

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

In the Matter of the Appeal of:

ROSENDIN ELECTRIC, INC.  
470 College Oak Drive  
Sacramento, CA 95841

Employer

Docket. 12-R2D1-3028

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code having ordered reconsideration on its own motion taken the petition for reconsideration filed by Rosendin Electric, Inc. (Employer) under submission, and, renders the following decision after reconsideration.

**JURISDICTION**

Beginning on August 15, 2012, the Division of Occupational Safety and Health (Division) conducted an accident inspection at a place of employment in Sacramento, California maintained by Employer. On October 5, 2012, the Division issued one citation to Employer alleging a violation of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.<sup>1</sup>

The citation alleged a general violation of section 3395(f)(3) [Heat Illness Prevention standard].

Employer filed a timely appeal of the citation.

Administrative proceedings were held, including a contested evidentiary hearing before an Administrative Law Judge (ALJ) of the Board. After taking testimony and considering the evidence and arguments of counsel, the ALJ issued a Decision on April 9, 2014. The Decision denied Employer's appeal, imposing a total civil penalty of \$225.

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<sup>1</sup> Unless otherwise specified, all references are to California Code of Regulations, Title 8.

Employer timely filed a petition for reconsideration of the ALJ's Decision. The Division filed an answer to the petition.

### **ISSUE**

Is the ALJ's decision finding a violation of the safety order supported by the evidence in the record?

### **EVIDENCE**

The Decision summarizes the evidence adduced at hearing in detail. We summarize that evidence briefly below, focusing on the portions relevant to the issue presented.

The Division visited Employer's worksite as part of a "heat sweep" performed on August 15, 2012; Employer was one of several subcontractors at work on a parking structure project at American River College. During the course of the inspection Former Associate Safety Engineer Rhyanne Truax (Truax, no longer employed with the Division at the time of hearing) requested the Employer's written safety programs, including the Illness and Injury Prevention Program (IIPP), Code of Safe Practices, and Heat Illness Prevention Program (HIPP). Truax was told by a representative of Employer during the inspection that its policies were located on a CD, which Truax was not able to access while in the field. Truax agreed to contact Employer's safety manager, Brent Bowers (Bowers), to get the documents in another format at a later time. Truax called Bowers and verbally requested the same documents, but did not submit a written document request form.

Truax testified that Bowers supplied her with all of the documents she requested, as well as the general contractor's (Webcor) safety program. Bowers also recalled the phone conversation with Truax, and acknowledged sending via email the IIPP, HIPP, and certain training documents. He did not send the Employer's "Site Specific Safety Plan" as Truax did not request it.

### **DECISION AFTER RECONSIDERATION**

In making this decision, the Board relies upon its independent review of the entire evidentiary record in the proceeding. The Board has taken no new evidence. The Board has also reviewed and considered Employer's petition for reconsideration and the Division's answer to it.

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

Employer petitioned for reconsideration on the basis of Labor Code section 6617(a) and (e).

Employer makes two arguments in its petition: that there is no specific format for the HIPP required by the heat illness safety orders, and that the documents that were located on-site but not provided to Truax pursuant to her verbal information request constituted a complete HIPP.

The Division's citation alleges a violation of section 3395(f)(3) for failure to have specific procedures for complying with each requirement of the standard, including subsections (f)(1)(B), (G), (H), and (I). The safety order reads as follows:

(f) Training.

(1) Employee training. Effective training in the following topics shall be provided to each supervisory and non-supervisory employee before the employee begins work that should reasonably be anticipated to result in exposure to the risk of heat illness:

[...]

(B) The employer's procedures for complying with the requirements of this standard.

[...]

(G) The employer's procedures for responding to symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.

(H) The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider.

(I) The employer's procedures for ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders. These procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate.

[...]

3395(f)(3) The employer's procedures for complying with each requirement of this standard required by subsections (f)(1)(B), (G), (H) and (I) shall be in writing and shall be made available to employees and to representatives of the Division upon request.

On its face, section 3395(f)(3) is clear—an employer must have certain procedures in writing, and must provide those procedures to its employees, or to Division representatives. The Board agrees with Employer: the standard does not require all HIPP documents to be in one document, although in practice a single, integrated HIPP may be simpler and easier for foremen and supervisors to access when a request is made at the worksite. However, regardless of how the HIPP document (or documents) are kept, the safety order puts the burden of producing the HIPP on the employer.

In this instance, Employer's contention that the Division's citation should be vacated as the Division did not request its Site Specific Safety Plan (which had certain HIPP elements) and its inspector did not notice posted documents at the worksite, which may have had HIPP elements, fails. An employee or Division representative who makes a request for the HIPP must be given the complete package of HIPP documents, regardless of what those documents are called. In some instances, an employer may choose to integrate the HIPP documents into an IIPP, Site Specific Safety Plan, or some other document or safety notice that is posted at the jobsite; this does not change the employer's responsibility to provide those relevant HIPP documents to an employee or Division representative who requests the employer's HIPP procedures.

Employer's document labeled "Heat Illness and Injury Prevention Program" is little more than a restatement of the safety orders, and fails to meet the requirements of the standard. (Div. Ex. 4). The document does not describe any of Employer's procedures for complying with subsections 3395(f)(1)(B), (G), (H) and (I), as required by the safety order. While Employer argues that the HIPP document should be supplemented with documents provided to the Division after issuance of the citation, such as the Site Specific Safety Plan, a flier describing its on-call non-emergency clinic, the Employer's emergency information posting, and a sign-in sheet for a heat illness training, these documents were not provided to the Division representative "upon request" as required by the safety order. (Er. Ex.s C, A, B, D). Even assuming

they had been promptly provided, the documents, which lack mention of several required elements, such as procedures for responding to symptoms of a possible heat illness, still fail to meet the requirements of the standard.

Therefore, we affirm the result of Decision sustaining the citation but for the different reasons stated above.

ART CARTER, Chairman  
ED LOWRY, Board Member  
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: NOVEMBER 21, 2014