BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of: **RANCH OF THE GOLDEN HAWK** **1663 Amherst Avenue** **Los Angeles, CA 90025** **Employer**	Inspection No. **1224802** **DECISION AFTER RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code, issues the following Decision After Reconsideration in the above-entitled matter.

JURISDICTION

Ranch of the Golden Hawk (Employer or ROTGH) is involved in the growing and selling of flowers. Additionally, Employer is involved in the care and maintenance of property owned by the Parcel 47 Partnership, including a house located on that property. On April 11, 2017, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Terry Hammer, commenced an accident investigation of Employer's work site located at 47 Hollister Ranch Road, Goleta, California (jobsite).

On September 28, 2017, the Division issued seven citations to Employer, alleging 11 violations of occupational safety and health standards codified in California Code of Regulations, title 8.[1] The citations alleged: Employer failed to report to the Division the death of an employee that occurred in a place of employment or in connection with employment; Employer failed to establish, implement, and maintain an effective written Injury and Illness Prevention Program; Employer failed to establish, implement, and maintain an effective written Heat Illness Prevention Plan; Employer failed to make available at least two persons trained in first aid and cardiopulmonary resuscitation while field work involving two or more employees was being performed; Employer failed to provide at least one employee trained in administering first aid at a remote jobsite; Employer failed to train employees and supervisors on a Heat Illness Prevention Plan; Employer failed to provide training and instructions in hazards involved in the job, proper and safe use of all equipment, and other topics; Employer failed to ensure that a qualified tree worker conducted a job briefing before tree work commenced; Employer failed to establish rescue procedures and provide training in emergency response; Employer failed to ensure that tree work

[1] References are to California Code of Regulations, title 8 unless specified otherwise.

was done under the direction of a qualified tree worker; and Employer failed to establish a method of communication for tree workers and failed to establish a drop zone prior to beginning tree work.

Employer timely appealed.

The matter was heard by Sam E. Lucas, Administrative Law Judge (ALJ) for the Board, via Zoom on April 8 and 9, 2021. The ALJ's Decision was issued on December 17, 2021. The ALJ affirmed all citations, but reduced the classification of Citation 2 from Serious to General, and modified the proposed penalties for Citations 2 through 5.

Employer's timely Petition for Reconsideration followed. The Board took Employer's petition under submission on February 7, 2022. The Division filed a reply on February 18, 2022.

Employer argues in its Petition that the Division did not have jurisdiction to issue the citations because 1) the tree work leading to the accident was a household domestic service, and 2) ROTGH was not the employer of the tree workers for purposes of California Occupational Safety and Health Administration (Cal/OSHA) enforcement.

Employer does not contest the violations alleged in Citation 1, Items 2 through 5, and Citation 2; the Serious classifications of Citations 3 through 7; the Accident-Related characterizations of Citations 6 and 7; or the reasonableness of the assessed penalties. Issues not raised in the Petition for Reconsideration are deemed waived. (Lab. Code, § 6618.) Thus, the issues here are limited to the violation alleged in Citation 1, Item 1, and the existence of the violations alleged in Citations 3 through 7.

In making this decision, the Board has engaged in an independent review of the entire record. The Board additionally considered the pleadings and arguments filed by the parties. The Board has taken no new evidence.

ISSUES

1. Was the tree work in question a household domestic service?

2. Was ROTGH the employer of the tree workers for purposes of triggering the requirements of the cited safety orders?

3. Did ROTGH violate section 342, subdivision (a)?

4. Did ROTGH violate section 3421, subdivisions (b), (c), (f), and (l)?

5. Did ROTGH violate section 3427, subdivision (b)?

FINDINGS OF FACT

1. On April 10, 2017, Marcelino Gorostieta Nova (Nova) and Adolfo Campuzano (Campuzano)

were engaged by ROTGH to perform tree work at the jobsite. As a result of the tree work, Nova suffered a fatal head injury when he was struck by a falling section of tree trunk.

2. The jobsite was located on a 100-acre property owned by the Parcel 47 Partnership (Partnership), a general partnership. The jobsite was a remotely situated work location.

3. Employer operated a business on the property that grew and sold exotic flowers. Employer was also responsible for ensuring the care and maintenance of the property, including a house located on the property. The title "Ranch of the Golden Hawk" refers to the Parcel 47 property as a whole as well as the flower business.

4. Although there was a house located on the property in question, no one resided or dwelled there.

5. Lawrence "Larry" Jones (Jones) was the Majority Partner in the Partnership. Jones had exclusive use of the house on the property. Jones visited the house on the property as a retreat or getaway, but never used the house as a residence.

6. A caretaker, Antonio Rubi (Rubi) was employed to care for the property at the jobsite. Rubi was present at the property three days a week. Rubi maintained the house and surrounding land. Rubi also participated in the operation of the flower business and had two assistants in this endeavor. Rubi and the two assistants were employees of Employer.

7. Hugh Sutherland (Sutherland) was the manager of the property and the supervisor of Rubi. Sutherland supervised Rubi remotely and was not present at the property. Sutherland was responsible for ensuring that the house and property were maintained in good condition, and for overseeing the operation of the flower business.

8. Sutherland had familiarity with the California Occupational Safety and Health Administration (Cal/OSHA) general requirements for operation of a business. Sutherland was also generally familiar with the requirements for a qualified tree worker.

9. The removal of dead trees on the property was recommended by Rubi to Sutherland. Rubi also suggested that Employer use Campuzano to perform the work. Sutherland approved the work suggested by Rubi and hired Campuzano. Nova was Campuzano's chosen assistant.

10. Jones had no knowledge of, and was not involved in, the tree work at issue herein until after the fatal accident.

11. Jones's main responsibility, in service to Employer, was to deposit the money required to cover Employer's expenses into a bank account held in Employer's name. The money deposited by Jones was used to maintain the house and land and to operate the flower business.

12. Employer had natural persons in service for it, including Nova, Campuzano, Rubi, and Rubi's

two assistants.

13. The tree workers, Nova and Campuzano, were engaged and directed to perform tree work at the jobsite by Employer. Neither tree worker was a licensed contractor, nor were they qualified tree workers.

14. Nova and Campuzano were the only tree workers involved in the tree work that resulted in the accident.

15. The tree workers received no training from Employer and were set to work without training. Employer did not have the tree workers demonstrate familiarity with the techniques and hazards of tree maintenance, removal, and the equipment used in the specific operations involved therein.

16. Employer did not have a job briefing conducted for the tree workers by a qualified tree worker before tree work began. Employer did not have a drop zone established by a qualified tree worker at the jobsite. Employer did not have a qualified tree worker review a method of communication to be used by the tree workers at a job briefing before tree work began.

17. The accident was never reported to the Division.

DISCUSSION

1. Was the tree work in question a household domestic service?

The threshold question is whether the tree work was "employment" within the Division's jurisdiction. Labor Code section 6303, subdivision (b), defines employment to include:

> The carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, except household domestic service.

The Division lacks jurisdiction over "household domestic service." (Lab. Code §§ 6303, subd. (b), 6307.) In *Fernandez v. Lawson* (2003) 31 Cal.4th 31 (*Fernandez*), the California Supreme Court addressed the term "household domestic service." The Court explained, "[T]he term 'household domestic service' implies duties that are personal to the homeowner, not those which relate to a commercial or business activity on the homeowner's part." (*Id*. at 37.) In *Cortez v. Abich* (2011) 51 Cal.4th 285, 293-294, the Court further explained "that 'overwhelming public policy and practical considerations' make it unlikely the Legislature intended Cal-OSHA's complex regulatory scheme to apply to a homeowner hiring a tree trimmer for a personal,

noncommercial purpose." These cases dealt explicitly, and exclusively, with private homeowners who contracted for tree-trimming work on privately-owned land.

Therefore, in order for work to qualify as household domestic service, exempted from the definition of "employment" in Labor Code section 6303 and the Division's jurisdiction, the work must be (1) personal to the homeowner, and (2) not related to a commercial or business activity on the homeowner's part.

Employer argues that the tree work fell within the household domestic service exception because it was personal to Jones, and unrelated to the commercial activity of the flower business. This argument is based on several incorrect or fallacious premises.

Employer claims that Jones owned the house on the property as a private individual. This is incorrect; the Partnership owned the house. Employer asserts that the Partnership was unrelated to the flower business. However, the record demonstrates that the two were so entangled as for any distinction to be irrelevant, particularly in light of the crucial fact that the land in question was owned by a business entity. Finally, Employer asserts that the tree work in question pertained only to the house. This assertion, even if true, is irrelevant; it is undisputed that the title "Ranch of the Golden Hawk" referred to both the flower business and to Parcel 47 as a whole, and ROTGH was the employer of employees who performed work that was unrelated to the flower business. Thus, this case does not involve "a homeowner hiring a tree trimmer" (*Cortez*, *supra,* 51 Cal.4th at 293-294) but, rather, a business entity hiring workers to perform tree work. The "household domestic service" exception therefore does not apply.

We address these somewhat overlapping arguments in greater detail below.

<u>The Partnership owned the house and the property.</u>

Employer argues that Jones was the sole, private owner of the house, and by extension of the dead trees near the house. Employer asserts that the tree work was therefore personal to Jones. Employer's arguments on this point are not well-developed. Employer claims, for example, that "Jones owned the house, not the partnership" (Petition, p. 7) and "Jones was a sole owner of the house," (*Id*. at p. 8), but also acknowledges that "Jones had sole and exclusive use of the house … per the Partnership Contract [sic]." (*Id.* at p. 6.) Both cannot be true, and the record is clear that Jones did not, in fact, own the house as a private individual; the Partnership owned the house as well as the land. (Exhibits P, R.)

At the time of the Division's inspection and issuance of citations, Jones, the Majority Partner, held a 99% interest in the Partnership.[2] Jones was, in addition, the sole owner of the flower business which occupied approximately 12 acres on the property (Exhibit 10), although he had no direct involvement in its operation. Jones also had exclusive use of the house on the property.

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[2] The remaining 1% interest in the partnership was held by a cousin of Jones's, the daughter of Jones's uncle, who had originally purchased the property. Jones testified that this arrangement was to allow the cousin access to the land.

Jones occasionally visited the house as a vacation or weekend retreat, but never used it as a residence, due to its remote location and the demands of his job a media executive.

The very nature of a business entity such as a general partnership is commercial, and therefore non-personal. "Partnership" means an "association of two or more persons to carry on as co-owners a business for profit." (Corp. Code §§ 16101, subd. (a)(9) and 16102, subd. (a).) As the Division pointed out in its reply to Employer's Petition, the benefits of forming a business entity do not include cherry-picking its obligations in order to frame an endeavor as personal and non-commercial for the sake of legal convenience. (Division's Reply, pp. 6-7. See, e.g., *Pacific Landmark Hotel, Ltd. v. Marriot Hotels, Inc.* (1993) 19 Cal.App.4th 615, 628 ["Since society recognizes the benefits of allowing persons and organizations to limit their business risks through incorporation, sound public policy dictates that disregard of those separate corporate entities be approached with caution."].)

Here, the General Partnership Agreement (Agreement), which dates from August 28, 2013, granted Jones a two-thirds interest in the Partnership and exclusive use of the house, but specified that all structures on the Parcel 47/ROTGH property, including the house in question, were owned by the Partnership. (Exhibit P, pp. 9-10, 12.) The Agreement granted Jones's cousin a one-third interest in the property. (*Id.*) On approximately September 7, 2013, Jones purchased an additional 32 1/3% interest in the Partnership from his cousin, giving Jones a 99% interest in the property, including the house. (Exhibits Q, R.) Employer is therefore incorrect in asserting that Jones owned the house as a private individual.

Because the Partnership, not Jones, owned the house, the ALJ correctly concluded that Jones was not the type of private homeowner contemplated in *Fernandez*. *Fernandez* addressed only tree work on property owned and occupied by a private individual. Here, the jobsite was on property owned and maintained by a business entity. The ALJ concluded, "It is apparent that the Partnership was the homeowner and it cannot reasonably be said that the partnership, a business entity, is able to have work performed that is 'personal' to it as contemplated under *Fernandez*." (Decision, p. 7.) In addition, the ALJ noted, "where an agent is hired for the purpose of retaining workers and supervising the running of a business, such as Sutherland, it is not comparable to a homeowner who is reasonably unfamiliar with particular nuances of the Cal/OSHA Act." (Decision, p. 8.) The defendants in *Fernandez*, for example, did not know that a license was required to perform the tree work in question, while Sutherland was aware of this requirement but mistakenly assumed that Campuzano was licensed. These factors distinguish the instant matter from the household domestic service at issue in *Fernandez*.

The tree work in question therefore cannot be said to be personal to Jones.

<u>The Partnership was not unrelated to the flower business.</u>

Employer further argues that the tree work was unrelated to a commercial activity or purpose because the Partnership "had no interest in the flower business." (Petition, p. 7.) As noted

above, the property was owned by a business entity, and the tree work was done for the benefit of the property and ultimately of that business entity. Regardless of the flower business, the very existence of a partnership to own the property demonstrates a commercial purpose. Employer's attempt to distinguish the tree work as entirely non-commercial is thus little more than a red herring.

Further, the record indicates that the Partnership did have a relationship to the flower business. The very land and buildings the flower business occupied were owned by the Partnership. The flower business had existed on Parcel 47/ROTGH since approximately 1985 or 1986, according to Jones's testimony, and Jones had an interest in that business from the outset. Jones testified that he originally purchased a one-third interest in the property from his uncle, who had owned Parcel 47/ROTGH since the 1970s, with the intention of Jones and his uncle starting the flower business on the property as equal partners. At some point, Jones testified, he purchased an additional one-third interest in the property from his uncle, making Jones the two-thirds owner. Jones also became sole owner of the flower business at some point prior to 2013, although the record is unclear as to exactly when this transition occurred.

Jones was thus the sole owner of the flower business, and owned a two-thirds interest in the property, when the 2013 Agreement was created. A reasonable inference can be drawn that the Agreement was drafted with the flower business in mind. The terms of the Agreement provide further support for this inference. The Agreement specified that the land was to be used "in such [a] manner … consistent with limited agricultural enterprises as may be undertaken by the Partners." (Exhibit P, p. 1.) Jones testified that his main responsibility to Employer was to deposit the money required to cover the costs of labor and other expenses in maintaining the property, the house, and the flower business into a bank account held by Employer under the name of Ranch of the Golden Hawk.

The ALJ therefore drew a reasonable inference that the Partnership existed for purposes of maintaining the flower business, as well as to maintain the property and house. The ALJ concluded, "[T]he Partnership operated for the purpose of running the flower business and maintaining the property, including the house, and such an enterprise is not blatantly noncommercial." (Decision, p. 7) The entanglement between the Partnership and the flower business provides further support for the finding that the tree work was related to a commercial activity.

<u>Even if the tree work related only to the house, the distinction is irrelevant.</u>

Finally, Employer argues that the dead trees were physically nearer to the house than to the areas where the flowers were grown and the barn where cultivated flowers were boxed for shipping; therefore, tree work near the house was unrelated to any commercial activity, and personal to Jones. (Petition, pp. 3, 6.)

The record makes clear that ROTGH's scope of authority as an employer extended beyond the flower business to include maintenance of the property as a whole. Both Sutherland and Rubi

were employed by ROTGH for the purpose of, and engaged in, the upkeep and maintenance of the entire property known as Parcel 47/ROTGH; including, but not limited to, the house and surrounding land. For example, Rubi did landscaping and yard work around the house, and prepared the house in advance of Jones's visits. Their service to ROTGH as an employer was not limited to the running of the flower business.

Employer acknowledges that Sutherland and Rubi "run the flower business and help to maintain the residential home" (Petition, p. 3, emphasis in original) but insists that maintaining the house and surrounding property was "in addition to and separate from [their] employment in the flower business." (*Id*. at p. 4) The record, however, demonstrates no such separation. ROTGH employed the same employees in service to both the flower business and the property as a whole, with no practical distinction between the two. Rubi and Sutherland were each paid for their work from the same bank account, held in the name of ROTGH, with no separation between their work for the flower business as opposed to the general maintenance of the property or the house. ROTGH was undisputedly an employer of Rubi, for example, regardless of whether he was engaged in tasks related to the flower business or the house at a given moment. Campuzano and Nova were hired by Sutherland and Rubi in furtherance of the performance of their duties to maintain the property and the house. Work done on Parcel 47/ROTGH was done in the service of ROTGH as the hiring entity, even work unrelated to the flower business.

The tree work in question therefore cannot be said to be unrelated to any commercial activity.

2. Was ROTGH the employer of the tree workers for purposes of triggering the requirements of the cited safety orders?

Having determined that the tree work was employment, and not a household domestic service, the next step of the analysis asks whether the jobsite was a place of employment as defined by Labor Code section 6303, subdivision (a); whether ROTGH was an employer as defined by Labor Code section 6304; whether Campuzano and Nova were employees as defined by Labor Code section 6304.1, subdivision (a); and finally, whether Campuzano and Nova were employees of ROTGH, or independent contractors.

Labor Code section 6303, subdivision (a) provides, "'Place of employment' means any place, and the premises appurtenant thereto, where employment is carried on." Here, the tree work in question was employment within the meaning of Labor Code section 6303, subdivision (b). The jobsite was therefore a place of employment.

Labor Code section 6304 specifies that "employer" has the same meaning as defined in Labor Code section 3300, subdivision (c), which provides that an employer is "every person ... which has any natural person in service." Here, ROTGH sought the services of tree workers. ROTGH, through Rubi and Sutherland, arranged for tree workers to come to the jobsite to perform the service of tree work. ROTGH was therefore an employer.

Labor Code section 6304.1, subdivision (a), defines “employee” to mean “every person who is required or directed by any employer to engage in any employment or to go to work or be at any time in any place of employment.” Here, ROTGH, through Rubi and Sutherland, directed the tree workers to perform tree work at the jobsite by indicating what trees to remove. Therefore, Campuzano and Nova were employees engaged to work by an employer.

Finally, there is no dispute that Campuzano and Nova were engaged by ROTGH to perform, and did perform, tree work services at the jobsite that involved trimming and/or removing trees over 15 feet tall. A contractor's license is required to trim or remove trees 15 feet or more in height. (Bus. & Prof. Code, § 7026.1, subd. (a)(4).) There is no dispute that neither Campuzano nor Nova held such a license. Labor Code section 2750.5 provides, in relevant part:

> There is a rebuttable presumption affecting the burden of proof that a worker performing services for which a license is required pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, or who is performing such services for a person who is required to obtain such a license, is an employee rather than an independent contractor.

Because the tree work being performed required a license pursuant to Business and Professions Code section 7026.1, subdivision (a)(4), the presumption of employment applies. (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (1985) 40 Cal.3d 5, 12–16 [Lab. Code § 2750.5 makes an unlicensed contractor who is performing work for which a license is required an employee of the hirer of the unlicensed contractor, for purposes of workers' compensation].) To rebut this presumption, the putative employer must present evidence that the worker was licensed to perform the services for which a license is required. (*Id.*) Here, since neither worker was licensed to perform the tree work, ROTGH cannot rebut the presumption of employment. Because a license is a condition of being an independent contractor, ROTGH failed to rebut the presumption of employment by demonstrating that the workers were independent contractors. (*Id.* at 8, 15.)

ROTGH was therefore the employer of Campuzano and Nova for Cal/OSHA enforcement purposes.

Employer argues that the ALJ failed to properly consider the Court’s analysis in *Fernandez* in finding that Campuzano and Nova, as unlicensed contractors, were ROTGH’s employees. (Petition, p. 9.) Employer argues that because the tree work was a household domestic service, the issue of the unlicensed contractors’ employment status is a moot point. Employer asserts that Jones, as an individual, was, like the homeowner in *Fernandez*, “an employer solely by virtue of Section 2750.5” and thus not subject to Cal/OSHA regulations. (Petition, p. 5.)

However, *Fernandez* considered the relatively narrow question of whether tree trimming performed on behalf of a private homeowner could ever be considered a household domestic

service, concluded that it could, set forth the test described above, and concluded that under the facts of that case, the tree trimming at issue was a household domestic service. The unlicensed contractor's employment status was therefore not at issue. Here, as discussed above, ROTGH was not a "homeowner who is an employer solely by virtue of section 2750.5," (*Fernandez*, *supra*, 31 Cal.4th at 35), nor was the tree work in this matter a household domestic service. The employment status of the unlicensed contractors in this matter is therefore not moot, as Employer claims.

Employer then asserts that Nova was Campuzano's employee, not Employer's. (Petition, p. 9.) Employer argues that Nova "was hired by Campuzano" and that Nova was "solely and exclusively under Campuzano's direction and control." (*Id.*) This argument incorrectly presumes that Campuzano was an independent contractor, and therefore must fail. Because Campuzano was himself not licensed, he is deemed to be Employer's employee. He therefore cannot be an independent contractor with Nova in his employ.

3. Did ROTGH violate section 342, subdivision (a)?

Citation 1, Item 1 alleged a Regulatory violation of the reporting requirements of section 342, subdivision (a).[3] Section 342, subdivision (a) requires an employer to report "any serious injury or illness, death, of an employee occurring … in connection with any employment" to the Divison "immediately," meaning, "as soon as practically possible but no longer than 8 hours after the employer knows or with diligent injury would have known of the death or serious injury or illness." The time frame may be extended to 24 hours "[i]f the employer can demonstrate that exigent circumstances exist." (§ 342, subd. (a).)

Here, there is no dispute that Nova was fatally injured in connection with work being performed at the jobsite. Employer never reported Nova's fatal injury, although Employer was aware it had occurred. The Division became involved because the Associate Safety Engineer who conducted the inspection saw a report of the accident on the local news and notified her district office.

Employer argues that it had "no reason to believe that [Nova] was an employee," and was thus unaware of the reporting obligation. (Petition, p. 10.) Employer raised the same argument in its post-hearing brief. The ALJ rejected this argument, explaining:

> The Appeals Board has contemplated ignorance of the law as an excuse for nonperformance within the context of section 342, subdivision (a). In *Geo Plastics*[,] Cal/OSHA App. 13-0810, Denial of Petition for Reconsideration (Mar. 24, 2014), the Appeals Board explained:

[3] Employer's Petition incorrectly references "Section 343, Subdivision (a) [sic]." (Petition, p. 10.)

> First, ignorance of the law, including this reporting requirement, is no excuse for non-compliance. [Citations.] Employers are presumed to know the safety orders applicable to their operations. [Citation.] Persons who avail themselves of the privilege of doing business in California are held to knowledge of the law's requirements. [Citations.]
>
> As such, Employer's position that it was unaware of its duty to report Nova's death does not present a defense.

(Decision, p. 25.)

We agree. Citation 1, Item 1 is affirmed.

4. Did ROTGH violate section 3421, subdivisions (b), (c), (f), and (l)?

Citations 3, 4, 5, and 6 alleged violations of section 3421, subdivisions (c), (f), (l), and (b), respectively.[4] Citations 3 through 6 are classified as Serious, and Citation 6 is characterized as Accident-Related. Employer does not dispute the classifications or charaterization of these Citations. (Lab. Code § 6618.)

The cited subdivisions of section 3421 allege that Employer failed to provide training and instruction on topics including, but not limited to, job hazards and the proper and safe use of equipment (§ 3421, subd. (c)); Employer failed to ensure that a qualified tree worker conducted a job briefing before tree work commenced (§ 3421, subd. (f)); Employer failed to establish rescue procedures and provide training in emergency response (§ 3421, subd. (l)); and Employer failed to ensure that tree work was done under the direction of a qualified tree worker (§ 3421, subd. (b)).

At the hearing, the Division presented evidence establishing each of these violations, which was unrebutted by Employer. The ALJ accordingly affirmed Citations 3 through 6.

Employer's Petition addresses these Citations collectively, to assert only that "safety standards specific to tree trimming … should not be imposed upon a homeowner who is contracting for household domestic services which are non-commercial and take place at a private residence." (Petition, p. 10.)

As the tree work at issue was employment, and not a household domestic service, Employer's argument fails. Citations 3, 4, 5, and 6 are affirmed.

5. Did ROTGH violate section 3427, subdivision (b)?

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[4] Employer's Petition incorrectly refers to the cited sections as "Section 3431 [sic], Subdivision (c), Subdivision (f), Subdivision (i) [sic], [and] Subdivision (b)." (Petition, p. 10.)

Citation 7, Item 1, classified as Serious and Accident-Related, alleged a violation of section 3427, subdivision (b), which requires an employer to establish a method of communication for tree workers, and to establish a drop zone, prior to beginning tree work.[5] Employer does not dispute the classification or charaterization of Citation 7. (Lab. Code § 6618.)

As with Citations 3 through 6, the Division presented unrebutted evidence that Employer failed to comply with this requirement. The ALJ accordingly affirmed Citation 7.

Employer addresses Citation 7 along with Citations 3 through 6, again asserting only that "safety standards specific to tree trimming … should not be imposed upon a homeowner who is contracting for household domestic services which are non-commercial and take place at a private residence." (Petition, p. 10.)

As the tree work at issue was employment, and not a household domestic service, Employer's argument fails. Citation 7, Item 1 is affirmed.

DECISION

For the reasons stated, the Board affirms the ALJ's Decision.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin P. Kropke, Board Member

FILED ON: 05/23/2022

[5] Employer's petition incorrectly references "3437(b) [sic]". (Petition, p. 10.)