BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:
GOLDEN STATE FC, LLC
2021 7TH AVENUE
SEATTLE, WA  98121

Employer

Inspection No. 1310525

DECISION

Statement of the Case

Golden State FC, LLC, doing business as Amazon Fulfillment Center SJC7, and also known as Amazon.com, (Employer) is an online product sales company. On April 23, 2018, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Mark Valadez, commenced an accident investigation of Employer’s work site located at 188 S. Mountain House Parkway in Tracy, California (work site or SJC7). On July 6, 2018, the Division issued one citation to Employer for failure to require appropriate foot protection for employees who are exposed to foot injuries from falling objects or crushing or penetrating actions.

Employer filed a timely appeal of the citation, contesting the existence of the violation, the classification of the citation, the reasonableness of the abatement requirements, and the reasonableness of the proposed penalty. Employer also asserted numerous affirmative defenses.¹

This matter was heard by Christopher Jessup, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board (the Appeals Board), in Modesto, California, on January 18, 2019, and March 26 and 27, 2019. Jeffrey Youmans and Joseph Hoag, attorneys with Davis Wright Tremaine LLP, and Jennifer Brown, attorney for Amazon, represented Employer. Kathryn Tanner, Staff Counsel, represented the Division. This matter was submitted for Decision on May 17, 2019.

¹ Except where discussed in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (RNR Construction, Inc., Cal/OSHA App. 1092600, Denial of Petition For Reconsideration (May 26, 2017); see also Western Paper Box Co., Cal/OSHA App. 86-812, Denial of Petition for Reconsideration (Dec. 24, 1986).)
Issues

1. Did Employer fail to require appropriate foot protection, for employees who were exposed to foot injuries, from falling objects or crushing or penetrating actions which may cause injuries?

2. Did the Division establish that Citation 1 was properly classified as Serious?

3. Did Employer rebut the presumption that the violation in Citation 1 was Serious by demonstrating that it did not know, and could not, with the exercise of reasonable diligence, have known of the existence of the violation?

4. Were the abatement requirements reasonable?

5. Is the proposed penalty reasonable?

Findings of Fact

1. The “Archangel area” of the outbound ship dock is involved in the shipment of boxes and has boxes in the area weighing up to 49.9 pounds.

2. Employer has employees in the outbound ship dock 24 hours per day, seven days per week, and the Archangel area has eight employees in the area per day.

3. In the Archangel area, employees move boxes by hand or push them on conveyor belts.

4. Employees in the Archangel area work around boxes at various heights including: boxes on conveyors three feet off the ground; boxes on pallets where the boxes are stacked to heights of up to six feet; walls of boxes in trucks where the boxes are stacked in excess of three feet high; and boxes carried by employees.

5. At the time of inspection, various administrative and engineering controls were not followed in the Archangel area.

6. Employer was aware that boxes fell off the conveyor belts approximately once per quarter.

7. Employer was aware of prior incidents of falling objects injuring employees’ feet.

8. During the inspection an employee in the Archangel area was carrying a box.

9. Employer’s policy permitted, but did not require, steel- or composite-toed shoes.

10. Employer has between 850 and 1,150 employees at SJC7.
Analysis

1. **Did Employer fail to require appropriate foot protection, for employees who were exposed to foot injuries, from falling objects or crushing or penetrating actions which may cause injuries?**

   The Division cited Employer for a violation of California Code of Regulations, title 8, section 3385, subdivision (a), which provides:

   Appropriate foot protection shall be required for employees who are exposed to foot injuries from electrical hazards, hot, corrosive, poisonous substances, falling objects, crushing or penetrating actions, which may cause injuries or who are required to work in abnormally wet locations.

   Citation 1 alleges:

   Prior to and during the course of the inspection, including, but not limited to, April 23, 2018, the employer failed to require appropriate foot protection for their employees that are exposed to foot injuries from falling objects, crushing or penetrating actions.

   The Appeals Board explained in *United Parcel Service*, Cal/OSHA App. 1158285, Decision After Reconsideration (November 15, 2018):  

   The Division holds the burden of proving a violation by a preponderance of the evidence. “Preponderance of the evidence’ is usually defined in terms of ‘probability of truth,’ for example as evidence that, ‘when weighed with that opposed to it, has more convincing force and greater probability of truth.’” [Citations.] To prove a violation of section 3385, subdivision (a), the Division must establish that employees were (1) exposed to foot injuries from, among other things, crushing or penetrating actions, and (2) the employer failed to require or provide adequate foot protection. [Citations.]

   a. **First Element: Were Employer’s employees exposed to foot injuries from crushing or penetrating actions?**

   In *United Parcel Service, supra*, Cal/OSHA App. 1158285, the Appeals Board identified exposure as the first element of establishing a violation of section 3385, subdivision (a), and explained:

   Exposure to foot injuries from crushing or penetrating actions may be established in two different ways. First, the Division may establish exposure by showing that

---

2 All references are to California Code of Regulations, title 8, unless otherwise indicated.
an employee was actually exposed to the zone of danger created by the violative condition. [Citations.] The Division may also establish exposure by “showing the area of the hazard was ‘accessible’ to employees such that it is reasonably predictable by operational necessity or otherwise, including inadvertence, that employees have been, are, or will be in the zone of danger.” [Citation.] “The zone of danger is that area surrounding the violative condition that presents the danger to employees that the standard is intended to prevent.” [Citation.]

In the instant matter, the issue presented is whether the Division established that employees were exposed to falling objects that could result in injury or exposed to a crushing or penetrating action that could result in injury. Further, the focus of that issue is whether it is reasonably predictable that employees have been, are, or will be in the zone of danger. Therefore, defining the scope of the zone of danger is necessary and, in the case at hand, the zone of danger is the area around elevated objects and the area around objects that had sufficient height where the objects could topple or fall from a standing position.

The evidence adduced at hearing demonstrated that employees were in Employer’s facility 24 hours per day, seven days per week. Further, in the Archangel area, the evidence established that Employer had boxes weighing up to 49.9 pounds. The boxes in that area were moved by employees from location to location. Employees moved boxes on manual conveyor belts at a height of approximately three feet, employees carried boxes by hand, employees stacked boxes on pallets up to heights of approximately six feet, and employees stacked boxes in trailers at heights that are inferred to be in excess of three feet. Therefore, the evidence established that employees worked around boxes that were elevated.

In furtherance of its argument that there was employee exposure to foot injuries, the Division offered evidence of two incidents that occurred prior to the inspection period that resulted in foot injury. Delbert Haynes (Haynes), an employee that worked in the outbound ship dock, testified that on or about April 4, 2018, a box fell off a pallet stack and struck his foot with sufficient force to result in injury. Haynes testified his injury consisted of a painful red mark that was treated with ice two or three times a day for a couple of weeks. Further, Kendris Cabral (Cabral), Employer’s site environmental health and safety manager for site SJC7, testified that Danyell Adams dropped a box on her foot that resulted in injury. Employer’s OSHA 300 log for 2018 shows that this took place on March 4, 2018, and that the resulting injury was a “contusion/bruise” to her left foot. (Ex. 16.).

Further, Exhibit 2 shows an employee in the Archangel area carrying a box during the Division’s inspection. Although the weight of the pictured box is not established, the picture of

---

3 The boxes stacked in the trailers are inferred to be in excess of three feet as the evidence at hearing showed that that the employees constructed walls of boxes in the truck trailers up toward the top of the trailer, and used a manual conveyor to bring boxes into the trailers, indicating that the trailers were taller than three feet high.
the employee is illustrative of the fact that during the inspection period it was reasonably predictable that employees would work with boxes in the Archangel area and, as employees worked with boxes weighing up to 49.9 pounds in that area, that it is also reasonably predictable that employees would carry boxes weighing up to 49.9 pounds.

Pursuant to the foregoing, it is clear that employees were exposed to the hazard of falling objects or to crushing or penetrating actions that could result in injury because it was reasonably predictable that employees would be in the Archangel area handling boxes and around boxes that could fall.

i. Employer Arguments

Employer argued that it had sufficient controls in place to limit employee exposure to falling objects. As a threshold consideration, in *Home Depot USA, Inc.*, Cal/OSHA App. 1011071, Decision After Reconsideration (May 16, 2017), the Appeals Board explained:

> [W]hile Employer has an extensive program of engineering and administrative controls, ultimately, the program cannot protect employees who must physically lift heavy objects from the risk of foot injuries that may occur if a heavy object is accidentally dropped. Such employees continue to be exposed to crushing injuries due to the nature and weight of the objects they must carry.

The pictures offered by the Division show that at the time of the inspection Employer had boxes stacked on pallets where the boxes were not wrapped to secure the packages. (See Ex. 2 and 7.) Exhibits 2 and 7 show that at the time of inspection Employer’s policy of stacking boxes in a T Method was not being followed. Cabral testified that employees are trained to not stack boxes on conveyor belts. However, Exhibit 3 shows boxes stacked on conveyor belts at the time of inspection. Cabral also testified that he was aware that boxes fell off of the conveyor lines approximately once per quarter. Therefore, the evidence at hearing showed that Employer did not have sufficient controls in place to limit employee exposure to falling objects during the Division’s inspection as the controls were not effectively implemented.

In support of its position, Employer offered expert witness opinion asserting that employees were not exposed to falling objects in the Archangel area. Employer’s expert,

---

4 It is noted that Employer repeatedly cites to “*Interline Brands, Inc.*, Cal/OSHA App. 1251604, 2019 WL 639205 (Jan. 10, 2019).” However, the Appeals Board has explained that ALJ decisions are not citable and have no precedential value. (*Home Depot USA, Inc.*, Cal/OSHA App. 10-3284, Decision After Reconsideration (Dec 24, 2012.).)

5 The T Method was described at hearing as a method of stacking where the boxes loosely formed a letter T in stacking them so that boxes were not stacked in a direct column.

6 Cabral asserted this was uncommon but provided no explanatory connection between what is common at Employer’s worksite and how employees are initially trained, other than the assertion that what is trained is allegedly common.
Domnick Zackeo (Zackeo), initially opined that employees are not exposed to foot injuries based on the availability of controls that are in place. Zackeo testified that the pictures from the Division’s investigation showed boxes not stacked in the T Method and boxes improperly stacked on the conveyor. Zackeo also testified that it was possible that an employee could drop a box if Employer’s controls were not followed. Ultimately, Zackeo testified that, at the time of the inspection, not all of Employer’s controls were being properly implemented.

Employer also argued that a violation of section 3385, subdivision (a), requires a demonstration that there is a realistic potential for serious injury. Employer relies on Performance Team Freight Systems, Cal/OSHA App. 1183505, Decision After Reconsideration (May 1, 2019), in support of this position. Employer’s reliance is misplaced. In Performance Team Freight Systems, the Appeals Board held that the Division demonstrated the employer’s administrative controls “were not infallible and could not prevent employee exposure to the hazards of serious injuries, crushing, and penetrating actions.” (Id.) Further, the Appeals Board held that the employer’s OSHA 300 logs and the testimony at hearing demonstrated “ongoing exposure to the zone of danger, and the potential for serious injury, due to the failure to provide appropriate foot protection.” (Id.) Contrary to Employer’s assertion, the Appeals Board did not find that the Division was required to prove a realistic potential for serious injury. Rather, the Appeals Board merely held that the Division had proven a potential for serious injury existed in that case. (Id.) Further, in Times Advocate, Times-Advocate Company, Cal/OSHA App. 90-1242, Decision After Reconsideration (Dec. 16, 1991), the Appeals Board explained, with reference to a violation of section 3385, subdivision (a), that “to prove existence of the violation it was unnecessary to demonstrate that serious physical harm would result, to a substantial probability, from such an accident. That an accident would cause even a minor injury, by crushing action, would support the existence of a general violation.” (Id.; see also Home Depot USA, Inc. dba Home Depot #6683, Cal/OSHA Inspection No. 1014901, Decision After Reconsideration (July 24, 2017).)

Additionally, the plain language of section 3385, subdivision (a), does not support Employer’s assertions regarding the requirement for the Division to prove a realistic potential for serious injury. Section 3385, subdivision (a), it provides in its relevant part: “employees who are exposed to foot injuries from electrical hazards, hot, corrosive, poisonous substances, falling objects, crushing or penetrating actions, which may cause injuries.” Section 3385, subdivision (a), is silent as to the severity of the foot injury. As such, the plain language of the regulation does not support a conclusion that the injury must be serious. Therefore, Employer’s contention that the Division is required to demonstrate a potential for serious injury is unsupported by Appeals Board precedent and unsupported by the plain language of section 3385, subdivision (a).

---

7 Zackeo testified at length regarding the sufficiency of Employer’s controls observed by his team, however, his testimony failed to adequately demonstrate that the working conditions during his team’s later review of Employer’s facility were equivalent to, or illustrative of, those that existed during the cited time period.
Finally, Employer contends in its closing brief that the Appeals Board wrongly decided a series of foot protection cases involving Home Depot and suggests that the standard that should be applied is whether a reasonably prudent employer in the industry would recognize a hazard warranting foot protection. However, Employer provides no basis or support for this position. Further, as Employer’s own hazard and personal protective equipment assessments identify a hazard of falling objects and Cabral’s testimony demonstrated that Employer was aware of employee foot injuries from falling objects, Employer fails to explain how its purportedly more appropriate standard supports its position in the instant matter. Rather, Employer appears to merely rely on its own addition of the word serious to the language of section 3385, subdivision (a), to argue the plain language of the regulation is unforeseeable rather than relying on the plain meaning of the language in section 3385, subdivision (a).

b. Second Element: Did Employer fail to require appropriate foot protection?

In United Parcel Service, supra, Cal/OSHA App. 1158285, the Appeals Board identified a burden-shifting analysis of the requirement for foot protection required by section 3385, and explained:

In determining whether Employer provided appropriate foot protection, the Board does not consider section 3385, subdivision (a), in isolation, but looks to the requirements of the whole regulation. (Coast Waste Management, Inc., Cal/OSHA App. 11-2385, Decision After Reconsideration (Oct. 7, 2016) [“Legislative intent must be assessed according to the language of the whole regulation.”].) When reviewing section 3385 as a whole, while an employer has some latitude to select appropriate foot protection, an employer’s latitude is circumscribed by the contents of subdivision (c). Relevant here, subdivision (c)(1), states, “Protective footwear for employees purchased after January 26, 2007 shall meet the requirements and specifications in American Society for Testing and Materials (ASTM) F 2412-05, Standard Test Methods for Foot Protection and ASTM F 2413-05, Standard Specification for Performance Requirements for Foot Protection which are hereby incorporated by reference.”

To reconcile the requirements of section 3385, subdivision (a), which requires that an employer provide “appropriate foot protection” with the more-restrictive requirement that purchased foot protection meet the ASTM requirements in subdivision (c)(1), the Board has adopted and applied a burden shifting analysis. (See, e.g., Morrison Knudsen Corp., Cal/OSHA App. 94-2771, Decision After Reconsideration (April 6, 2000); MCM Construction Inc., Cal/OSHA App. 94-246, Decision After Reconsideration (March 30, 2000); Zero Corporation, Cal/OSHA App. 79-1161, Decision After Reconsideration (Nov. 15, 1984); Home Depot USA, Inc. dba Home Depot #6683, Cal/OSHA Inspection No. 1014901, Decision After Reconsideration (July 24, 2017).) First, under the burden-shifting analysis, when the Division demonstrates employees were exposed to foot injuries from falling objects, crushing or penetrating actions, a
presumption is created that footwear meeting the ASTM standards, referenced in section 3385, subdivision (c), is appropriate. (Ibid.) Next, the burden shifts to employer to rebut the ASTM standard by showing that footwear meeting the respective ASTM standards would provide no protection or would be inappropriate. (Ibid.) If an employer fails to successfully rebut application of the ASTM standard, the presumption controls and appropriate foot protection means footwear meeting the referenced standards. (Ibid.) However, if an employer successfully rebuts application of the ASTM standards, the Division must show that Employer’s foot protection is not appropriate, separate and apart from consideration and application of those standards.

As discussed above, the Division established exposure to foot injuries from falling objects or crushing or penetrating actions. Therefore, appropriate foot protection is required. It is presumed that footwear meeting the ASTM specifications and standards referenced in section 3385, subdivision (c)(1), would be “appropriate.”

The record demonstrates Employer’s footwear policy required fully enclosed shoes and prohibited shoes with heels in excess of one and one-half inches high or less than one-inch width. (Ex.17.) Employer’s policy permitted steel-toed shoes, but warned employees that such shoes may delay security screening and require removal of the shoes. The policy also offered the suggestion that composite-toed boots are safer and will not alarm at a screening point. However, the policy did not require either steel- or composite-toed shoes. Further, Employer’s policy provided no indication that it required footwear that satisfied the requirements and testing set forth in the ASTM specifications for impact resistance, compression resistance, or metatarsal protective footwear. (Ex. 17, Q, and R.) Therefore, Employer’s policy did not require foot protection meeting the ASTM specifications.

As Employer’s policy did not require foot protection meeting the ASTM specifications, the burden shifts to Employer to demonstrate that the ASTM-compliant foot protection would be inappropriate or provide no protection. Employer offered no evidence demonstrating that footwear meeting the ASTM standard would not provide protection.

Employer argues that the nature of the boxes used in its process reduces the potential for employee injury. Employer presented its facts in support of this position only as general testimony suggesting that the boxes used in Employer’s process could diminish the impact of a falling object. However, Employer did not present further evidence demonstrating the extent to which foot protection is rendered unnecessary by the boxes used by Employer. Additionally, although Employer asserts that the force of impact is reduced by the boxes, Employer did not establish that the boxes eliminated exposure to injury in heavier packages.
Therefore, Employer failed to require appropriate foot protection where the Division established exposure to foot injuries from falling objects or crushing or penetrating actions. Accordingly, the violation is established.

2. Did the Division establish that Citation 1 was properly classified as Serious?

Labor Code section 6432, subdivision (a), states:

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. The actual hazard may consist of, among other things:

(2) The existence in the place of employment of one or more unsafe or unhealthful practices that have been adopted or are in use.

“Serious physical harm” is defined as an injury or illness occurring in the place of employment that results in:

(1) Inpatient hospitalization for purposes other than medical observation.
(2) The loss of any member of the body.
(3) Any serious degree of permanent disfigurement.
(4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

(Lab. Code §6432, subd. (e).)

The Appeals Board has defined the term “realistic possibility” to mean a prediction that is within the bounds of human reason, not pure speculation. (A. Teichert & Son, Inc. dba Teichert Aggregates, Cal/OSHA App. 11-1895, Decision After Reconsideration (Aug. 21, 2015), citing Janco Corporation, Cal/OSHA App. 99-565, Decision After Reconsideration (Sep. 27, 2001).)

Labor Code section 6432, subdivision (g), provides:

A division safety engineer or industrial hygienist who can demonstrate, at the time of the hearing, that his or her division-mandated training is current shall be deemed competent to offer testimony to establish each element of a serious violation, and may offer evidence on the custom and practice of injury and illness
prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.

Associate Safety Engineer Mark Valadez testified that he was current on his division-mandated training at the time of the hearing. As such, he was competent to offer testimony regarding the classification of the citation as Serious. Valadez testified that employee exposure to falling objects created a realistic possibility of serious injury including amputations or hospitalization greater than 24 hours for a surgery due to fractures or amputations. Therefore, the Division offered sufficient uncontested evidence to establish there was a realistic possibility that serious physical harm could result from exposure to falling objects.

Accordingly, the Division established a rebuttable presumption that the citation was properly classified as Serious.

3. Did Employer rebut the presumption that the violation in Citation 1 was Serious by demonstrating that it did not know, and could not, with the exercise of reasonable diligence, have known of the existence of the violation?

Labor Code section 6432, subdivision (c), provides that an employer may rebut the presumption that a Serious violation exists 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. In order to satisfactorily rebut the presumption, the employer must demonstrate both:

(1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b) [; and]
(2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

(Lab. Code §6432, subd. (c).)

The evidence showed that Employer was aware of the hazard of falling objects, through employee reports, employee injuries, and through Employer’s own identification of the hazard for its hazard assessment. (Ex. 12 and 13.) Despite possessing this knowledge, Employer did not require footwear complying with the ASTM standard and, therefore, did not demonstrate that it took all the steps a reasonable and responsible employer in like circumstances would be expected to take before the violation occurred to anticipate and prevent the violation. Despite Employer’s assertions that it had controls in place to reduce or eliminate employee exposure to the hazard of
falling objects, the evidence supports a finding that those controls were not effectively implemented. Furthermore, it is predictable that employees will drop carried items or that items stacked above the ground will fall such that even if Employer effectively implemented its controls it would not eliminate exposure. Such hazards are not eliminated through training alone as commonplace failures and mistakes are both foreseeable and predictable. (Home Depot USA, Inc., supra, Cal/OSHA App. 1011071.)

Accordingly, Employer failed to rebut the presumption of a Serious classification and the Serious classification was properly established.

4. Were the abatement requirements reasonable?

Section 3385, subdivision (a), requires appropriate foot protection for employees exposed to foot injuries from falling objects or crushing or penetrating actions. Here, Employer provided insufficient evidence to support the assertion that complying with the safety order and providing foot protection to exposed workers was unreasonable or otherwise not required by the safety order. The requirement that Employer provide appropriate foot protection is found reasonable. (See, United Parcel Service, supra, Cal/OSHA App. 1158285.) Therefore, Employer is mandated to provide appropriate foot protection pursuant to the requirements of the safety order. However, consistent with the Appeals Board's previous precedent concerning abatement, this Decision does not specify the method of abatement. (Id.; Home Depot USA, Inc., supra, Cal/OSHA App. 10-3284.) Employer may select the least burdensome means of meeting the requirements of the cited section. (United Parcel Service, supra, Cal/OSHA App. 1158285; The Daily Californian/Caligraphics, Cal/OSHA App. 90-929, Decision After Reconsideration (Aug. 28, 1991.).)

5. Is the proposed penalty reasonable?

Penalties calculated in accordance with the penalty setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence that the amount of the proposed civil penalty was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (Stockton Tri Industries, Inc., Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

However, the Appeals Board has held that “while there is a presumption of reasonableness to the penalties proposed by the Division in accordance with the Director’s regulations, the presumption does not immunize the Division’s proposal from effective review by the Board ... .” (DPS Plastering, Inc., Cal/OSHA App. 00-3865, Decision After Reconsideration (Nov. 17, 2003.).) Nor does the presumptive reasonableness of the penalty calculated in accordance with the penalty-setting regulations relieve the Division of its duty to offer evidence in support of its determination of the penalty since the Appeals Board has
historically required proof that a proposed penalty is, in fact, calculated in accordance with the penalty-setting regulations. (*Plantel Nurseries*, Cal/OSHA App. 01-2346, Decision After Reconsideration (Jan. 8, 2004); *RII Plastering, Inc.*, Cal/OSHA App. 00-4250, Decision After Reconsideration (Oct. 21, 2003).)

An initial penalty of $18,000 is assessed for all Serious violations. (§336, subd. (c).) The penalty may be further adjusted based on Extent and Likelihood and the result is the Gravity-based penalty. Where Extent or Likelihood is rated as high, the base penalty is increased by 25 percent, where it is rated as medium the base penalty is not adjusted, and where it is rated as low the base penalty is decreased by 25 percent. (§336, subd. (c).) Valadez testified that Extent was determined to be medium because the hazard was not isolated but was not present everywhere. Therefore, Valadez asserted that there was no adjustment warranted for Extent. Valadez testified that Likelihood was determined to be high because of the number of employees exposed to the hazard and the historical occurrences of exposure. Although Valadez did not specifically elaborate regarding the number of employees, Cabral testified that there are typically a total of 30 to 40 employees in the outbound ship dock per day, comprised of two shifts, and four employees in the Archangel area during each shift. Additionally, the OSHA 300 logs showed a history of foot injuries at Employer’s SJC7 facility. (Ex. 14, 15, and 16.) Therefore, the Likelihood was sufficiently substantiated as high. Therefore, the resulting Gravity-based penalty was $22,500.

Section 336 also provides adjustment factors for Good Faith, Size, and History.

**Good Faith**

Section 335, subdivision (c), provides:

Good Faith of the Employer – is based upon the quality and extent of the safety program the employer has in effect and operating. It includes the employer’s awareness of Cal/OSHA, and any indications of the employer’s desire to comply with the Act, by specific displays of accomplishments. Depending on such safety programs and the efforts of the employer to comply with the Act, Good Faith is rated as: GOOD—Effective safety program; FAIR—Average safety program; POOR—No effective safety program.

Section 336, subdivision (d)(2), allows for a reduction of 15 percent for “fair” Good Faith. Valadez testified that Employer had an injury and illness prevention program that was in good shape and that Employer worked with him during his investigation. As nothing was presented to demonstrate a deficiency with this determination or to warrant rating Employer’s safety program as more than average, Good Faith is determined to be fair and the Gravity-based penalty may be reduced by 15 percent.
Size

Section 335, subdivision (b), and section 336, subdivision (d)(1), provide that no adjustment may be made for Size when an employer has over 100 employees. Here, Valadez testified that Employer has more than 100 employees and Cabral testified that Employer has between 850 to 1,150 employees at SJC7, depending on the season. As Employer has more than 100 employees, no adjustment is warranted for Size.

History

Section 335, subdivision (d), and section 336, subdivision (d)(3), provide that if an employer has not had a negative history of violations in the past three years, based upon specified criteria, the employer warrants a 10 percent reduction of the penalty. Valadez testified that Employer’s history entitled it to a 10 percent reduction.

This results in a total of 25 percent adjustment to the Gravity-based penalty, or $5,625, pursuant to section 336, subdivision (d). (Ex. 19.) The Adjusted penalty may be further reduced if the violation is abated. Although the Division initially issued the citation with an abatement credit, Valadez testified that abatement was not completed by Employer and the evidence presented at hearing demonstrated that Employer had not abated the violation. Therefore, no reduction is warranted for abatement. (§336, subd. (e).) Accordingly, the resulting final penalty is $16,875.

Conclusion

The evidence supports a finding that Employer violated section 3385, subdivision (a), by failing to require appropriate foot protection where employees were exposed to foot injuries from falling objects or crushing or penetrating actions. The violation was properly classified as Serious. The proposed penalty, as amended herein, is reasonable. The abatement requirements are reasonable.

ORDER

It is hereby ordered that Citation 1 is affirmed and the associated penalty is modified as set forth in the attached Summary Table.

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

Dated: 05/29/2019

Christopher Jessup
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.**
## APPENDIX A
### SUMMARY OF EVIDENTIARY RECORD

Inspection No.: **1310525**  
Employer: **GOLDEN STATE FC, LLC**  
Date of hearing(s): January 18, 2019, March 26, 2019

### DIVISION'S EXHIBITS

<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Exhibit Description</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>JURISDICTIONAL DOCUMENTS</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>2</td>
<td>PHOTO OF ARCHANGEL AREA</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>3</td>
<td>PHOTO OF ARCHANGEL AREA CONVEYOR BELTS</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>4</td>
<td>PHOTO OF ARCHANGEL AREA WITH EMPLOYEE</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>5</td>
<td>DIVISION MANDATED TRAINING LETTER</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>6</td>
<td>PHOTO OF ARCHANGEL AREA</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>7</td>
<td>PHOTO OF BOXES ON PALLETES</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>8</td>
<td>OSHA FORM 1</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>9</td>
<td>HAYNES WITNESS STATEMENT</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>10</td>
<td>RAM WITNESS STATEMENT</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>11</td>
<td>DOCUMENT REQUEST SHEET</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>12</td>
<td>PERSONAL PROTECTIVE EQUIPMENT ASSESSMENT TRAILER LOAD</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>13</td>
<td>PERSONAL PROTECTIVE EQUIPMENT ASSESSMENT PALLET BUILDING AND WRAPPING</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>14</td>
<td>OSHA 300 LOG 2016</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>15</td>
<td>OSHA 300 LOG 2017</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>16</td>
<td>OSHA 300 LOG 2018</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>17</td>
<td>EMPLOYER DRESS AND GROOMING STANDARDS</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>18</td>
<td>NOTICE OF INTENT TO CLASSIFY CITATION AS SERIOUS</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>19</td>
<td>PROPOSED PENALTY WORKSHEET</td>
<td>Admitted Into Evidence</td>
</tr>
</tbody>
</table>
## EMPLOYER’S EXHIBITS

<table>
<thead>
<tr>
<th>Exhibit Letter</th>
<th>Exhibit Description</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>FC LEARNING TRANSCRIPT FOR PRAVEN RAM</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>B</td>
<td>SAFETY OBSERVATIONS: OBSERVATION CONFIRMATION</td>
<td>Marked for Identification Only</td>
</tr>
<tr>
<td>C</td>
<td>PHOTO OF TEAM LIFT AND HEAVY LIFT WITH CARE STICKERS</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>D</td>
<td>GONZALEZ WITNESS STATEMENT</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>E</td>
<td>PHOTO OF FROM RAM INJURY VIDEO</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>F</td>
<td>BODY MECHANICS TRAINING</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>G</td>
<td>TOOL SAFETY STATION TRAINING</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>H</td>
<td>PMV NETWORK STANDARD PALLET BUILDING SJC7</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>I</td>
<td>PMV NETWORK STANDARD FLOOR LOADING NONSORTS SJC7</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>J</td>
<td>FC LEARNING TRANSCRIPT FOR ROSA GONZALEZ</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>K</td>
<td>FC LEARNING TRANSCRIPT FOR DELBERT HAYNES</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>L</td>
<td>ACRADIS POWER POINT PRESENTATION FOR AMAZON</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>M</td>
<td>DOMINICK ZACKEO RESUME</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>N</td>
<td>DOMINICK ZACKEO EXPERT TESTIMONY LIST</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>O</td>
<td>ARCADIS TEAM RESUMES</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>P</td>
<td>CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 3385</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>Q</td>
<td>ASTM STANDARD F2412 - 05 - STANDARD TEST METHODS FOR FOOT PROTECTION</td>
<td>Admitted Into Evidence</td>
</tr>
<tr>
<td>R</td>
<td>ASTM STANDARD F2413 - 05 - STANDARD SPECIFICATION FOR PERFORMANCE REQUIREMENTS FOR FOOT PROTECTION</td>
<td>Admitted Into Evidence</td>
</tr>
</tbody>
</table>
## JOINT EXHIBITS

<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Exhibit Description</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>J1</td>
<td>DIAGRAM OF FACILITY</td>
<td>ADMIT</td>
</tr>
</tbody>
</table>

Witnesses testifying at hearing:

<table>
<thead>
<tr>
<th>Witness Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Praven Ram</td>
<td>Former Amazon Associate</td>
</tr>
<tr>
<td>Delbert Haynes</td>
<td>Amazon Associate</td>
</tr>
<tr>
<td>Mark Valadez</td>
<td>Associate Safety Engineer</td>
</tr>
<tr>
<td>Kendris Cabral</td>
<td>Amazon Site EHS Manager</td>
</tr>
<tr>
<td>Dominick Zackeo</td>
<td>Vice President of Arcadis</td>
</tr>
</tbody>
</table>
APPENDIX A
CERTIFICATION OF HEARING RECORD

Inspection No.: 1310525
Employer: GOLDEN STATE FC, LLC

I, Christopher Jessup, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above-entitled matter, hereby certify the proceedings therein were electronically recorded or recorded by a certified court reporter. If the proceedings were recorded electronically, the recording was periodically monitored during the hearing. Either the electronic recording or the recording made by a certified court reporter constitutes the official record of the proceedings, along with the documentary and other evidence presented and received into evidence during or after the hearing. To the best of my knowledge the recording equipment, if utilized, was functioning normally and exhibits listed in this Appendix are true and correct, and accurately represent the evidence received during or after the hearing.

Christopher Jessup
Administrative Law Judge

05/29/2019
## SUMMARY TABLE

**OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**

In the Matter of the Appeal of:
**GOLDEN STATE FC, LLC**

| Inspection No. | 1310525 |

### Citation Issuance Date: 07/06/2018

<table>
<thead>
<tr>
<th>ITEM</th>
<th>SECTION</th>
<th>TYPE</th>
<th>CITATION/ITEM RESOLUTION</th>
<th>AFFIRMED</th>
<th>PENALTY PROPOSED BY DOSH IN CITATION</th>
<th>FINAL PENALTY ASSESSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3385 (a)</td>
<td>S</td>
<td>ALJ affirmed citation. Penalty modified.</td>
<td>A</td>
<td>$8,435.00</td>
<td>$16,875.00</td>
</tr>
</tbody>
</table>

**Sub-Total**

- **$8,435.00**
- **$16,875.00**

### Total Amount Due*

- **$16,875.00**

*You may 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.

### PENALTY PAYMENT INFORMATION

1. Please make your cashier’s check, money order, or company check payable to: **Department of Industrial Relations**

2. Write the **Inspection No.** on your payment

3. **If sending via US Mail:**
   - CAL-OSHA Penalties
   - PO Box 516547
   - Los Angeles, CA 90051-0595
   - **US Bank Wholesale Lockbox**
   - c/o 516547 CAL-OSHA Penalties
   - 16420 Valley View Ave.
   - La Mirada, CA 90638-5821

   **Online Payments can also be made by logging on to http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html**

   **-DO NOT** send payments to the California Occupational Safety and Health Appeals Board-

### Abbreviation Key:

- **G**=General
- **R**=Regulatory
- **Er**=Employer
- **S**=Serious
- **W**=Willful
- **Ee**=Employee
- **A/R**=Accident Related
- **RG**=Repeat General
- **RR**=Repeat Regulatory
- **RS**=Repeat Serious

OSHAB 201

SUMMARY TABLE

Rev. 02/18