BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

HOME DEPOT U.S.A., INC.
dba THE HOME DEPOT RDC 5642
2455 PACES FERRY ROAD, D17
ATLANTA, GA  30339

Employer

Inspection No.
1330738

DECISION

Home Depot U.S.A., Inc, dba, The Home Depot RDC 5642 (Employer), is a warehouse distribution center for the Home Depot home improvement stores. Beginning July 17, 2018, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Patrick McDonagh (McDonagh), conducted a programmed inspection of the distribution warehouse located at 5655 Ontario Mills Parkway in Ontario, California, (the warehouse).

On August 7, 2018, the Division issued Employer two citations, one of which is at issue - failure to provide a means to prevent an employee’s feet from coming into contact with a conveyor when using a crossover as defined by section 3207. 1

Employer contests the existence of the violation, the classification, the abatement requirements, and the reasonableness of the proposed penalty. Employer also asserted a series of affirmative defenses.2

This matter was heard by Leslie E. Murad, II, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board. On December 3, 2020, ALJ Murad conducted the hearing from Highland, California, with the parties and witnesses appearing remotely via the Zoom video platform. Attorneys, Matthew Deffebach and Mini Kapoor of Haynes and Boone, LLP, represented Employer. Martha Casillas, staff counsel, represented the Division. The matter was submitted on February 1, 2021.

OSHAB 600 (Rev. 5/17)

1 Unless otherwise specified all citations will be to title 8 of the California Code of Regulation.
2 Except where discussed in the 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).)
**Issue**

Did Employer fail to ensure that the feet of employees did not touch the conveyor when using the crossover stepping stones (walking pads) system Employer had in place which met the requirements of a crossover as defined by section 3207?

**Findings of Fact**

1. The Employer was Home Depot U.S.A., Inc.
2. The Division had jurisdiction and the Employer consented to the inspection.
3. The citations were timely issued, the appeal forms were timely filed and amended by motion and order.¹
4. Employer had in place and in use a crossover system that used a ladder, handrails and raised diamond-studded stepping stones (walking pads), as defined in section 3207, subdivision (a).
5. Employee’s feet were not exposed to contacting the conveyor belt when crossing over the conveyor by use of the stepping stones crossover system.

**Analysis**

Did Employer fail to ensure that the feet of employees did not touch the conveyor when using the crossover stepping stones (walking pads) system Employer had in place which met the requirements of a crossover as defined by section 3207?

Section 3999, subdivision (c), provides:

Crossovers as defined in Section 3207 of these orders shall be provided where necessary, which will allow employees to pass over or cross a conveyor. Unless a 6-foot 6-inch headroom clearance is provided, employees shall not be permitted to pass under conveyors.

Citation 1, Item 2, alleges:

Prior to and during the course of the inspection, including but not limited to, on July 17, 2018, employees on the upper mezzanine were permitted to crossover the conveyor lines. There was no means to preventing employees’ feet from coming into contact with the conveyors. These crossovers do not meet the crossover definition as defined in Section 3207 of these orders.

Section 3207, subdivision (a), provides in its relevant part:

Crossover. A means to allow employees to pass over or cross a horizontal belted or live roller conveyor without the employee’s feet from coming into contact with moving or movable elements of the conveyor. Such a means shall include, but are not limited to, catwalks as specified in Section 3273 of these Orders, non-

¹ Findings of Fact 1, 2 and 3, were stipulated to by the parties.
continuous, slip resistant (e.g., raised diamond-studded) metal “stepping stones” (e.g., “walking pads”), or replacing conveyor rollers with continuance parallel metal strip walking surfaces (“crosswalks”).

The Division has the burden of proving a violation by a preponderance of the evidence. (ACCO Engineered Systems, Cal/OSHA App. 1195414, Decision After Reconsideration (Oct. 1, 2019).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighed with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inference to be drawn from both kinds of evidence. (Timberworks Construction, Inc., Cal/OSHA App. 1097751, Decision After Reconsideration (Mar. 12, 2019).)

The Division called as its only witness Associate Safety Engineer McDonagh. McDonagh testified that he went to Employer’s warehouse as a result of a programmed inspection on July 17, 2018. He observed a complex set of conveyors. McDonagh took photographs. Photograph Exhibit 4 shows the crossover system that Employer had in place at the time of the inspection. McDonagh was of the opinion that a person’s feet could still possibly touch the conveyor belt. However, McDonagh also testified that the crossover system at Employer’s warehouse was in compliance with section 3207 as a stepping stone crossover. “I cannot trigger a violation related to this crossover definition, based on the crossovers at Home Depot.” (Hearing transcript, 72, 21-23.) McDonagh further testified that the Employer’s crossover as depicted in Exhibit 4 was in compliance with Section 3207 and was provided, as necessary, by Employer pursuant to section 3999, subdivision (c). (Hearing transcript, 93, 9-25.)

The witnesses called by Employer, David Bell, National Manager for Health, Safety and Environment, Taylor Maupin, Asset Protection Manager for the warehouse, John Chiaravalle, Regional Maintenance Manager for the west, and Domenick Zackeo, Employer’s Environmental Health and Safety Consultant all testified that the crossover system in use was safe. No one disagreed with McDonagh’s conclusion that the crossover system in use was in compliance with the cited regulation.

The Division has the burden of proving each element of its case, including the applicability of the safety order. (Coast Waste Management, Inc., Cal/OSHA App. 11-2385, Decision After Reconsideration (Oct. 7, 2016).) Based on the evidence presented, the Division has failed to prove its case. The testimony provided proved by a preponderance of the evidence that the crossover system used by Employer met the requirements of section 3207. As such, there can be no finding of a violation of section 3999, subdivision (c).

**Conclusion**

The Division failed to establish that the crossover system in use by Employer violated section 3999, subdivision (c).
Order

It is hereby ordered that Citation 1, Item 2, is dismissed

Dated: 03/02/2021

Leslie E. Murad, II
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.: 1330738
Employer: HOME DEPOT U.S.A., INC. dba THE HOME DEPOT RDC 5642
Date of hearing(s): December 3, 2020.

DIVISION'S EXHIBITS

<table>
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<tr>
<th>Exhibit Number</th>
<th>Exhibit Description</th>
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<td>Jurisdictional Documents (Combined)</td>
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<tr>
<td>4</td>
<td>Photo by CSHO number 2190: cross over at issue</td>
<td>Admitted Into Evidence</td>
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<tr>
<td>5</td>
<td>Photo by CSHO number 2246: cross over at issue, another angle</td>
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<td>6</td>
<td>Photo by CSHO number 2270: objects on conveyors</td>
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<tr>
<td>7</td>
<td>Field Documentation Worksheet (field notes and measurements)- 9 pages</td>
<td>Admitted Into Evidence</td>
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<tr>
<td>8</td>
<td>Narrative Summary</td>
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<td>9</td>
<td>Evidence Grid</td>
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<td>10</td>
<td>C-10 penalty worksheet</td>
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<td>12</td>
<td>Reg 3999</td>
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<tr>
<td>13</td>
<td>Reg 3207</td>
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EMPLOYER'S EXHIBITS

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<th>Exhibit Letter</th>
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<tr>
<td>J</td>
<td>Ad for Crossover Walk Plate for Roller Conveyor</td>
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<td>L</td>
<td>Emails</td>
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<td>Y</td>
<td>THD Ontario RDC-5642 Crossover Study</td>
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<td>AA</td>
<td>Conveyor Crossover Safety Training Sign Up Sheet</td>
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<td>Nick Zackeo Resume</td>
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Witnesses testifying at hearing:

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<tr>
<th>Name</th>
<th>Title, Company Information</th>
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<tr>
<td>Dominick Zackeo</td>
<td>Vice President of Arcadis, Inc., Environmental Health and Safety Consultant</td>
</tr>
<tr>
<td>John Chiaravalle</td>
<td>Regional Maintenance Manager for the West for Home Depot</td>
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<tr>
<td>Taylor Maupin</td>
<td>Asset Protection Manager for Ontario Home Depot RDC</td>
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<tr>
<td>David Bell</td>
<td>Manager of Health, Safety and Environment for Home Depot Corp.</td>
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<tr>
<td>Patrick McDonagh</td>
<td>DOSH Assoc. Safety Engineer/Inspector</td>
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Inspection No.: 1330738
Employer: HOME DEPOT U.S.A., INC. dba THE HOME DEPOT RDC 5642

I, Leslie E. Murad, II, 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.

Leslie E. Murad, II

03/02/2021
Dated
**SUMMARY TABLE**

**OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**

In the Matter of the Appeal of:
HOME DEPOT U.S.A., INC. dba THE HOME DEPOT RDC 5642

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<th>08/07/2018</th>
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<th>AFFIRMED</th>
<th>PENALTY PROPOSED BY DOSH IN CITATION</th>
<th>FINAL PENALTY ASSESSED</th>
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<td>1</td>
<td>2</td>
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**Sub-Total**
$750.00 $0.00

**Total Amount Due**
$0.00

*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

   If sending via Overnight Delivery:
   - 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=Wilful
- Ee=Employee
- A/R=Accident Related
- RG=Repeat General
- RR=Repeat Regulatory
- RS=Repeat Serious