

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal
of:

KEY ENERGY SERVICES, INC.
5080 California Ave, Suite 150
Bakersfield, CA 93309

Employer

DOCKET 13-R4D7-0560

DECISION

Statement of the Case

Key Energy Services, Inc. (Employer) services oil wells. Beginning August 8, 2012, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Paul Ricker conducted an accident inspection at a place of employment maintained by Employer at Lease number WWD3, section 27, Highway 33, McKittrick, California (the site). On January 31, 2013, the Division cited Employer for failure to identify and evaluate hazards of wearing multiple layers of clothing in the heat¹, failure to ensure that methods and procedures were developed for correcting unhealthy conditions², failure to have high heat procedures in writing³, and failure to train employees on risk factors for heat illness while wearing multiple layers of clothing⁴.

Employer filed a timely appeal contesting the existence of the alleged violations, the classifications, the time allowed to abate, the changes required to abate, and the reasonableness of the proposed penalties. Employer alleged multiple affirmative defenses.

This matter came on regularly for hearing before Dale A. Raymond, Administrative Law Judge (ALJ) for the California Occupational Safety and

¹ Alleged as a general violation of § 3203(a)(4), with a proposed penalty of \$315. All section references are to California Code of Regulations, Title 8, unless otherwise specified.

² Alleged as a general violation of § 3203(a)(6), with a proposed penalty of \$315.

³ Alleged as a general violation of § 3395(e), with a proposed penalty of \$315.

⁴ Alleged as a general violation of § 3395(f)(1)(A), with a proposed penalty of \$315.

Health Appeals Board, at Bakersfield, California on July 15, 2014. John F. Martin, Attorney, of Ogletree Deakins Nash Smoak & Stewart P.C., and William A. Bruce, Attorney, of Klein DeNatale Goldner, represented Employer. David Pies, Staff Attorney, represented the Division. The parties presented oral and documentary evidence. The parties requested, and were granted leave to file briefs. The matter was submitted on September 8, 2014. The ALJ extended the submission date on her own motion to October 14, 2014.

The Division moved to withdraw Citation 1, Item 3 based on new evidence. Good cause having been found, the motion was granted. Employer agreed to waive any rights it might have pursuant to Labor Code § 149.5 or Title 8, California Code of Regulations § 397 to petition for or recover costs or fees, if any, incurred in connection with its appeal of Citation 1, Item 3. Employer reserved the right to seek costs in connection with its appeal of Items 1, 2, and 4.

Exhibits received and testifying witnesses are listed on Appendix A. Certification of the Record is signed by the ALJ. Unless otherwise specified, all section references are to Sections of Title 8, California Code of Regulations.

Issues

1. Did Employer fail to identify and evaluate the hazards of wearing multiple layers of clothing while employees were working in high heat?
2. Did Employer ensure that methods and procedures were developed for correcting unhealthy conditions while wearing multiple layers of clothing?
3. Did Employer train its employees on risk factors for heat illness while wearing multiple layers of clothing?

Findings of Fact

1. On August 7, 2012, Employer assigned a crew to foam, then acidize a well using a coiled tubing unit. The work shift began at about 4:30 a.m. Work continued all day until about 4:40 p.m. The temperature rose to over 95 degrees Fahrenheit. On that date, coiled tubing operator Rolando Torres (Torres) suffered a heat illness incident.
2. Employer's IIPP required scheduled periodic inspections to identify unsafe conditions and work practices (Exhibit A-5, section V) and to locate new, previously unrecognized hazards. (Exhibit A-5, section VII).
3. Employer has a behavioral-based safety program overseen by Senior Safety Advisor Frank Dorado in Bakersfield. While at a job site, employees inspect the crew and their behavior to identify unsafe conditions and work practices.
4. Employer uses Job Safety Analysis (JSA) and Work Plans to identify hazards at each job location before work begins.

5. Employer's IIPP contained procedures that identified and evaluated the hazards of wearing multiple layers of clothing while working in high heat.
6. Employer encouraged employees to drink water. Employer ensured that drinking water was available at all times in order to reduce heat stress while wearing multiple layers of clothing. Employer supplied drinking water in plastic bottles and supplied as much water as employees could drink. Employer monitored the amount of water consumed by collecting the used bottles in very large clear plastic bags. Employer did not allow employees to consume caffeinated beverages or energy drinks during the work shift because they are dehydrating. Employer supplied a sugar-free electrolyte drink called "Squinchers" that is not dehydrating. Employees were allowed to have as much as they wanted.
7. Employer requires a shade canopy to be set up when the temperature reaches 75 degrees Fahrenheit in order to reduce heat stress and address the heat hazard created by multiple layers of clothing. Employer advised employees to wear minimal clothing underneath flame-resistant clothing (FRC) and Tyvek in order to reduce heat stress while wearing multiple layers of clothing. Employer recommended that employees wear T-shirts and gym shorts. Light colored clothing is cooler to wear than dark colored clothing because dark colors absorb more heat. Employer changed the color of its FRC from dark blue to light blue and changed the color of its green helmets to green striped helmets to address the hazard of heat illness. Employer established, maintained, and implemented methods and procedures to correct unhealthy conditions created by wearing multiple layers of clothing in high heat.
8. Prior to August 7, 2012, Employer required all new employees to have two weeks of training ("Rig Pass" training) before starting work in the field. The first week of training included classroom instruction on heat illness prevention, which lasts at least 90 minutes. Training included instruction on symptoms, risk factors, and prevention. One of the risk factors discussed was multiple layers of clothing.
9. The second week of Rig Pass training consisted of training outdoors at a test rig, in temperatures over 95 degrees.
10. Rick Sims (Sims) was one of Employer's trainers who conducted Rig Pass training. Sims quizzed his trainees on the subject of heat illness prevention. Sims gave training regarding the increased hazard of heat illness due to multiple layers of clothing, including the hazards caused by FRC and Tyvek. Sims gave Torres Rig Pass training. Sims recalled giving training regarding heat illness to Torres.
11. Employer conducted heat illness prevention training for all employees once a month, every month from about March to November. One of the slides used in the training identified "clothing" as one of six factors of heat stress.
12. Employer's IIPP required its employees to be trained on risk factors for heat illness while wearing multiple layers of clothing. This requirement was implemented and maintained.

Analysis

1. Did Employer fail to identify and evaluate the hazards of wearing multiple layers of clothing while employees were working in high heat?

Section 3203(a)(4) provides:

- (a) Effective July 1, 1991, every employer shall establish, implement, and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: ...
- (4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.

The Division has the burden of proving a violation, including the applicability of the safety order, by a preponderance of the evidence. (*Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).) The Division must make some showing that an element of the violation occurred. (*Lockheed California Company*, Cal/OSHA App. 80-889, Decision After Reconsideration (July 30, 1982).)

Occurrence of an accident alone is not proof that an employer has failed to identify and evaluate hazards. (See *Michigan-California Lumber Co.*, Cal/OSHA App. 91-759, Decision After Reconsideration (May 20, 1993).)

Section 3203(a)(4) does not require Employers to identify a particular hazard, but only to include “procedures for identifying and evaluating work place hazards including scheduled periodic inspections.” (*Brunton Enterprises, Inc.*, Cal/OSHA App. 08-3445, Decision After Reconsideration (October 11, 2013).)

The alleged violation description for Citation 1, Item 1 provides:

The employer failed to identify and evaluate the hazards of wearing multiple layers of clothing while employees were working in an outdoor environment with the temperature at approx. 101 degrees F.

The Division did not meet its burden of proof.

Employer's IIPP required periodic inspections to be performed to identify and evaluate hazards. Employer implemented this requirement with a behavioral-based safety program where employees visit crews to identify and evaluate hazards. Employer also required Job Safety Analysis and Work Plans to be completed before jobs are performed, both of which identify and evaluate hazards.

Although Employer did not use the term "multiple layers of clothing," it must be found that Employer's IIPP included procedures demonstrated by inspections to identify and evaluate the hazards of wearing multiple layers of clothing while employees were working in an outdoor environment in high heat, and that these inspections were performed.

Therefore, Citation 1, Item 1, is vacated and the penalty is set aside.

2. Did Employer ensure that methods and procedures had been developed and implemented for correcting unhealthy conditions while wearing multiple layers of clothing?

Section 3203(a)(6) provides:

- (a) Effective July 1, 1991, every employer shall establish, implement, and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: ...
- (6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:
 - (A) When observed and discovered; and,
 - (B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

A written plan that states action shall be taken on reported unsafe or unhealthy conditions may satisfy the requirement to have a written plan to correct an unsafe or unhealthy condition. Implementation under § 3203(a)(6) consists of actual responses to known or reported hazards. (*Bay Area Rapid Transit District*, Cal/OSHA App. 09-1218, Decision After Reconsideration and Order of Remand (Sep. 6, 2012), citing *Los Angeles County Department of Public Works*, Cal/OSHA App. 96-2470, Decision After Reconsideration (Apr. 5, 2000).)

The alleged violation description for Citation 1, Item 2 provides, “The employer did not ensure that methods and procedures had been developed and implemented for correcting unhealthy conditions while wearing a combination of clothing.”

Here, Employer’s IIPP required that hazards be corrected immediately when discovered and that the corrective actions be documented. (Exhibit A-5, section VII). Specific procedures need not be identified in the IIPP. An IIPP that states action shall be taken satisfies the requirement to have a plan to correct an unsafe or unhealthy condition, as long as it is implemented. (*Bay Area Rapid Transit District*, Cal/OSHA App. 09-1218, Decision After Reconsideration and Order of Remand (Sep. 6, 2012), citing *Los Angeles County Department of Public Works*, Cal/OSHA App. 96-2470, Decision After Reconsideration (Apr. 5, 2000).)

Employer implemented multiple measures to correct the unhealthy condition of overheating while wearing multiple layers of clothing outside in high heat, which included the following:

1. Training new employees to wear minimal street clothing underneath FRC and Tyvek.
2. Changing the color of helmets from green to green striped and changing the color of FRCs from dark blue to light blue because light colored clothing does not absorb as much heat as darker clothing.
3. Erecting a shade canopy when the temperature exceeded 75 degrees.
4. Encouraging employees to drink water and providing all the water an employee could drink. Employer provided water in water bottles, which were disposed of in a specific bag so Employer could easily track and verify water consumption.
5. Restricting the type of liquids employees were allowed to drink while on the job. Employer supplied electrolyte fluids called “Squinchers.” During hot weather, Employer required employees to avoid caffeinated beverages, including energy drinks, because caffeine dehydrates the body.
6. Mandatory training for new employees at Employer’s facility in Bakersfield for two weeks. The first week included at least 90 minutes of classroom instruction on heat illness prevention, which included methods to counteract heat stress. The second week was spent outdoors at a test rig, which allows employees to slowly acclimate to the heat.
7. Mandatory monthly safety meetings for all employees from about March through November which included heat illness training. Slides are shown which list risk factors and heat illness symptoms. One of the slides specifically lists “clothing” as a factor of heat stress. The discussion of the risk factor relating to clothing included

multiple layers of clothing and how to counteract the heat stress it caused.

When Torres developed symptoms of heat stress, the response by the other crew members demonstrates that Employer implemented the measures to correct the unhealthy condition caused by multiple layers of clothing. Employer's other employees responded immediately. They shut down the job, placed a canopy shade over him, loosened and took off his FRC and Tyvek suit, applied cool water bottles to his underarms and groin, and called 911. These actions establish that Employer implemented its IIPP and HIPP.

Therefore, it is found that Employer ensured that methods and procedures had been developed and implemented for correcting unhealthy conditions while wearing a combination of clothing.

Accordingly, Citation 1, Item 2, is vacated, and the penalty is set aside.

3. Did Employer train its employees on the environmental and personal risk factors for heat illness associated with wearing multiple layers of clothing in high heat?

Section 3395(f)(1)(A) provides as follows:

3395 Heat Illness Prevention ...

(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:

(A) The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment.

The alleged violation description for Citation 1, Item 4 provides, "The employer failed to train the employee(s) on the environmental and personal risk factors for heat illness associated with wearing multiple layers of clothing in an outdoor environment with the temperature at approx. 101 degrees F.

The Division took the position that Employer violated § 3395(f)(1)(A) because Employer's HIPP did not contain training materials. The Division's argument fails. The safety order does not require the training materials themselves to be part of the HIPP; only the requirement to train must be in writing. The training requirements are in writing. (Exhibit A-1, section 6.0)

Sims gave heat illness prevention training to all new employees during Rig Pass training. The instruction took at least 90 minutes and included a Power Point presentation. He instructed employees on heat illness symptoms, the importance of acclimatization, and the risk factors presented by wearing clothing, especially the risk factors created by wearing street clothing underneath protective clothing. Sims used a Power Point slide that included a list of factors that increased heat stress. The list included wearing PPE (personal protective equipment), being unaccustomed to working in heat, physical exertion, medications, body weight, and age. Sims discussed the increased risk caused by multiple layers of clothing, including risks associated with clothing color, clothing type, and FRCs. Sims gave his students quizzes on heat stress symptoms.

In addition, Employer gave training on heat illness prevention once per month for every month from about March to November. This training included risk factors related to clothing. "Clothing" was specifically listed on one of the slides as a risk factor. Multiple layers of clothing were discussed as a risk factor.

The Division did not identify any of employer's employees who were not trained. The fact that Torres suffered from heat exhaustion on August 7, 2012 does not establish that Torres was not trained. Sims specifically recalled that he gave heat illness prevention training to Torres. The Division did not rebut this testimony.

For the above reasons, the Division did not carry its burden of proof. Therefore, Citation 1, Item 4, is vacated, and the penalty is set aside.

Decision

It is hereby ordered that the items are established, modified, or withdrawn as indicated above 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 be assessed.

Dated: November 3, 2014

DALE A. RAYMOND
Administrative Law Judge

DAR:ml

APPENDIX A

**SUMMARY OF EVIDENTIARY RECORD
KEY ENERGY SERVICES, INC.
Docket 13-R4D7-0560**

Date of Hearing: July 15, 2014

Division's Exhibits

| Number | Exhibit Description | Admitted |
|---------------|---|-----------------|
| 1 | Jurisdictional documents | Yes |
| 2 | Weather chart for Taft, CA from Aug. 6 to Aug 9, 2012 | Yes |
| 3 | Heat Illness Prevention Plan | Yes |
| 4 | Accident Investigation | Yes |
| 5 | Form C-10—Proposed penalty worksheet | Yes |
| 6 | National Weather Service data for Bakersfield for August 2012 | Yes |
| 7 | Bakersfield Weather History by Weather Underground | Yes |
| 8 | Map from Taft, CA to McKittrick, CA | Yes |

Employer's Exhibits

| Letter | Exhibit Description | Admitted |
|---------------|--|-----------------|
| A-1 | Key's Heat Illness Prevention Program | Yes |
| A-2 | Key's Heat Illness Prevention Program—Addendum | Yes |
| A-3A | August 2012 Rig Pass Training—Safety Orientation and Compliance Training | Yes |
| A-3B | August 2012 Rig Pass Training Excerpt—Health and Adverse Weather | Yes |
| A-4 | May 2012 Heat Illness Prevention | Yes |

| | | |
|------|--|-----|
| A-5 | Key's Injury & Illness Prevention Program | Yes |
| A-6 | 3202 Injury and Illness Prevention Program Checklist | Yes |
| A-7 | Key's Work Plan and planning documents for August 7, 2012 | Yes |
| A-8 | Heat Illness Prevention Test, Rolando Torres | Yes |
| A-9 | Heat Illness Prevention Test, Ramiro Rodriguez | No |
| A-10 | Heat Illness Prevention Test, Abel Perez | No |
| A-11 | Photos of Water Bottles | Yes |
| A-12 | Cal-OSHA 3203 Injury and Illness Prevention Program Checklist in file for Inspection 313387185 | Yes |
| A-13 | Excerpts from Rolando Torres audio interview | No |
| A-14 | Excerpts from Alexis Toralba audio interview | No |
| A-15 | Excerpts from Abel Perez audio interview | No |
| A-16 | Excerpts from Romero Rodriguez audio interview | No |
| A-17 | Paul Ricker's deposition transcript | Yes |

Witnesses Testifying at Hearing

1. Efren Gomez
2. Frank Dorado
3. Rick Sims

CERTIFICATION OF RECORDING

I, Dale A. Raymond, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge, the electronic recording equipment was functioning normally.

Signature

Date

SUMMARY TABLE DECISION

In the Matter of the Appeal of:

KEY ENERGY SERVICES, INC.
Docket 13-R4D7-0560

Abbreviation Key:

Reg=Regulatory

G=General

W=Willful

S=Serious

R=Repeat

IMIS No. 313387185

| DOCKET | CITATION | ITEM | SECTION | TYPE | MODIFICATION OR WITHDRAWAL | AFFIRMED | VACATED | PENALTY PROPOSED BY DOSH IN CITATION | PENALTY PROPOSED BY DOSH AT HEARING | FINAL PENALTY ASSESSED BY BOARD |
|------------------|----------|------|---------------|------|----------------------------|----------|---------|--------------------------------------|-------------------------------------|---------------------------------|
| 13-R4D7-0560 | 1 | 1 | 3203(a)(4) | G | ALJ vacated violation | | X | \$315 | \$315 | \$0 |
| | | 2 | 3203(a)(6) | G | ALJ vacated violation | | X | 315 | 315 | 0 |
| | | 3 | 3395(e) | G | DOSH withdrew violation | | X | 315 | 0 | 0 |
| | | 4 | 3395(f)(1)(A) | G | ALJ vacated violation | | X | 315 | 315 | 0 |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Sub-Total | | | | | | | | \$1,260 | \$1,260 | \$0 |

Total Amount Due*

\$0

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: *Please do not send payments to the Appeals Board.*

All penalty payments should be made to:

Accounting Office (OSH)
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

*You will owe more than this amount if you did not appeal one or more citations or items containing penalties.

Please call (415) 703-4291 if you have any questions.

ALJ: DAR/ml
POS: 11/03/14