

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal
of:

NATIONAL DISTRIBUTION CENTERS, LP
15835 San Antonio Avenue
Chino, CA 91708

Employer

DOCKET 12-R6D2-0391

DECISION

Statement of the Case

National Distribution Centers, LP¹ (NDC) distributes merchandise. Beginning September 1, 2011, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Barry Burgess² conducted an accident inspection at a place of employment maintained by NDC at 15835 San Antonio Avenue, Chino, California (the site.) On January 24, 2012, the Division issued NDC an amended serious citation alleging that an employee of Tri-State Staffing, Inc. (TSI) working for NDC suffered a serious heat illness due to NDC's failure to implement and/or failure to ensure implementation of its Injury and Illness Prevention Program relating to (1) identification and evaluation of the hazard of indoor heat exposure and heat illness³, (2) procedures for correcting the hazard of indoor heat exposure and heat illness⁴, and (3) effective training on the hazard of indoor heat exposure and heat illness.⁵

NDC filed a timely appeal contesting the existence of the alleged violation, its classification, the reasonableness of the proposed penalty, and alleging multiple affirmative defenses.

¹ Employer was purchased by National Freight, Inc. (NFI) after the citation issued.

² Associate Safety Engineer Kim Knudsen accompanied him.

³ Referencing § 3203(a)(4). Unless otherwise specified, all section references are to Sections of Title 8, California Code of Regulations.

⁴ Referencing § 3203(a)(6) and § 3395(f), as amended.

⁵ Referencing § 3203(a)(6) and § 3395(f), as amended.

This matter came on regularly for hearing before Dale A. Raymond, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at West Covina, California on November 6, 2012, March 27, 2013, September 5 and 6, 2013, April 22 and 23, 2014, and October 21 and 22, 2014. Ronald A. Peters, Attorney, of Littler Mendelson, P.C., represented NDC. Tuyet-Van Tran, Staff Counsel, and Melissa Peters, Staff Counsel, represented the Division. The Third Party (affected employee Domingo Blancas) was represented by Managing Attorney Jora Trang and Staff Attorney Nicole Marquez of Worksafe, Inc., and Special Counsel Iustina Mignea of the Legal Aid Society Employment Law Center.

On March 27, 2013, this matter was consolidated for hearing on joint motion with TSI, Docket 12-R6D2-0378. The Third Party did not object. Good cause appearing, the motion was granted. All admissible evidence presented in either matter is admitted in both matters.

The parties presented oral and documentary evidence. Exhibits received and testifying witnesses are listed on Appendix A. Certification of the Record is signed by the ALJ. The parties requested and were granted leave to file briefs. The matter was submitted on December 15, 2014. The ALJ extended the submission date to March 2, 2015 on her own motion.

Issues

1. Did NDC identify and evaluate the hazard of indoor heat exposure and heat illness for employees exposed to the risk of heat illness?
2. Did NDC establish and implement procedures for correcting the hazard of occupational heat exposure and heat illness when NDC did not transport a TSI employee with possible symptoms of heat illness to the medical clinic or to the emergency room?
3. Did NDC provide training to TSI employees on indoor heat exposure?

Findings of Fact

1. The site was a warehouse controlled by NDC. Both NDC and TSI employees worked there. TSI was the primary employer. NDC was the secondary employer⁶. Both NDC and TSI employees were exposed to the hazard of indoor heat exposure.
2. NDC Director of Safety, Mark Winsborrow (Winsborrow), performed monthly and annual inspections to identify and evaluate job hazards. Winsborrow identified the job hazard of indoor heat exposure and evaluated it. His evaluation determined that indoor heat at the site created the hazard of heat illness.

⁶ The parties stipulated that TSI was the primary employer and NDC was the secondary employer.

3. Domingo Blancas (Blancas) was a TSI employee who worked indoors at the site. He reported possible heat illness symptoms to TSI Risk Manager Erica Lepe (Lepe) on August 30, 2011.
4. Lepe implemented NDC's procedures for correcting the hazard of indoor heat exposure when she provided Blancas with transportation to the medical clinic through another employee.
5. On August 30, 2011, the clinic doctor who examined Blancas called Lepe. He told her that Blancas's vital signs were normal, he could not verify any heat illness symptoms, and that it was not an emergency. For the protection of the patient, he referred Blancas to the emergency room for further testing that the clinic could not do.
6. On August 31, 2011, Lepe again implemented NDC's procedures for correcting the hazard of indoor heat exposure when she learned that Blancas had reported to work that day, called Blancas to her office, found out that he had not gone to the emergency room, told him that she would get a ride for him to the emergency room, and called the medical clinic to get more information. While her back was turned as she made phone calls, Blancas disappeared without a word. Then Lepe received a telephone call which led her to believe that Blancas's son was taking him to the emergency room.
7. All employees, including Blancas, received required training on the hazards of indoor heat exposure.

ANALYSIS

1. Did NDC identify and evaluate the hazard of occupational heat exposure and heat illness for employees exposed to the risk of heat illness?

The alleged violation description, as amended, reads as follows:

On or about August 30, 2011 an employee of Tri State Staffing Inc. working for National Distribution Centers, LP suffered a serious heat illness because National Distribution Centers, LP failed to implement and/or failed to ensure implementation of the required elements of an Injury and Illness Prevention Program including but not limited to:

1. National Distribution Centers, LP failed to identify and evaluate the hazard of occupational heat exposure and heat illness for employees exposed to the risk of heat illness. Reference § 3203(a)(4).

The relevant portions of section 3203(a) provide as follows:

(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.

(A) When the program is first established; [Exception omitted]

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

Section 3203(a)(4) requires Employers to have procedures to identify and evaluate workplace hazards only; it does not require employers to identify a particular hazard. (*Brunton Enterprises, Inc.*, Cal/OSHA App. 08-3445, Decision After Reconsideration (October 11, 2013).) Inspections only need to be reasonably performed. (*Underground Construction Co., Inc.*, Cal/OSHA App. 98-4105, Decision After Reconsideration (Oct. 30, 2001), *affirmed in part regarding definition of inspection*, Judgment Granting Peremptory Writ of Mandamus, Sacramento County Superior Court, State of California, 01CS01671 (June 24, 2005), Amended Decision After Reconsideration (Feb. 22, 2006) vacating Decision After Reconsideration issued Oct. 30, 2001.)

The site was a large warehouse controlled by NDC where goods were loaded and unloaded from truck trailers. TSI supplied laborers who worked inside the warehouse and inside the truck trailers.

Both NDC Director of Safety Mark Winsborrow (Winsborrow) and TSI Risk Manager Erica Lepe (Lepe) performed inspections of the site as part of their job duties, Winsborrow performing them for NDC⁷, and Lepe performing them for TSI. They both walked inside the warehouse where employees were working. From the heat that they felt and the work that they observed, both of them identified indoor heat as a job hazard. After evaluating the hazard based on their training, both determined that the heat was high enough to cause heat stress, which could lead to serious injury or death.

Winsborrow performed inspections of the site either every week or every other week. He determined that methods and procedures needed to be put in

⁷ NDC's IIPP required monthly and annual periodic inspections to be performed to identify and evaluate hazards. The requirement for these inspections are found in Employer's IIPP overview (Exhibit H-12, Chapter 1, p 2) and in Chapter 2, Section IX, titled "Safety Inspections." Inspections were for "focusing on safety, security, and injury prevention."

place to correct the hazard⁸. Lepe walked the floor, usually twice per day. Lepe testified that about 10 employees per hot season complained of heat illness. As a result of the heat hazard, TSI instituted a heat illness prevention program for the site in 2009.

Based on the above, it must be found that NDC identified and evaluated the hazard of occupational heat exposure.⁹ Therefore, a violation of 3203(a)(4) cannot be found.

2. Did NDC establish and implement procedures for correcting the hazard of occupational heat exposure and heat illness when NDC did not transport a TSI employee with possible symptoms of heat illness to the medical clinic or to the emergency room?

The alleged violation description, as amended, reads as follows:

National Distribution Centers, LP failed to establish and implement procedures for correcting the hazard of occupational heat exposure and heat illness including but not limited to failure to respond to symptoms of possible heat illness, failure to contact emergency medical services when necessary, and failure to have a designated person available to ensure that emergency procedures are invoked when appropriate. Reference § 3203(a)(6) and § 3395(f).

There are three alleged instances of violations of § 3203(a)(6): (1) failure to respond to symptoms of possible heat illness, (2) failure to contact emergency medical services when necessary, and (3) failure to have a designated person available to ensure that emergency procedures were invoked when appropriate.

The relevant portion of section 3203(a)(6) provides as follows:

- (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: ...

⁸ NDC purchased the site from The Gilbert Company in June 2011. Winsborrow worked at the site for Gilbert and continued with the same job when NDC took over.

⁹ The Division did not carry its burden of proof. 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).)

(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 or discovered ...

Section 3206(a)(6) is a “performance standard,” which establishes a goal or requirement for employer to meet, while leaving the employer latitude in designing an appropriate means of compliance. (*BHC Fremont Hospital, Inc.*, Denial of Petition After Reconsideration (May 30, 2014), citing *Davey Tree Service*, Cal/OSHA App. 08-2708, Denial of Petition for Reconsideration (Nov. 15, 2012), writ denied, Alameda Superior Court RG14731145 (Feb. 5, 2015).)

Implementation is a question of fact. (*Ironworks Limited*, Decision After Reconsideration, Cal/OSHA App. (Dec. 20, 1996).) Proof of implementation requires evidence 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) [employer’s failure give any training to employee in accordance with its own sufficient written training program was failure to implement the training portions of an IIPP as required by § 3203(a)(7)].)

The alleged violation description references § 3395(f), which applies to outdoor places of employment only. Because the site is an indoor place of employment, the § 3395(f) requirements are not binding on NDC or TSI.¹⁰

Failure to respond to symptoms of possible heat illness

As discussed above, the first alleged instance of failure to implement NDC’s IIPP was failure to respond to symptoms of possible heat illness.

A possible heat illness incident occurred on August 30, 2011. On August 30, 2011, TSI employee Domingo Blancas (Blancas) reported possible symptoms of heat illness to Lepe. Lepe did not see signs of heat illness. Blancas was conscious, coherent, able to answer all questions, and able to walk without difficulty. He was not pale or sweating. He did not say he was hot or that he needed to cool off. Lepe told Blancas that she could not drive

¹⁰ The Division admitted in its brief that it has not alleged a violation of § 3395. The Appeals Board has held that “Briefs and arguments are reliable indications of a party’s position on the facts as well as on the law, and a reviewing court may make use of statements therein as admissions against the party.” *Davey Tree Service*, Cal/OSHA App. 08-2708, Denial of Petition for Reconsideration (Nov. 15, 2012), fn. 3.

him to the clinic because she had a meeting. She directed him to get a ride to the clinic with another employee. The other employee drove Blancas to the clinic.

According to evidence Employer presented, the examining doctor at the clinic, Ted. D. Diaz III, D.O. (Dr. Diaz) called Lepe later that day. He said that Blancas did not have any signs of heat illness or the other symptoms that he was complaining about. All his vital signs were normal. Dr. Diaz's diagnosis was dehydration possibly secondary to dehydration. (Exhibit 22, p. 3, Exhibit B, p.1) He referred Blancas to the emergency room for the protection of the employer. Blancas did not need to go to the emergency room on an emergency basis.

According to Lepe, she found out that Blancas had clocked in the next day, August 31, 2011. Lepe had him brought to her office. He looked fine. He told her he was feeling better. He did not report any symptoms. Lepe asked Blancas if he had gone to the emergency room. He said no because he did not have a ride. She said that Dr. Diaz told her Blancas said his son (Josue Blancas) would drive him to the emergency room and asked why his son did not drive him to the emergency room. Blancas did not give a response other than a shrug of his shoulders. Lepe turned her back to make a call to the clinic to gather information, find out if there were any other instructions, and make arrangements to take him to the emergency room. When she turned around, Blancas was gone. Lepe then got a telephone call from Josue Blancas's (Josue's) manager. Josue, who worked across the street in another building NDC controlled, had just left. Lepe correctly concluded that Josue left to drive Blancas to the emergency room.

According to evidence that the Division and the Third Party presented, Blancas came to Lepe's office on his own and showed Lepe the emergency room referral. She told him he had to find his own ride, so he left to get his son, Josue, to drive him to the emergency room. The evidence about Blancas is from Blancas's declaration (Exhibit TP-1) and Josue's testimony at hearing.

Blancas could not be cross-examined, which decreased the reliability of Blancas's statements in his declaration¹¹. Blancas made inconsistent statements on at least two occasions. He told Dr. Diaz that his son would take him to the emergency room, but Blancas did not call his son; Blancas took the bus home. Blancas stated in his sworn declaration that he had never been trained on heat illness, but his signature appears on sign-in sheets for heat stress training, discussed further below. Also, Blancas made many changes in his story when he spoke to Dr. Diaz. (Exhibit 22, p. 1, Exhibit B, p. 2).

¹¹ The declaration was admitted as hearsay.

Similarly, Josue made inconsistent statements. On direct examination, Josue testified under oath that he drove his father home from the medical clinic on August 30. On cross examination, Josue changed his story and said that his father took the bus home.

Lepe gave direct testimony at hearing, which was subject to cross examination. Lepe's testimony about what the doctor told her is corroborated by the medical records from Dr. Diaz. (Exhibit 22, pp. 1-3, Exhibit B, p. 2-3). The Division did not call Dr. Diaz to rebut Lepe's testimony, although they had the motive and power to call him.

Therefore, Lepe's testimony about the events on August 30 and 31 is found stronger and more trustworthy than the statements from Blancas and Josue. Based on Lepe's testimony, it is found that Blancas complained of symptoms of heat illness on August 30, although he did not appear to be suffering from heat illness and Lepe responded by obtaining a ride for him to the medical clinic. Based on Lepe's testimony, it is further found that Lepe called Blancas into her office on August 31, began to make arrangements for Lepe to go to the emergency room, he left her office without explanation, and she did not have time to conduct a search for him before she learned that Josue was probably taking Blancas to the emergency room.

Under these circumstances, it cannot be found that NDC failed to establish or implement appropriate responses to symptoms of possible heat illness on August 30 or 31.

Therefore, the Division did not prove the first alleged § 3203(a)(6) violation instance.

Failure to contact emergency medical services

As explained above, the second alleged instance of a failure to implement NDC's IIPP was failure to contact emergency medical services when necessary. The issue is whether Lepe failed to implement NDC's IIPP when she did not contact emergency services.

On August 30, Lepe personally observed Blancas, but did not see signs of heat illness. Blancas was conscious, coherent, able to answer all questions, and able to walk without difficulty. He was not pale or sweating. He did not say he was hot or that he needed to cool off. Blancas did not appear to have a life-threatening condition. She obtained a ride for him to the emergency room.

On August 31, Blancas appeared fine to her. He said that he felt better. Dr. Diaz told Lepe that Blancas did not need to go to the emergency room on

an emergency basis. She intended to arrange a ride for him to the emergency room.

Accordingly, the evidence does not support a finding that contacting emergency personnel was necessary or that NDC failed to establish or implement procedures for contacting emergency personnel.

Therefore, the Division did not prove the second alleged § 3203(a)(6) violation instance.

Failure to have designated person available

As explained above, the third alleged instance of a failure to implement NDC's IIPP was failure to have a designated person available to ensure that emergency procedures were invoked when appropriate.

Before August 29, 2011, NDC delegated implementation of the response to an ill TSI employee to TSI and announced the policy at a safety committee meeting where Lepe was present. (Exhibit 11) Lepe was designated as the person to call 911 if an emergency arose. (Exhibit 11) Additionally, NDC and TSI supervisors were at the site at all times.

On August 30, 2011, Blancas's NDC supervisor (Rudy Thomas) in fact referred Blancas to Lepe. On August 30 and 31, 2011, Lepe was available at the site and spoke to Blancas in her office.

Under these conditions, it cannot be found that NDC failed to have a designated person available to ensure that emergency procedures were invoked when appropriate or that it failed to effectively implement its provisions to have a designated person available to ensure that emergency procedures were invoked when appropriate.

Therefore, the Division did not prove the third alleged § 3203(a)(6) violation instance.

In conclusion, it is found that NDC established and implemented procedures to correct the hazard of heat exposure and heat illness, including procedures to respond to symptoms of possible heat illness, to contact emergency medical services when necessary, and to designate an available person to ensure that emergency procedures were invoked when appropriate and implemented the procedures. Therefore, the Division did not establish a violation of § 3203(a)(6).

3. Did NDC provide required training to TSI employees on the hazard of indoor heat exposure?

The relevant portion of the alleged violation description provides:

National Distribution Centers, LP failed to provide effective training on the hazard of occupational heat exposure and heat illness before employees were exposed to the risk of heat illness. Reference § 3203(a)(6)[sic]¹² and § 3395(f)¹³.

Section 3203(a)(7)¹⁴ requires employers to give training and instruction to employees regarding the safety and health hazards to which employees may be exposed. Substantial compliance is sufficient. (See *Marine Terminals Corp. dba Evergreen Terminals*, Cal/OSHA App. 08-1920, Decision After Reconsideration (Mar. 5, 2013)[substantial compliance with requirement to have employees comply with safe work practices includes training and retraining programs].)

Specifically § 3207(a)(7) requires employers to: (7) Provide training and instruction: ...

(C) To all employees given new job assignments for which training has not been previously received.¹⁵

¹² The reference to (a)(6) was a clerical error. The intended reference was (a)(7). The previous alleged violation description (AVD) referred to (a)(7) and § 5193(f). The amendment substituted 3395(f) for 5193(f). No other change was made to the AVD.

¹³ As discussed above, § 3395(f) is not relevant because it applies to outdoor places of employment only. The issue is whether there was effective training for TSI employees.

¹⁴ Section 3207(a)(7) requires employers to: (7) Provide training and instruction: (A) When the program is first established; [Exception omitted] (B) To all new employees; (C) To all employees given new job assignments for which training has not been previously received; (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard; (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

¹⁵ None of the triggering conditions specified in subsections (A), (B), (D), or (E) existed in August 2011. NDC's IIPP was not first established in 2011. None of the employees about whom testimony was given (Domingo Blancas, Josue Blancas, Santos Castaneda, Erica Lepe) were new employees. None of the employees were given new job assignments for which training had not been previously received. There were no new substances, processes, procedures, or equipment introduced that represented a new hazard. Heat exposure was not a new or previously unrecognized hazard. The requirement in subsection (F) applies without regard to any triggers. Between July and August, 2011, before the Blancas incident, NDC gave training relating to the hazards of occupational heat illness and heat exposure for NDC employees. All NDC employees at the site were management or supervisory personnel. The training lasted about an hour. Among other things, NDC developed and presented a power point presentation followed by a 20-question quiz. (Exhibits E, F, K, I) The Division admitted that this training was effective for NDC employees. Division's closing brief, p. 13-14, Burgess testimony.

There was some evidence that training was not given or was so poor that it was the equivalent of no training. Blancas, in his written declaration, stated that he had never received heat stress training (Exhibit TP-1), and TSI employees gave incomplete answers to Burgess when he interviewed them about heat illness.

This evidence is outweighed by other evidence. When Burgess interviewed TSI employees regarding heat illness, they gave incomplete answers regarding heat illness symptoms. They knew that heat was bad for them and that they should drink water. Although incomplete, these answers, and the completed heat stress quizzes, showed that employees received training. The answers were correct as far as they went. Inability to recite symptoms does not mean that employees would not or could not recognize heat illness symptoms if they saw them.

NDC supervisors, including Rudy Thomas, Blancas's NDC supervisor, were directed to give informal five-minute heat stress training to their crews. (Exhibit K) Lepe testified that she had personally trained Blancas about heat illness, and he identified the symptoms to her without difficulty. Lepe testified that she and other TSI personnel gave formal heat illness training to all employees once a month. Heat illness training was conducted in English and Spanish on May 4, 2011, August 4 and 5, 2011. (Exhibits 13, 14, 15, D, G) Blancas's signature on the May 4, 2011 sign-in sheet coupled with his statement to Burgess that he received heat stress training are persuasive evidence that Blancas and other TSI employees received appropriate heat stress training.

The fact that Blancas and Lepe did not recognize that Blancas may have had heat illness does not establish that TSI's training was ineffective. Occurrence of an incident alone is not proof that an employer has an ineffective IIPP. (See *Michigan-California Lumber Co.*, Cal/OSHA App. 91-759, Decision After Reconsideration (May 20, 1993).) A licensed medical doctor, Marvin Pietruszka (Pietruszka), who reviewed Blancas's medical records, was unable to conclude that Blancas suffered from heat illness. Dr. Diaz, who initially evaluated Blancas, also was unable to definitively conclude that he had heat illness. Because medical experts were not able to diagnose heat illness after examining Blancas or reading his medical records, it cannot be found that Lepe's failure to recognize Blancas's possible heat illness was evidence of ineffective heat illness training.

Based on the above, it must be found that NDC provided effective training for employees on the hazard of occupational heat exposure and heat illness. Therefore, a violation of 3203(a)(7) cannot be found.

Conclusion

Therefore, Employer's appeal is granted. Citation 1, Item 1, is vacated, and the penalty is set aside.

Decision

It is hereby ordered that the citation be vacated and the penalty set aside as indicated above and as set forth in the attached Summary Table.

Dated: March 25, 2015

DALE A. RAYMOND
Administrative Law Judge

DAR:ml

APPENDIX A

SUMMARY OF EVIDENTIARY RECORD

**NATIONAL DISTRIBUTION CENTERS, LP
Docket 12-R6D2-0391
and
TRI-STATE STAFFING
Docket 12-R6D2-0378**

Dates of Hearing:

November 6, 2012; March 21, 23, and 27, 2013; September 5 and 6, 2013,
April 22 and 23, 2014, October 21 and 22, 2014

Division's Exhibits

Exhibit Number	Exhibit Description	Admitted
1	Jurisdictional Documents (both dockets)	Yes
2	Photograph—boxes in trailer on conveyer	Yes
3	Photograph—carrying boxes	Yes
4	Photograph—stacked boxes in warehouse	Yes
5	Photograph—wide angle view inside warehouse	Yes
6	Photograph—large fan	Yes
7	Aerial photo of warehouses	Yes
8	Blancas--Medical records	Yes— under seal
9	Document request for Tri-State Staffing (TSI)	Yes
10	Document request for National Distribution Centers (NDC)	Yes
11	Committee Meeting Notes—NFI/NDC	Yes
12	Committee Meeting Notes—Gilbert/TSI	Yes

13	Safety Training records 8/4/11	Yes
14	Safety Training sign-in sheet 8/5/11	Yes
15	Safety Training sign-in sheet 8/4/11	Yes
16	1BY for TSI	Yes
17	Response to 1BY for TSI	Yes
18	1BY for NDC	Yes
19	Form C-10 for TSI	Yes
20	Form C-10 for NDC	Yes
21	Mary Kochie—C.V.	Yes
22	Blancas Medical Records	Yes— under seal
23	NFI/NDC Injury report	Yes
24	Blancas—Pomona Valley Hospital Medical Records	Yes— under seal

Employer's Exhibits

Exhibit Letter	Exhibit Description	Admitted
A	Marvin Pietruszka—C.V.	Yes
B	Blancas—medical records	Yes— under seal
C	Cal/OSHA Form C-170—Summary of investigation	Yes
D	Safety training records	Yes
E	Quick Card on heat stress	Yes

F	NFI/NDC Emergency procedures for heat stress	Yes
G	Safety sign-in sheet 5/4/11	Yes
H	H1-Working in the Heat	Yes
	H2-Quizzes	No
	H3-Sign-In sheets	No
	H4-DOSH interview questionnaires	No
	H5-DOSH Inspection Notes	No
	H6-Minutes 6/17/11, 1/19/10	Yes
	H7-Employee statement of illness	Yes
	H7A-Interview notes	Yes
	H8-heat illness evaluation questionnaire	No
	H9-emails—Riley/Carleson/William	No
	H10-Heat Illness Indoor Prevention Evaluation	No
	H11-Heat Illness Plan for Indoors	No
	H12-NFI/NDC IIPP and CSP	Yes
	H13- Heat Stress PowerPoint Slides	No
	H14-Gilbert Co/TSS Staffing Agreement	No
	H15-TSI IIPP	No
I	NFI/NDC heat stress/illness quiz	Yes
J	Blancas—Interview notes	Yes
K	Winsborrow email re heat stress training	Yes
L	Heat Index	No

Third Party Exhibit

Exhibit	Exhibit Description	
TP-1	Declaration of Domingo Blancas	Yes as hearsay

Witnesses Testifying at Hearing

1. Santos Castaneda
2. Josue Blancas
3. Marvin Pietruszka
4. Barry Burgess
5. Mary Kochie
6. Erica Lepe
7. Mark Winsborrow

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.

DALE A. RAYMOND
Signature

March 25, 2015
Date

SUMMARY TABLE DECISION

In the Matter of the Appeal of:

NATIONAL DISTRIBUTION CENTERS, LP
Docket 12-R6D2-0391

Abbreviation Key: Reg=Regulatory
 G=General W=Willful
 S=Serious R=Repeat
 Er=Employer DOSH=Division

IMIS No. 314757618

DOCKET	C I T A T I O N	I T E M	SECTION	T Y P E	ALLEGED VIOLATION MODIFICATION OR WITHDRAWAL	A F F I R M E D	V A C A T E D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD	
12-R6D2-0391	1	1	3203(a)	S	ALJ vacated violation		X	\$18,000	\$18,000	\$0	
Sub-Total									\$18,000	\$18,000	\$ 0

Total Amount Due*

\$ 0

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: *Please do not send payment to the Appeals Board. All penalty payments must 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: DR/ml
 POS: 03/25/15

