BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1461476**
WALMART, INC. **601 N. WALTON BLVD., MS0710-L28** **BENTONVILLE, AR 72716** **Employer**	**DECISION**

Statement of the Case

Walmart, Inc., (Employer or Walmart), operates a warehouse distribution center for Walmart stores. Beginning September 16, 2019, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Mariaeva Garland (Garland), conducted an inspection of the distribution warehouse (the warehouse) located at 11188 Citrus Avenue, Fontana, California, as the result of an accident that took place at the warehouse.

On February 28, 2020, the Division cited Employer with three citations. Citation 3, Item 1, was withdrawn by the Division at the hearing. The citations which remain at issue include 1) an alleged failure to report a serious injury, alleged as a repeat violation; and 2) an alleged failure to provide appropriate foot protection to employees operating electric pallet jacks.

Employer filed timely appeals of the citations, contesting the existence of the violations, the classifications, and the reasonableness of the abatement requirements and the penalties. Employer also raised the affirmative defenses that it was not the employer of the injured employee, and also asserted the Independent Employee Action Defense.[1]

This matter was heard by Leslie E. Murad, II, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board. On December 10, 2020, ALJ Murad conducted the video hearing with all participants appearing remotely via the Zoom video platform. Attorney, Matthew Gurvitz of Venable, LLP, represented Employer. Eric Compere, staff counsel, represented the Division. The matter was submitted on May 29, 2021.

[1] 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).)

Issues

1. Did the Division establish that Walmart was an employer under a dual employer relationship as it relates to the injured worker at the time of the injury?

2. Did Walmart fail to report to the Division a serious injury occurring at its warehouse?

3. Was Citation 1 properly classified as a "Repeat Violation"?

4. Did Walmart fail to require appropriate foot protection to employees using electric pallet jacks?

5. Did Walmart establish that it was not responsible for the violation alleged in Citation 2 based on the Independent Employee Action Defense?

6. Did the Division establish a rebuttable presumption that Citation 2 was properly classified as Serious?

7. Did Walmart rebut the presumption that the violation in Citation 2 was Serious by demonstrating that it did not know and could not, with the exercise of reasonable diligence, have known of the existence of the violation?

8. Are the abatement requirements for Citation 2 reasonable?

9. Are the proposed penalties for Citation 1 and Citation 2 reasonable?

Findings of Fact

1. Walmart had a contract in place at the time of the accident with a staffing agency, EmployBridge Holding Company (EmployBridge). EmployBridge supplied workers to perform labor and assist with the shipping of Walmart's goods from Walmart's warehouse.

2. Walmart had control over employees working in the warehouse by this same contract.

3. Walmart engaged people to perform services moving goods in the warehouse.

4. Walmart's contract with EmployBridge provided Walmart the right to terminate workers' services.

5. The injured worker, Mark Walter (Walter), was a temporary employee, not engaged in his own distinct business.

6. Walter was performing warehouse work that was the regular business of Walmart.

7. Walmart provided Walter with the equipment used to perform the warehouse work.

8. While operating an electric pallet jack at Walmart's warehouse, Walter sustained a compound fracture of his lower leg.

9. The injury required medical treatment with surgery and a hospital stay of two days.

10. EmployBridge reported the injury to the Division. Walmart failed to report the injury to the Division.

11. The Division cited Walmart for a violation of section 342, subdivision (a), in 2018. The citation was not timely appealed and became final by operation of law on January 9, 2019.

12. Employees working in the warehouse moved boxes and merchandise by use of electric pallet jacks.

13. Employer had a policy that foot protection was required to be worn in the warehouse but that policy was not properly enforced.

14. Employer presented no evidence that abatement as to Citation 1 or Citation 2 was unreasonable.

15. The penalties were calculated in accordance with the Division's policies and procedures.[2]

Analysis

1. Did the Division establish that Walmart was an employer under a dual employer relationship as it relates to the injured worker at the time of the injury?

As both the California courts and the Board have recognized, there are circumstances in which two entities may both be employers of the same individual or individuals. (*Sully-Miller*, supra; *Manpower Inc.*, Cal/OSHA App. 78- 533, Decision After Reconsideration (Jan. 8, 1981); *Sully-Miller Contracting Company*, Cal/OSHA App. 99-896, Decision After Reconsideration (Oct. 20, 2001, aff'd by *Sully-Miller*, supra.) This is sometimes referred to as "dual

[2] Finding of Fact Number 15 was determined by stipulation of the parties.

employment", with the "*primary employer*" being the employer who loans or leases one or a number of employees to the "*secondary employer*" (also referred to as "general" and "special" employer). (*Sully - Miller Contracting Company v. California Occupational Safety and Health Appeals Board* (2006) 138 Cal. App. 4th 684.) It has long been found by the Board that each employer has safety responsibilities to the employee--for example, a *primary employer* must establish an Illness and Injury Prevention Program (IIPP) and provide training which addresses general hazards as well as the potential hazards employees may be exposed to at the secondary worksite. (*Kelly Services*, Cal/OSHA App. 06-1024, Decision After Reconsideration (Jun. 15, 2011).) (See, *Staffcheck*, Cal/OSHA App. 10-R4D3-2456-2458, Decision After Reconsideration (Aug. 28, 2014).)

Each "dual employer" in such circumstances is responsible for complying with California's workplace safety and health standards. (*Strategic Outsourcing Inc*., Cal/OSHA App. 10-R2D5-0905 through 0914, Denial of Petition for Reconsideration (Sept. 16, 2011).

On August 31, 2019, the injured worker, Mark Walter (Walter), worked in his place of employment moving goods. His place of employment was a warehouse. The work he conducted was in the regular performance of warehouse operations. The warehouse Walter worked in was owned and controlled by Walmart. Walmart provided the equipment required for Walter to perform his task. Walter was operating an electric pallet jack provided to him by Walmart in the warehouse moving goods as instructed when he was injured. There was no testimony regarding Walter's compensation or the length of his employment. Walter was subject to the control of Walmart while he was working in its warehouse.

The right to exercise control over others determines whether the person having such control is an employer under the California Occupational Safety and Health Act (Act), (*Sully-Miller Contracting Company v. California Occupational Safety and Health Appeals Board* (2006) 138 Cal. App. 4th 684,693.) The employer need not exercise those rights; having them is sufficient. (Id)

The issue of whether Walter was in an employment relationship with Walmart and how much control Walmart had over its employees is further addressed in the contract that Walmart entered into with EmployBridge Holding Company (EmployBridge) entitled the "Master Temporary Services Agreement" (Contract). (See Exhibit 6.) . EmployBridge is a staffing company that provided staffing services for Walmart at Walmart's warehouse, where the injury took place. Walter, the injured employee, was one of those workers. Walmart retained certain powers in this same Contract with powers that provided indications of an employer/employee relationship.

Paragraph 7of the Contract reads as follows:

> "Wal-Mart shall have the right to refuse, in its sole discretion, any individual whom Agency proposes to perform work under this agreement for any lawful reason. Wal-Mart also reserves the right to remove Agency's employees or subcontractors providing services under this Agreement when such individuals are not performing satisfactorily, who are acting contrary to Wal-Mart's best interest or for any other lawful reason. Wal-Mart is the sole determiner of its own best interests."

Walmart also provided training to workers performing services in their warehouse. Paragraph 12 of the Contract states that Employer would provide EmployBridge employees with: "… (iii) adequate instructions and assistance to perform the services requested of them." Employer provided training materials to EmployBridge to train employees.

EmployBridge workers assigned to work in Walmart's warehouse were given specific assignments by this same Contract. A blank form was provided by this same contract for the specific job assignments that was to be filled out by EmployBridge and turned into Walmart to meet the needs of Walmart. In the blank form found at Exhibit A of the Contract under "Scope of Work", at paragraph 1, it provides: "The temporary workers assigned to Wal-Mart shall perform tasks and responsibilities generally described as follows…" The tasks to be performed and their responsibilities were to be filled out in the form to meet the needs of Walmart.

As is shown by the terms of this Contract, Walmart had control over what work was performed by employees in its warehouse. Walmart also retained the right by this same Contract to terminate employees from the warehouse.

The evidence presented established that EmployBridge assigned the injured employee Walter to work on an electric pallet jack provided by Walmart to him for his use on the date of the accident, August 31, 2019, in Walmart's warehouse. EmployBridge as the staffing agency loaned its employees to Walmart by the contract in this case. The warehouse Walter worked in was owned and controlled by Walmart. Walmart retained control over the employees by the contract. The preponderance of the evidence demonstrates that EmployBridge was the primary employer and Walmart was the secondary employer in this situation. EmployBridge and Walmart were in a dual employer relationship. Walter was an employee of Walmart as a result of that dual employer relationship.

2. Did Walmart fail to report to the Division a serious injury occurring at its warehouse?

California Code of Regulations, title 8, section 342, subdivision (a)[3], under "Reporting Work-Connected Fatalities and Serious Injuries," provides:

> Every employer shall report immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment.
>
> Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

In Citation 1, Item 1, the Division alleges:

> The employer did not report to the Division a serious injury suffered by an employee who sustained serious foot injury on or about August 31, 2019.
>
> The repeat classification is based on Citation No. 1, Item No. 1, issued in Inspection 1313974 on 9/10/2018.

a. Place of employment

As discussed above, “place of employment” is defined under Labor Code section 6303, subdivision (a), as "any place and the premises appurtenant thereto, where employment is carried on except a place where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division."

Walter was working in Walmart’s warehouse operating an electric pallet jack under the direction of Walmart. Walter lost control of the electric pallet jack and crashed his electric pallet jack into a rack and suffered a compound fracture of his lower left leg. Walter was injured in his place of employment. *Serious injury or illness*

[3] Unless otherwise specified, all references will be to sections of title 8 of the California Code of Regulation.

Section 330, subdivision (h), provides, in relevant part:

> "Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation [...].
>
> The definition of "serious injury or illness" in section 330, subdivision (h), uses the language "occurring in a place or employment or in connection with any employment." The definition does not refer to the cause of the injury or illness.
>
> Walter's injury required hospitalization for two days and surgery. Since Walter's injury required hospitalization in excess of 24 hours and the injury occurred at his place of employment, Walter suffered a serious injury.

b. An employer shall report immediately.

Section 342, subdivision (a), specifically defines "immediately" as "as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness…"

The Board has held that all employers, both primary and secondary, have an obligation to report a serious injury under section 342(a). (See, *Labor Ready, Inc.*, Cal/OSHA App. 99-3350, Decision After Reconsideration (May 11, 2001).) EmployBridge reported the injury to the Division. Walmart did not report the injury to the Division.

Walmart's sole reason for not reporting the injury was that Walmart believed they did not employ Walter. However, as discussed above, Walter was an employee of Walmart under the dual employment relationship and, therefore, Walmart had a duty to report his injury to the Division. The Division established a violation of the reporting requirements of Section 342, subdivision (a). Citation 1 is affirmed.

3. Was Citation 1 properly classified as a "Repeat Violation"?

Section 334, subdivision (d), provides that a "Repeat Violation" is:

[A] violation where the employer has abated or indicated abatement of an earlier violation occurring within the state for which a citation was issued, and upon a later inspection, the Division finds a violation of a substantially similar regulatory requirement and issues a citation within a period of five years immediately following the latest of: (1) the date of the final order affirming the existence of the previous violation cited in the underlying citation; or (2) the date on which the underlying citation became final by operation of law. For violations other than those classified as repeat regulatory, the subsequent violation must involve essentially similar conditions or hazards.

> In Citation 1, Item 1, the Division alleges:
> The employer did not report to the Division a serious injury suffered by an employee who sustained serious foot injury on or about August 31, 2019.

The repeat classification is based on Citation No. 1, Item No. 1, issued in Inspection 1313974 on 9/10/2018.

Walmart was issued a citation for violating 342, subdivision (a) in inspection number 1313974 on September 10, 2018. This 2018 citation was not timely appealed by Walmart and became final by operation of law on January 9, 2019. This prior failure to report an injury or illness in 2018 occurred less than five years before the current citation that is at issue herein, thus making this a repeat violation.

The fact that there was a prior violation of section 342, subdivision (a) was established by the Division. This is a repeat violation as defined by section 334, subdivision (d). The preponderance of the evidence supports the finding of a repeat violation. The citation is properly classified as a Repeat citation. The classification remains as issued.

4. Did Walmart fail to require the use of appropriate foot protection for employees using electric pallet jacks?

Section 3385, subdivision (a), provides:

> Appropriate foot protection shall be required for employees who are exposed to foot injuries from electrical hazards, hot, corrosive, poisonous

> substances, falling objects, crushing or penetrating actions, which cause injuries or who are required to work in abnormally wet locations.

In Citation 2, Item 1, the Division alleges:

> Prior to and during the course of the inspection and on August 31, 2019 and September 16, 2019, the employer failed to require appropriate foot protection for employees operating electric pallet jack.

To establish a violation of section 3385, subdivision (a), the Division must establish by a preponderance of the evidence that employees were (1) exposed to foot injuries from, among other things, falling objects, crushing, or penetrating actions, and (2) the employer failed to require adequate foot protection. (*In United Parcel Service*, Cal/OSHA App. 1158285, Decision After Reconsideration (Nov. 15, 2018),)"Preponderance of the evidence" is 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." (*Timberworks Construction, Inc.*, Cal/OSHA App. 1097751, Decision After Reconsideration (Mar. 12, 2019).)

a. Were Walmart's employees exposed to foot injuries from falling objects, crushing, or penetrating actions?

Employee exposure to the hazard of foot injuries may be established in one of two ways. First, the Division may establish exposure by showing that an employee was actually exposed to "the zone of danger created by the violative condition". (*United Parcel Service*, *supra*, Cal/OSHA App. 1158285.) Or, the Division may establish exposure by showing that "the area of the hazard was 'accessible' to employees such that it is reasonably predictable by operational necessity or otherwise, including inadvertence, that employees have been, are, or will be in the zone of danger." (*Golden State FC, LLC*, Cal/OSHA App. 1310525, Decision After Reconsideration (Apr. 14, 2021).)

Walmart's warehouse presented a number of potential hazards to workers including falling objects and crushing or penetrating dangers posed by heavy boxes and by the use of heavy equipment such as electric pallet jacks. The boxes and rack system, which rack system had five levels up from the ground at approximately five feet per shelf, is depicted in Exhibit 8. Exhibit 8 shows the various sizes of boxes and the numerous pallets stacked on the shelves in the warehouse that created potential hazards for workers in the warehouse. The electric pallet jack is also a heavy vehicle that can cause injury to a worker's foot (Exhibits 11 and 12). Walter was exposed to a zone of danger by working in the warehouse with his electric pallet jack. Walter lost control of the electric pallet jack and his left foot and leg exited the operating area of the equipment resulting in a crush injury when he crashed into a rack. Walter's ankle was

pinned between a rack and the pallet jack, resulting in a compound fracture of his left ankle. Walter suffered a serious injury. Walter was exposed to the zone of danger and suffered an injury as a result.

b. Were Walmart's employees provided with appropriate foot protection?

The second element of section 3385, subdivision (a), is whether an employer's choice of foot protection constitutes "appropriate" protection for the hazards to which employees are exposed. The regulation provides some guidance, stating at subsection (c) (1):

> Protective footwear for employees purchased after January 26, 2007 shall meet the requirements and specifications in American Society for Testing and materials (ASTM) F 2412-05, Standard Test methods for Foot Protection which are hereby incorporated by reference.

Once the Division has shown that there is exposure to foot injuries, it is incumbent on Employer to select and mandate the use of safety footwear that will protect against the hazards found in the workplace. (*Home Depot USA, Inc., dba Home Depot #6683*, Cal/OSHA App. 1011071 Decision After Reconsideration (Aug. 15, 2017).)

Walter was provided with appropriate foot protection to wear in Walmart's warehouse. Walter elected to not wear his foot protection while working on the day of the accident. Employees operating electric pallet jacks for EmployBridge in the Walmart warehouse were required to wear foot protection, which was a steel toed shoe. Walter was running late that morning and was not inspected by EmployBridge before he started work on the day of the accident. The requirement to wear appropriate foot protection was not enforced. Walter was not inspected before he started his shift on the day of the accident while operating the electric pallet jack in Walmart's warehouse. Walter was allowed to operate the pallet jack with non-steel toed tennis shoes.

Employees were exposed to the hazards of falling objects or to crushing or penetrating actions that could result in injury. Walmart failed to require that all workers working in the warehouse wore appropriate foot protection. Accordingly, the Division established a violation of section 3385, subdivision (a). Citation 2, Item 1, is affirmed.

5. Did Walmart establish that it was not responsible for the violation alleged in Citation 2 based on the Independent Employee Action Defense (IEAD)?

There are five elements necessary to establish the IEAD: (1) the employee was experienced in the job being performed; (2) the employer has a well-devised safety program; (3) the employer effectively enforces the safety program; (4) the employer has a policy of sanctions it enforces against employees who violate the safety program; and (5) the employee caused the safety violation he or she knew was contrary to employer's safety rules, (*Synergy Tree Trimming, Inc*., Cal/OSHA App. 317253953, Decision After Reconsideration (Jun. 10, 2015).)

As the IEAD is an affirmative defense, Employer bears the burden to prove all five elements of the IEAD by a preponderance of the evidence, as above described.

Walmart failed to present any testimony or evidence on this defense. Consequently, Walmart's defense of IEAD fails.

6. Did the Division establish a rebuttable presumption that Citation 2 was properly classified as Serious?

Labor Code section 6432, subdivision (a), provides, in relevant part:

> a. (a) There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The actual hazard may consist of, among other things:
>
> [...]
>
> (b) The existence in the place of employment of one or more unsafe or unhealthful practices that have been adopted or are in use.

The Appeals Board has defined the term "realistic possibility" to mean a prediction that is within the bounds of human reason, not pure speculation. (A. *Teichert & Son, Inc. dba Teichert Aggregates*, Cal/OSHA App. 11-1895, Decision After Reconsideration (Aug. 21, 2015), citing *Janco Corporation*, Cal/OSHA App. 99-565, Decision After Reconsideration (Sep. 27, 2001).) "Serious physical harm" is defined as an injury or illness occurring in the place of employment that results in, among other possible factors, "inpatient hospitalization for purposes other than medical observation" or "the loss of any member of the body." (Lab. Code § 6432, subd. (e).)

Garland was current in her Division-mandated training. Therefore, under Labor Code section 6432, subdivision (g), Garland is deemed competent to offer testimony to establish each element of the Serious violation, and to offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation was properly classified as Serious. Garland testified that Citation 2, Item 1, was classified as Serious because there is a realistic ("serious") possibility that an employee may sustain serious injury. [4] Walter suffered a compound fracture of his left ankle; tibia and fibula. This was a serious injury that required more than 24 hours of hospitalization. Walter was hospitalized for two days. This demonstrates that there was not only a realistic possibility of serious physical harm, but the violation resulted in actual serious physical harm.

Accordingly, the Division has met its burden to establish a rebuttable presumption that the violation cited in Citation 2 was properly classified as Serious.

7. Did Walmart rebut the presumption that the violation in Citation 2 was Serious by demonstrating that it did not know and could not, with the exercise of reasonable diligence, have known of the existence of the violation?

Labor Code section 6432, subdivision (c), provides that an employer may rebut the presumption that a Serious violation exists by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. In order to satisfactorily rebut the presumption, the employer must demonstrate that:

(1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b) [; and]

(2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

Labor Code section 6432, subdivision (b), provides that the following factors may be taken into account:

[4] Garland testified that the citation was classified as serious because of the "serious possibility of serious injury." The ALJ accepted this as meaning "realistic" possibility.

(A) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards; (B) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards; (C) Supervision of employees exposed or potentially exposed to the hazard; and (D) Procedures for communicating to employees about the employer's health and safety rules and programs.

As set forth in Labor Code section 6432, subdivision (b), the burden is on Employer to rebut the presumption that the citation was properly classified as Serious. Further, the Board has held that a failure to exercise supervision adequate to ensure employee safety is equivalent to failing to exercise reasonable diligence and will not excuse a violation on a claim of lack of employer knowledge. (*Stone Container Corporation*, Cal/OSHA App. 89-042, Decision After Reconsideration (Mar. 9, 1990).) (See also *Gateway Pacific Contractors*, Cal/OSHA App. 10-R2D3-1502-1508, Decision After Reconsideration (Oct. 4, 2016).)

Employer provided training records for Walter (Exhibit 7), meeting the first element to rebut the presumption. However, Employer did not present any evidence supporting the other three elements. Therefore, Employer did not meet its burden to establish that it did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. Walmart has not rebutted the presumption that the citation was properly classified as Serious. Accordingly, Citation 2 was properly classified as Serious.

8. Are the abatement requirements for Citation 2 reasonable?

The Division's requirement that an employer immediately abate a condition which could expose a worker to death is not unreasonable. (Paul E. McCollum, Sr., Cal/OSHA App. 74-083, Decision After Reconsideration (Nov. 19, 1974).) In the instant case, the Division did not mandate any specific means of abatement. The Division has only required compliance with the minimum requirements of the safety order. Employer may choose the least burdensome. (*The Daily Californian/Calgraphics*, Cal/OSHA App. 90-929, Decision After Reconsideration (Aug. 28, 1991).)

Employer did not offer any argument, testimony, or other evidence, regarding why the abatement requirements were unreasonable. Accordingly, the abatement requirements for Citations 2 are found to be reasonable.

9. Are the proposed penalties for Citation 1 and Citation 2 reasonable?

Penalties calculated in accordance with the penalty setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence that the amount of the proposed civil penalty was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*RNR Construction, Inc., supra*, Cal/OSHA App. 1092600, citing *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

Citation 1, Item 1, is a Regulatory violation with a repeat characterization. Since the parties stipulated that the penalty was re-calculated and reduced from $20,000 to $10,000 in accordance with the Division's policies and procedures the penalty of $10,000 is reasonable.

Citation 2, Item 1, is a Serious violation. Since the parties stipulated that the penalty was calculated in accordance with the Division's policies and procedures, the penalty of $15,300 is reasonable.

Conclusion

In Citation 1, Item 1, the Division established that Employer failed to report a serious injury in violation of section 342, subdivision (a). The citation was properly classified as Repeat Regulatory. The penalty, as stipulated, is reasonable.

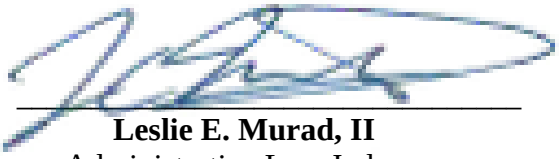
In Citation 2, Item 1, the Division established that Employer violated section 3385, subdivision (a), by failing to require appropriate foot protection where employees were exposed to foot injuries from falling objects or crushing or penetrating actions. The violation was properly classified as Serious. The proposed penalty, as stipulated by the parties, is reasonable.

Order

It is hereby ordered that Citation 1, Item 1, is affirmed as above stated with the penalty reduced by stipulation and Citation 2, Item 1, is affirmed as issued and as set forth in the attached Summary Table.

It is further ordered that the penalties indicated above and set forth in the attached Summary Table are assessed.

Citation 3, Item 1, is vacated pursuant to stipulation of the parties.



Dated**:** 07/16/2021

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.**