

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

In the Matter of the Appeal of:

**GRANITE CONSTRUCTION COMPANY, INC. /  
GRANITE INDUSTRIAL, INC.  
P.O. Box 50085  
Watsonville, CA 95077**

**Employer**

Inspection No.  
**1235643**

**AMENDED DECISION  
AFTER REMAND FROM  
SUPERIOR COURT**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and in accordance with the Judgment and Order Granting (In Part) Petition for Writ of Mandate issued by Judge Jennifer K. Rockwell, Sacramento County Superior Court, hereby sets aside its March 30, 2021 Decision After Reconsideration, and issues the following Amended Decision After Remand From Superior Court.

**JURISDICTION**

The Division of Occupational Safety and Health (Division) issued three citations to Granite Construction Company, Inc./Granite Industrial Inc. (Employer), alleging the following four violations of worker safety regulations.

Citation 1, Item 1 alleged a General violation of section 5144, subdivision (e)(1) [failure to medically evaluate employees who were required to use respirators];

Citation 1, Item 2 alleged a General violation of section 5144, subdivision (k)(5) [failure to retrain employees who were required to use respirators];

Citation 2, Item 1 alleged a Serious violation of section 1509, citing section 3203, subdivision (a)(6) [failure to have methods and/or procedures for correcting unsafe or unhealthy conditions]; and

Citation 3, Item 1 alleged a Serious violation of section 5144, subdivision (a)(1) [failure to use appropriate respirators when effective engineering controls were not feasible].

On August 22, 2019, after a three-day hearing on the merits, the administrative law judge (ALJ) issued a Decision. In the Decision, the ALJ vacated all of the citations.

On September 26, 2019, the Division filed a Petition for Reconsideration with the Board, disputing the ALJ's Decision and asserting, "(1) the evidence did not justify the findings of fact; and (2) the findings of fact did not support the order or decision." (Division's Petition, p. 2; Lab. Code, § 6617, subds. (c), (e).) Employer answered. On November 04, 2019, the Board took the Division's Petition under submission.

On March 30, 2021, the Board issued a Decision After Reconsideration, which affirmed in part, and overruled in part, the ALJ's Decision. The Board vacated Citation 1, Item 2. However, the Board affirmed all other citations and the associated penalties, adjusting the penalties in Citations 2 and 3 to \$16,875 each.

Employer timely filed a writ petition in the Sacramento County Superior Court, seeking judicial review of the Board's Decision After Reconsideration. On May 27, 2022, the Honorable Steven M. Gevercer entered an Order denying Employer's writ petition in its entirety.

Employer timely appealed the Superior Court's Order to the California Court of Appeal, Third Appellate District. On September 25, 2023, following briefing and oral argument, the Court of Appeal issued an opinion reversing the Superior Court as to Citation 2, Item 1, and Citation 3, Item 1, and affirmed the Superior Court as to Citation 1, Item 1.<sup>1</sup> The Court of Appeal remanded the matter, directing the Superior Court to enter a new judgment granting Employer's writ petition, in part, as described.

On April 16, 2024, the Court of Appeal issued a Remittitur to the Superior Court. On June 28, 2024, the Superior Court issued an Order After Remittitur. Consistent with the Court of Appeal, the Superior Court granted Employer's writ petition as to Citation 2, Item 1 and Citation 3, Item 1, denied Employer's writ petition as to Citation 1, Item 1, and ordered Employer to prepare a judgment consistent with the Order After Remittitur. On October 10, 2024, Judge Jennifer K. Rockwell, Sacramento Superior Court, issued an Order remanding the matter to the Appeals Board, and directed the Board to enter a consistent Amended Decision (Remand Order).

## **DECISION AFTER REMAND**

In accordance with the Superior Court's Remand Order described above, the Board issues this Decision After Remand:

- (1) The Board hereby vacates those portions of the Board's March 30, 2021 Decision After Reconsideration, that pertained to Citation 2, Item 1 and Citation 3, Item 1. Citation 2, Item 1 and Citation 3, Item 1, and the associated penalties of \$16,875.00 for each, are vacated.

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<sup>1</sup> The Third Appellate District Court of Appeal's Opinion was first issued on September 25, 2023. Following Employer's request for publication, the Court of Appeal ordered the Opinion to be published on October 16, 2023. The Board and the Division then separately filed petitions for rehearing, in response to which the Court of Appeal issued an order modifying its Opinion. In the same order, on its own motion, the Court of Appeal ordered the Opinion be republished. (*Granite Construction Co. v. Occupational Safety & Health Appeals Bd.* (Cal. App. 3d Dist., Nov. 13, 2023) 2023 Cal. App. Unpub. LEXIS 6802, 2023 WL 7485250.)

(2) The Board hereby affirms those portions of the Board’s March 30, 2021 Decision After Reconsideration, that pertained to Citation 1, Item 1 and Citation 1, Item 2. Citation 1, Item 1, and its associated penalty of \$795.00, are affirmed.

(3) Citation 1, Item 2, and its associated penalty of \$795.00, remain vacated.

(4) Employer’s total monetary penalty is hereby recalculated to total \$795.00.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair

/s/ Judith S. Freyman, Board Member

/s/ Marvin P. Kropke, Board Member

FILED ON: 02/24/2025

