

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

In the Matter of the Appeal of:

**L & S FRAMING, INC.
1145 TARA COURT
ROCKLIN, CA 95765**

Employer

Inspection Number
1692964

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the Division of Occupational Safety and Health's (Division) Petition for Reconsideration (Petition) under submission, renders the following decision after reconsideration.

JURISDICTION

L & S Framing, Inc., (Employer) is a general contractor conducting business in California. On August 23, 2023, the Division commenced its investigation of an injury accident that occurred at Employer's worksite at 7357 Dorstone Way in Sacramento, California. Employer was framing the second story of a residence when an employee, who was a member of the framing crew, injured himself with a pneumatically driven nailer or nail gun while descending a ladder.

On January 19, 2024, the Division issued three citations to Employer alleging three violations of workplace safety standards codified in the California Code of Regulations, title 8.¹ Employer timely appealed.

Administrative proceedings before an administrative law judge (ALJ) of the Board followed, among them a contested evidentiary hearing on July 9, 2024. The ALJ issued a decision (Decision) on January 9, 2025. The Decision held that Employer had violated the safety orders as alleged and imposed civil penalties.

Employer timely petitioned the Board for reconsideration (Employer's Petition), which the Board took the under submission. On December 3, 2025, the Board issued its Decision After Reconsideration (December DAR) addressing Employer's Petition affirming the ALJ's Decision but reducing the penalty assessed for the violations alleged in Citation 3.

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

The Division then timely filed a petition for reconsideration (Division’s Petition) as a party newly aggrieved by the Board’s December DAR, citing *Ventura Coastal, LLC v. Occupational Safety and Health Appeals Bd.* (2020) 58 Cal.App.5th 1. The Board took the Division’s Petition under submission on January 26, 2026, and now renders the following decision after reconsideration. The Board has taken no new evidence.

ISSUES

1. Did the Board cite the wrong penalty regulation in its December DAR?
2. Was the penalty assessed for Citation 3 incorrect?

FINDINGS OF FACT

The Board makes these findings.

1. The Board cited the incorrect subdivision of the penalty assessment regulation in the December DAR. The correct penalty assessment regulation is section 335, subdivision (a)(2)(ii), not subdivision (a)(2)(i).

DISCUSSION

The Division’s Petition correctly notes that the appropriate regulation to use in calculating the penalty for Citation 3 is section 335, subdivision (a)(2)(ii) and not subdivision (a)(2)(i). We will issue an errata contemporaneously with the instant Decision After Reconsideration.

The Division also argues that the penalty to be assessed under subdivision (a)(2)(ii) is higher than we calculated it under subdivision (a)(2)(i). We disagree for two reasons.

First, the Board case authorities cited in the Division’s Petition are all ALJ decisions. “A decision issued by an ALJ is neither citable authority, nor binding on the Board, under long-held Board authority.” (*Three-D Services Co, Inc.*, Cal/OSHA App. 1203336, Denial of Petition for Reconsideration (Jan. 20, 2023) (citations omitted).) The Board will not consider a party’s argument which is not supported by authority. (*Interline Brands, Inc.*, Cal/OSHA App. 1251604, Decision After Reconsideration (Sep. 17, 2020) citing *People ex rel. Reisig v. Acuna* (2010) 182 Cal.App.4th 866 at 873; *Shimmick Construction Co. Inc.*, Cal/OSHA App. 1080515, Denial of Petition for Reconsideration (Mar. 30, 2017).)

Section 335, subdivision (a)(2) defines the “extent” of the violation, that is “the degree to which a safety order is violated.” (§ 335, subd. (a)(2)(ii).) The Division contends that the extent was “high,” not “medium,” as we held. We disagree.

Section 335, subdivision (a)(2)(ii) provides that “Extent is rated as: [P] MEDIUM When occasional violation of the standard occurs or 15-50% of the units are in violation.”

The record shows that one of six employees mishandled a nail gun in violation of the safety order. One employee is 16.67% of the six employees on site, thus the Board determined that the extent of the violation was medium.

DECISION AFTER RECONSIDERATION

For the reasons stated above, we affirm our earlier Decision After Reconsideration regarding the extent of the violation alleged in Citation 3 and the adjustment of the penalty for it. We also acknowledge that we cited the wrong subdivision of the penalty assessment regulation.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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



FILED ON: 02/26/2026