sentinel, supra*, Employer's failure to document all of Employer's seven step accident investigation does not constitute a violation of section 3203, subdivision (a)(5) because the evidence presented at the hearing shows Employer did implement its IIPP procedures in investigating the June 24, 2014 accident. Therefore, a violation of the safety order is not established⁸. The Employer's appeal is granted and Citation 1, Item 2 is dismissed.

⁷ Evidence Code Section 954- Subject to Section 912 and except as otherwise provided in this article, the client, whether or not a party has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer if the privilege is claimed by: the (a) The holder of the privilege; (b) A person who is authorized to claim the privilege by the holder of the privilege; or (c) The person who was the lawyer at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure. The word "persons as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

⁸ Since a violation has not been established, determining the classification is not required.

5. Did Employer fail to ensure the hoist drum brake system on Service Rig 414 was maintained to control the load being handled?

Section 6626, Brakes and Brake Control Mechanism, subdivision (a) provides:

The brakes for hoist drums for well-servicing machinery and for drilling machinery shall be designed, constructed, installed and maintained to control the load being handled.

The Division alleged:

On or about July 17, 2014, the Division initiated an investigation. Prior to and during the course of the investigation, including, but not limited to, on June 24, 2014, an employee from Service Rig 414 suffered a serious injury when the blocks from Service Rig 414 descended striking the worker. The employer did not ensure the hoist drum brake system on Service Rig 414 was designed, installed and maintained to control the load being handled.

In order to find a violation of the safety order the Division must establish the brakes for hoist drums for well-servicing machinery and drilling machinery were not (1) designed, (2) constructed, (3) installed; and (4) maintained to control the load being handled, which exposed Employer's employees to a hazardous condition or circumstance.

At the hearing, Clark stated there was not any issue regarding the design, construction or installation of the brakes for the well-servicing and drilling machinery. The only remaining issue was whether the brake system, which includes the brake handle for the hoist drums was properly maintained to control the load being handled, and whether Employer's failure to maintain the brake handle to control the load exposed employees to an existing hazardous condition or circumstance.

Clark testified that during his investigation Employer acknowledged a previous 2011 incident involving Rig 414's brake handle to establish that the brake handle was not properly maintained. However, Employer presented evidence at the hearing showing the accident involving Rig 414 in 2011 was not

related to the brake handle referenced in the June 24, 2014 accident (Exhibit 5)⁹.

In determining whether the brake system was properly maintained to handle the load, the Division called Guerrero who was employed by Employer as a certified brake operator for nine years. As brake operator Guerrero testified that he was responsible for controlling the brakes. Guerrero testified that the accident occurred during the process of removing a production tree (a three inch pipe that goes on top of the wellhead)¹⁰. Guerrero described the brake system as winch lines that are a hoisting mechanism with blocks connected to the lines which are connected to a draw that has a clutch and a throttle. The braking system keeps the blocks from falling. Guerrero stated that he was in the process of unscrewing the production tree while he was holding the brake handle. Just before the accident occurred he briefly took his hand off the brake handle for approximately 15 to 30 seconds for no reason.

Guerrero stated Rig 414's brake handle was heavier than other rigs, and that the other rigs had softer brake handles. Guerrero said he was previously warned by injured employee Victor Gonzalez (Gonzalez) that Rig 414's brake handle would lift up by itself. However, Guerrero did not attribute taking his hands off the brake handle to the condition of the brake handle being heavier or the brake handle lifting up by itself. Guerrero acknowledged receiving specific training for operating the brakes and was given a handbook that included Employer's policy warning employees to keep their hands on the brake handle. As a certified rig operator, Guerrero operated several rigs during his nine years of employment with Employer and was trained not to walk away while holding a brake handle (Exhibit A23 p.141). He was aware that taking his hands off the brake handle was a violation of Employer's policy.

Former injured employee, Gonzalez testified that he suffered serious injuries as a result of the June 24, 2014 accident involving Rig 414. At the time of the accident he worked as a floor hand but was training to become a rig operator and worked as a relief operator with Guerrero at the time of the accident. Gonzalez stated he worked on Rig 414 for two weeks prior to and including the day of the accident. Gonzalez stated there were not any irregularities with the rig's brakes, but he noticed that Rig 414's brake handle worked differently than the other rigs he had worked on during his employment with Employer. Gonzalez testified that Rig 414's brake handle would "lift up by

⁹ Notice of Incident – 7-14-2011 – Rig 414. [Txt] Description of incident: Crew was preparing to run in the hole with tubing and floor hand was going to change out tong dies. With the rig turned off and the brake chained down, the operator turned to disconnect the hoses. At that moment the blocks descended causing the elevators to pinch the floor hand's left hand between the tongs and the elevators.

¹⁰ A wellhead is a component at the surface of an oil or gas well used to support casing and tubing strings. *ge-energy.com*

itself” compared to other rigs and acknowledged warning Guerrero that the brake handle would lift up by itself.

Employer presented evidence that demonstrated the brake system was maintained to handle the load being lifted. Dorado, Employer’s Health and Safety Environmental Trainer testified that as part of Employer’s accident investigation after the accident, Employer’s mechanic, Julio Torres (Torres), tested Rig 414’s brakes and brake handle on June 24, 2014, shortly after the accident (Exhibit 7)¹¹. The test results revealed that the brakes were not at fault in causing the June 24, 2014 accident. The test results revealed the brake handle was adjusted too high, which was related to the comfort of the rig operator and could be adjusted by the operator. Marty Shephard, whose company inspects Employer’s rig brakes on a weekly and daily basis, testified that Employer asked his company to independently inspect Rig 414 a few days after the June 24, 2014 accident. Shephard stated that he tested the brake handle on July 8, 2014 and found the brakes to be properly adjusted. Shephard also testified that the brake handle did not rise when he tested the brake handle on July 8, 2014 and agreed with Employer’s findings that the brake handle was adjusted too high.

The Division did not submit any evidence to rebut the Employer’s test results regarding the brake handle. Rather, the Division argued that Employer should have maintained engineering means to avoid the blocks falling when Guerrero released the brake handle for 15 to 30 seconds. The Division asserted that Employer solely relying on its policies and training procedures to prevent rig operators from removing their hands from the rig brake handle unless the handle is latched, is insufficient to prevent a serious accident from occurring.

Here, the exposure asserted by the Division was Employer’s failure to maintain the brake system, which included the brake handle. However, the tests results, which were not rebutted by the Division did not establish that the brake system was not properly maintained. Guerrero’s testimony also dispels employee exposure to an existing violative condition based upon his testimony that there was nothing wrong with the brake handle and that he removed his hands from the brake handle for 15 to 30 seconds for no reason, against Employer’s known policy.

In weighing the evidence, it appears that the brakes and brake handle were properly maintained as confirmed by Torres and Shephard testing the brakes and brake handle (Exhibit 7). The test results found that the brake handle was adjusted high, which did not affect the operation of the brake, as testified by Shephard and Dorado. Therefore, the Division did not establish that Employer failed to maintain the brake system to control the load being handled, which created a hazardous safety condition for employees. Thus, a

¹¹ Service Work Order – completed by Julio Torres on June 24, 2014.

violation of the safety order is not established.¹² The Employer's appeal is granted and Citation 2 is dismissed.

Conclusion

Citation 1, Item 1, section 14300.29, subdivision (a), citing Employer for failure to complete Column F on the 2011 300 log is affirmed. The appeal of Citation 1, Item 2, citing Employer for failure to follow its IIP procedures in investigating occupational injury or occupational illness is granted. Finally, Employer's appeal of Citation 2 for failure to ensure the brake handle was maintained to control the load being handled is also granted.

Order

It is hereby ordered: that the Citation 1 is established and the penalty is assessed. Citation 1, Item 2 and Citation 2 are dismissed as indicated above and as set forth in the attached Summary Table.

Dated: May 18, 2016

CLARA HILL-WILLIAMS
Administrative Law Judge

CHW:ml

¹² Since a violation has not been established, determining the classification is not required.

APPENDIX A

SUMMARY OF EVIDENTIARY RECORD

**KEY ENERGY SERVICES
Dockets 15-R4D7-0255 and 0256**

Date of Hearing: January 13, 2016

Division's Exhibits

Exhibit Number	Exhibit Description	Admitted
1	Jurisdictional Documents	X
2	Injury Illness Prevention Program	X
3	Document Request Sheet	X
4	Notice of Incident	X
5	Notice of Incident	X
6	Log 300 Form 2011	X
7	Service Work Order, dated 6/24/15	X
8	Photos (A through F) – Rig 414	X
9	DOSH FORM 36	X

Employer's Exhibits

Exhibit Letter	Exhibit Description	Admitted
A-1	Marty Shepherd July 22, 2104 email to Mike George	X
A-2	Global Fabricators Invoice	X
A-3	Form 301s for 2011	X
A-4	OSHA 300 log for YTD 2014, 2013 and 2012	X

A-5	Injury Illness and Prevention Program	X
A-6	Service Work Order, June 24, 2014	X
A-7	Flash Alert	X
A-8	Safety Meeting Attendance Sheets	X
A-9	KeyView PowerPoint	X
A-10	Service Work Orders, July 2014	Withdrawn
A-11	Prevention Maintenance Guide	X
A-12	Rig Function and Operation Guidelines, Hopper Rigs	X
A-13	Rig Brake adjustment procedures	X
A-14	Hoist Brake Awareness	X
A-15	Rig Inspection forms	X
A-16	Crew inspection process, daily	X
A-17	Weekly rig inspection process	X
A-18	Company records on Rig 414 brake repairs	X
A-19	Service work orders prior to June 24, 2014	X
A-20	Key Employee Safety Handbook	X
A-21	Work Plan, June 24, 2014	X
A-22	COG 130-COG-005-A, Installation for Tubing Hanger and Wellhead (rev. 10-02-13)	X
A-23	Rig Operator Reference Guide	X
A-24	Safety handbook acknowledgments	X
A-25	Disciplinary records – sample	Withdrawn
A-26	Acknowledgment Safety Handbook (Isaac Guerrero)	X
A-27	Acknowledgment Safety Handbook (Victor Gonzalez)	X

Witnesses Testifying at Hearing

- 1. Isaac Guerrero**
- 2. Victor Gonzalez**
- 3. Gregory Clark**
- 4. Marty Shephard**
- 5. Frank Dorado**

CERTIFICATION OF RECORDING

I, Clara Hill-Williams, 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

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

In the Matter of the Appeal of:

KEY ENERGY SERVICES, LLC.

5080 California Avenue
Bakersfield, California 93309

Employer

**DOCKETS 15-R4D7-0255
and 0256**

TRANSMITTAL

The attached Decision was issued on the date indicated therein. If you are dissatisfied with the Decision, you have thirty (30) days from the date of service of the Decision in which to petition for reconsideration. The petition for reconsideration must be sent to:

**Occupational Safety and Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, California 95833**

Your petition for reconsideration must fully comply with the requirements of Labor Code Sections 6616, 6617, 6618, and 6619 and with Title 8, California Code of Regulations, Section 390.1.

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

OSHAB 20 (9/99)

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is Occupational Safety and Health Appeals Board, 100 North Barranca Street, Suite 410, West Covina, California, 91791.

On May 18, 2016, I served the attached by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at West Covina, California, with first-class postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

Bill Bruce, Esq.
KLEIN DENATALE GOLDNER
4550 California Avenue, Second Floor
Bakersfield, CA 93309

District Manager
DOSH – Bakersfield
7718 Meany Avenue
Bakersfield, CA 93308

Chief Counsel
DOSH – Legal Unit
1515 Clay Street, Suite 1901
Oakland, CA 94612

William Cregar, Staff Counsel
DOSH – Legal Unit
320 W. Fourth Street, Suite 400
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 18, 2016 at West Covina, California.

Declarant

SUMMARY TABLE DECISION

In the Matter of the Appeal of:

KEY ENERGY SERVICES, INC.
Dockets 15-R4D7-0255 and 0256

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

IMIS No. 316982651

DOCKET	CITATION	ITEM	SECTION	TYPE		AFFIRMED	VACATED	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
15-R4D7-0255	1	1	14300.29(a)	Reg	Citation Affirmed and penalty modified by ALJ	X		\$185	\$375	\$375
		2	3203(a)(5)	G	Citation Dismissed		X	420	0	0
15-R4D7-0256	2	1	6626(a)	SAR	Citation Dismissed		X	22,500	0	0
Sub-Total								\$23,105	\$375	\$375

Total Amount Due*

\$375

(INCLUDES APPEALED CITATIONS ONLY)

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

*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: CHW/ml
POS: 05/18/16