

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

In the Matter of the Appeal of:

**WILSON CONSTRUCTION COMPANY**  
1190 NW Third Avenue  
Canby, Oregon 97013

Employer

**DOCKETS 13-R4D3-1597  
through 1599**

**DECISION**

**STATEMENT OF THE CASE**

Wilson Construction Company, (Employer) specializes in the design and construction of electric utility infrastructures used by power providers. On November 28, 2012, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Rene Garcia-Caraballo (Garcia-Caraballo) conducted an accident inspection at a place of employment maintained by Employer at Avenue S and Tuvey Road, in Palmdale, California (the site). On April 22, 2013, the Division cited Employer for the following alleged violations of the occupational safety and health standards and orders found in California Code of Regulations, title 8<sup>1</sup>: Citation 1, Item 1, related to grounding equipment (section 2743, subdivision (b)); Citation 2, Item 1, related to preventing hazardous induced voltage buildup (section 2941, subdivision (i)(1)(D)); and Citation 3, Item 1, related to identifying hazardous conditions in the work place (section 1509, subdivision (a)).

Employer filed a timely appeal contesting the violation of the safety orders, and the reasonableness of the proposed penalties for Citations 1, 2, and 3. Employer also alleged several affirmative defenses.

The matter came on regularly for hearing before Clara Hill-Williams, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at Van Nuys, California on May 21, 2014 and on September 24, 2014. Employer was represented by Jeffrey A. Johnson,

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

Executive Vice President and General Counsel. The Division was represented by Staff Counsel Kathryn Woods. The ALJ extended the submission date to October 14, 2015.

### **ISSUES**

1. Did Employer violate section 2743, subdivision (b) by failing to ensure all noncurrent-carrying metal parts of portable and fixed equipment including their associated fences, housings, enclosures, and supporting structures, were grounded?
2. Did Employer violate section 2941, subdivision (i)(1)(D) by failing to prevent a possibility of a hazardous induced voltage buildup from a conductor that was not grounded or by failing to make provisions to isolate or insulate the employees?
3. Did Employer violate section 1509, subdivision (a) by failing to have effective hazard identification procedures in place to ensure employees installing a dead end board were safe?
4. Did Employer establish that the alleged violation of section 2743, subdivision (b) was the result of an independent employee action?

### **FINDINGS OF FACT**

1. On November 17, 2012, Brian Cashmere (Cashmere) and Dana Barendse (Barendse) both journeymen<sup>2</sup> employees of Employer were assigned to replace and repair jumper cables while working on a dead-end board/platform<sup>3</sup> connected to one of the electrical towers at the work site.
2. The dead end board and the jumper cable metal parts are considered equipment and used as part of, or in connection with an electrical installation.
3. On the previous afternoon, November 16, 2012, another journeyman crew, Andy Robbins (Robbins) and Ryan Teasley (Teasley) installed the dead-end

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<sup>2</sup> All states follow the National Electrical Code, and recognize three basic categories: apprentice, journeyman and master. There is no national license; some municipalities require city licenses. An apprentice is a beginner or trainee who works under direct supervision of a master electrician. A journeyman is trained and experienced and can work on his own under the general guidance of a master. A master originates projects, gets permits for construction and installations and oversees the work of journeymen and apprentices. *Workcron.com*.

<sup>3</sup> A dead-end board/platform is a working platform comprised of a modified ladder with a flat surface attached to one side, which the linemen/workers stand on.

board to the same tower Cashmere and Barendse were assigned to work on the following day, which was November 17, 2012.

4. On November 16, 2012, Robbins and Teasley were only assigned to hang the dead end board and were not assigned to connect the ground to the tower because it was late in the afternoon and getting dark with poor visibility.
5. Robbins and Teasley intended to connect the grounds to the tower the following day (November 17<sup>th</sup>) but were unexpectedly reassigned to a different tower at the work site.
6. On the morning of November 17, 2012, the ground for the dead-end board was attached at the conductor, but the ground at the tower end of the board was not connected and was hanging free<sup>4</sup>.
7. Barendse and Cashmere failed to connect the ground connector, which should have been connected to the tower before they attempted to remove the paddles from the jumper cable<sup>5</sup>.
8. As soon as Cashmere dislodged the paddle from the dead end clamp he felt electrical contact in his hands. Despite the electrical contact to his hands Cashmere was able to detach the conductor that Barendse could not release as a result of the conductor's electrical contact by cutting Barendse's lanyard with his pocket knife<sup>6</sup>.
9. The source of the ground connector's electrical energy was from a nearby 500 kv<sup>7</sup> line because the ground connector was not attached to the tower as required.
10. The resulting electrical contact felt by Cashmere and Barendse demonstrated that the equipment was not grounded and not in compliance with safety order section 2743, subdivision (b).
11. Cashmere and Barendse's failure to follow Employer's safety plan is a single, isolated failure to "implement" a detail within Employer's otherwise effective program.

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<sup>4</sup> (See Exhibit 5 Incident Report and Analysis p.6).

<sup>5</sup> Jumper – a small connector used to make temporary electrical connections; jumper cable – a jumper that consists of a short piece of wire with clips on both ends. *The Free Dictionary.com* According to Garcia-Caraballo's investigation Cashmere was using a screwdriver to help pry the paddle off the bolts while Barendse held the jumper cable paddle.

<sup>6</sup> The parties stipulated that Dana and Brian sustained serious injuries, which consisted of second degree electrical burns.

<sup>7</sup> kv – kilovolt is a unit of electromotive force, equal to 1000 volts. *dictionary.reference.com*

12. Both linemen (Barendse and Cashmere)) erred by not checking to make sure both ends of the grounding cable were properly attached in violation of Employer's policy.
13. As a result of Barendse and Cashmere's failure to follow Employer's procedures, they were placed on special assignment as "safety watchers" and were prohibited from performing their usual work assignments.

### ANALYSIS

**1. Did Employer violate section 2743, subdivision (b) by failing to ensure all noncurrent-carrying metal parts of portable and fixed equipment including their associated fences, housings, enclosures, and supporting structures, were grounded?**

Section 2743, subdivision (b) provides:

All noncurrent-carrying metal parts of all portable and fixed equipment including their associated fences, housings, enclosures, and supporting structures, shall be grounded<sup>8</sup>.

The Division alleged the following:

Tower Site M51A – Where on November 17, 2012 two Journeyman Lineman sustained second degree electrical burns to their right hand, stomach and right foot from the induced electrical current from an adjacent energized 500 kv high voltage line while replacing a jumper cable from a dead end platform board, the employer did not ensure that the exposed non energized jumper cable metal parts [be] connected by a continuous ground return conductor to the point at which the system neutral impedance<sup>9</sup> is connected to earth.

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,

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<sup>8</sup> The citation has been amended from the version that appears in the citation issued on April 22, 2013. History: Amendment of section heading, section and Note filed 4-1-2009; operative 4-1-2009.

<sup>9</sup> The apparent opposition in an electrical circuit to the flow of an alternating current that is analogous to the actual electrical resistance to a direct current and that is the ratio of effective electromotive force to the effective current. *Merriam-Webster.com*

1983).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighted with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001), citing *Leslie G. v. Perry & Associates* (1996) 43 Cal App. 4th 472, 483, review denied.)

To order to establish a violation the Division must prove: (1) that all noncurrent-carrying metal parts; (2) all portable and fixed equipment; including their associated fences, housings, enclosures, and supporting structures; (3) shall be grounded.

In establishing the first element of "non-current carrying metal parts", Garcia-Caraballo testified that the dead end board, which is non-metal and the jumper cable and paddles, which are metal parts were not electrically charged, which was affirmed by Employer's safety manager, Michael McGinnis (McGinnis). Garcia-Caraballo established the second element, "all portable and fixed equipment" in describing the dead-end board as fixed equipment that was a platform the linemen stood on (See fn3). According to Garcia-Caraballo's investigation and Employer's Incident Report, the dead-end board was installed the previous late afternoon (November 16, 2012) by a different work crew (See Exhibit 5, fn4).

Finally, the third element of the safety order requires that non-current metal parts, portable and fixed equipment are grounded. On November 17, 2012, Barendse and Cashmere failed to connect the ground connector, which should have been connected to the tower before they attempted to remove the paddles. Garcia-Caraballo testified that Employer's accident report investigation concluded that the ground for the dead-end board was attached at the conductor, but the ground at the tower end of the board was not connected and was hanging free<sup>10</sup>. Garcia-Caraballo interviewed the November 16, 2012 journeyman crew, Robbins and Teasley, who acknowledged that they did not connect the ground to the tower on the evening before the November 17<sup>th</sup>, 2012 accident<sup>11</sup>. Employer's accident report found that Cashmere and Barendse failed to connect the ground connector and that it should have been connected before removing the paddles (Exhibit 3 Employer's Incident Report p.1 and p.8). Employer's accident report further concluded that according to Employer's policy Barendse and Cashmere should have checked to determine if the cables were grounded before removing the jumper paddles. Cashmere and Barendse's resulting electrical contact injuries demonstrated that the equipment was not

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<sup>10</sup> (See Exhibit 5 Incident Report and Analysis p.6).

<sup>11</sup> Because it was getting dark, they decided to delay connecting the grounds to the tower or to the conductor until the following day, but were unexpectedly reassigned to a different tower.

grounded and was not in compliance with the safety order section 2743, subdivision (b). As such, the Division has met its burden of proof and the violation is established.

**2. Did Employer violate section 2941, subdivision (i)(1)(D) by failing to prevent a possibility of a hazardous induced voltage buildup from a conductor that was not grounded or by failing to make provisions to isolate or insulate the employees?**

Section 2941(i)(1)(D) Work on or in Proximity to Overhead High Voltage Lines provides:

When there is a possibility of the conductor accidentally contacting any energized high voltage circuit or receiving a hazardous induced voltage buildup, the conductor being installed or removed shall be grounded or provisions made to isolate or insulate the employees.

The Division alleged:

Tower Site M51A – Where on November 17, 2012 two journeyman lineman sustained second degree electrical burns to their right hand, stomach and right foot from induced electrical current from an adjacent energized 500 kv high voltage line while replacing a jumper cable from a dead end platform board, the employer did not ensure that when there was a possibility of receiving a hazardous induced voltage buildup the dead end platform conductor being installed [be] grounded or provisions made to isolate or insulate the employees.

This safety order requires (1) a possibility of the conductor accidentally contacting any energized high voltage circuit or (2) receiving a hazardous induced voltage buildup, (3) the conductor being installed or removed shall be grounded or (4) provisions made to isolate or insulate the employees.

Here, According to Garcia-Caraballo's investigation, the first element is met because there was a possibility of a conductor accidentally contacting an energized high voltage circuit with the work site's high voltage towers of 270 kv and 500 kv at a distance of only 77 feet between each tower.

The second element of receiving a hazardous induced voltage buildup as explained by the Division's Senior Safety Engineer Fred Porter's (Porter) testimony, is a phenomenon where a de-energized conductor takes on an

electron flow. The electron flow's proximity to an energized conductor causes the risk of a shock or burn as if it was an energized conductor. Porter asserted that the possibility of a buildup was actualized when Cashmere disconnected the jumper paddle, which exposed both Cashmere and Barendse to the induced current. Consequently, when Cashmere disconnected the jumper cable from the conductor by cutting the jumper cable the equipotential zone (EPZ)<sup>12</sup> was breached, which caused the injuries. Garcia-Caraballo concluded that if the cables were grounded an energy build-up would not have occurred, which caused the employees' injuries when the cable was cut.

The third element of the safety order requires that the conductor being installed or removed shall be grounded. Here, as discussed above, Cashmere and Barendse failed to ground the conductor. In establishing the fourth element, Garcia-Caraballo testified that if gloves were worn or an insulated protective blanket was worn, such protection would have "insulated" Barendse and Cashmere from the injuries they sustained by their failure to check the grounds. However, when a safety standard includes two or more distinct requirements, as indicated in section 2941, subdivision (i)(1)(D), if an employer violates any one of the requirements, it is considered a violation of the safety standard. (*Golden State Erectors*, Cal/OSHA App. 85-0026, DAR (Feb. 25, 1987) and *California Erectors Bay Area Inc* Cal/OSHA App. 93-503, DAR (Jul 31, 1998).) Here, the safety order's third and fourth elements are in the disjunctive. The third element requires that the conductor is grounded. The fourth element also establishes a violation if provisions are not made to isolate or insulate the employees. Here, either the third or the fourth element would establish a violation. Here, Cashmere and Barendse failed to ground the conductor, which is sufficient to establish a violation of the safety order, without considering the fourth element of the employer's failure to insulate or isolate the employees.

Thus, the Division established that Employer failed to prevent a possibility of a hazardous induced voltage buildup from a conductor that was not grounded.

**3. Did Employer fail to have effective hazard identification procedures in place to ensure employees installing a dead end board platform were safe?**

Section 1509(a) Injury and Illness Prevention Program (IIPP) provides:

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<sup>12</sup> McGinnis testimony defined EPZ as an equipotential zone, which means it was safe for the employees to be on the dead-end board because the jumper and conductor were grounded, which created an EPZ, which still existed when Cashmere and Barendse arrived on the morning of November 17, 2012. It was only after Cashmere disconnected one end of the jumper that he felt electrical contact because the grounds were only attached to the conductor and not to the tower.

Every Employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Safety Orders.

Section 3203(a)(4) provides:

...every employer shall establish, implement and maintain an effective IIPP (Program). The Program shall be in writing and, shall, at a minimum: 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;
- (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.

The Division alleged:

Tower Site M51A – Where on November 17, 2012 two Journeyman Lineman sustained second degree electrical burns to their right hand, stomach and right foot from induced electrical current from an adjacent energized 500 kv high voltage line while replacing a jumper cable from a dead end platform board, the employer did not have effective hazard identification procedures in place to ensure that the employees installing the dead end board platform before leaving the high voltage electrical tower construction worksite.

In clarifying section 3203 subdivision (a)(4), Employer's program must include: (1) procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices; and (2) Inspections shall be made to identify and evaluate hazards. These procedures must take place when the Program is first established, whenever new substances, processes procedures are introduced and represent a new occupational safety hazard and whenever the employer is made aware of a new or previously unrecognized hazard.

To establish an IIPP violation, the Division must prove that flaws in the Employer's written IIPP amounted to a failure to "establish" or "implement" or "maintain" an "effective" program. A single, isolated failure to "implement" a detail within an otherwise effective program does not necessarily establish a violation for failing to maintain an effective program where that failure is the sole imperfection. (See *GTE California*, Cal/OSHA App. 91-107, Decision After Reconsideration (Dec. 16, 1991); *David Fischer, dba Fischer Transport, A Sole Proprietorship*, Cal/OSHA App. 90-762, Decision After Reconsideration (Oct. 16, 1991).)

Garcia-Caraballo cited Employer for violation of section 1509, subdivision (a) because there was a lack of communication when working on projects from day to day regarding what needed to be done the following day. Garcia-Caraballo testified that Employer did not have effective hazard procedures in place for employees working on the dead-end platform. He testified that daily communication is necessary to address new unrecognized hazards that require communication from one work crew to the next work crew. Here, it is undisputed that the previous crew did not attach the jumper ground to the tower, the day before the November 17, 2012 accident occurred "the ground connection at the tower end of the board was not connected...the ground for the dead-end board was attached at the conductor, but the tower end of [the] ground was hanging free". (See Exhibit 3 – Incident Report & Analysis)

Employer's investigation report (See Exhibit 5) acknowledged the "inadequate communication between the crew that hung the board in the afternoon and the crew that worked on the board the next morning, in that there was inadequate debriefing between the two crews as to the status of the grounding the conductor and bonding of the board at the end of the previous workday." McGinnis testified that the previous crew was only assigned to hang the dead-end board and was not assigned to ground both ends conductors. However, Employer did have a procedure for identifying and evaluating work place hazards. Employer's safety manual stated the first task performed each morning was checking the grounds because there may be new and unrecognized hazards. McGinnis testified that if Cashmere and Barendse would have followed Employer's procedure in first checking the grounds before beginning the assignment the accident would not have occurred. Thus, Employer met the second element of requiring inspections to identify unsafe conditions by its policies and procedures neglected by Cashmere and Barendse.

In weighing the evidence regarding whether Employer failed to have an effective hazard identification procedures in place to ensure employees installing the dead end board platform are safe, the Division failed to prove that flaws in the Employer's written IIPP amounted to a failure to "establish" or "implement" or "maintain" an "effective" program. The Division did not present

any other provisions of Employer's IIPP or instances (See Exhibit B) that demonstrated Employer failed to implement its IIPP. Here, Cashmere and Barendse's failure to follow Employer's safety plan as described above, is a single, isolated failure to "implement" a detail within an otherwise effective program and does not establish that Employer failed to maintain an effective program where the employees failure to follow a specific safety policy is the sole imperfection. (See *GTE California, supra*).

**4. Did Employer establish that the alleged violation of section 2743, subdivision (b) and section 2941, subdivision (i)(1)(D) was the result of an independent employee action?**

Employer asserts the independent employee act defense. The Board has held that the independent employee action defense enunciated in *Mercury Service, Inc.*, Cal/OSHA App. 77-1133, Decision After Reconsideration, (Oct. 16, 1980) can relieve the Employer of fault for the violation of a safety order. In order to establish the independent employee action defense (IEAD), Employer has the burden of establishing all of the following elements:

1. The employee was experienced in the job being performed.
2. The employer has a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments.
3. The employer effectively enforces the safety program.
4. The employer has a policy of sanctions against employees who violate the safety program.
5. The employee caused a safety infraction which he or she knew was contra to the employer's safety requirements.

Failure to prove any one of the elements negates the independent employee action defense in its entirety. (*Ferro Union, Inc.*, Cal/OSHA App. 96-1445 (Sep. 13, 2000).)

In considering the first element of whether the employee was experienced in the job being performed, Barendse and Cashmere were both electrical journeymen with several hundred hours of electrical experience<sup>13</sup> and training,

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<sup>13</sup> Employer's Appendix D reflected Barendse and Cashmere completed over 800 hours of "hot work" (electrical work).

and could work on their own under the general guidance of a master (supervisor) (See fn3). The evidence at hearing did not reflect that the assignment given Barendse and Cashmere was difficult or was a new process that they were not familiar with performing.

In reviewing the second element requiring the employer to have a well-devised safety program that includes training employees in matters of safety respective to their particular job assignment, Employer submitted documentation, which was site specific for each assignment (See Appendix A) verifying Barendse and Cashmere's completion of Employer's training and safety programs.

In addressing the third element requiring Employer to effectively enforce the safety program, Garcia-Caraballo's investigation confirmed Barendse and Cashmere received training that included tailgate meetings as recent as October 5, 2012, less than two weeks before the accident (See Exhibit A-Appendix A, Tab F and Tab H, p.5). Employer also required that the linemen's work was checked every morning. As journeymen, Barendse and Cashmere were required to check the groundings each day before beginning their work assignment. The Division countered that neither Cashmere nor Barendse were singularly charged with checking the grounds; rather it was both of their jobs to do so according to the testimony of McGinnis. However, Employer's requirement that both employees were responsible for checking the grounds demonstrates an effective safety program. Employer's safety program does in fact put the responsibility on each employee, in that they are both charged with checking the grounds; if one employee did not check the other employee was still charged with checking the grounds. Such redundancy in the requirement to check grounds enhances safety. A singular assignment for each employee to check the grounds would result in fewer opportunities to ensure the grounds were checked if one of the employees did not check the grounds.

Considering the fourth element of whether Employer has a policy of sanctions against employees who violate the safety program, Employer asserted that it has a progressive discipline policy. According to McGinnis, based upon the two workers' failure to follow Employer's procedures, they were placed on special assignment as "safety watchers" and were prohibited from performing their usual work assignments. Instead, they were required to observe other linemen in the field to ensure they were working safely. While the Division questions Barendse and Cashmere's special assignment as safety watchers as a form of sanctions, a finding is made that demotion even if temporary is a form of discipline, which satisfies the fourth element of IEAD.

Under the fifth element, Employer must show that the employees caused a safety infraction which they knew was contra to the employer's safety requirements. According to Employer, Barendse and Cashmere ignored established safety protocol by failing to check the grounds before performing

the day's task, which was confirmed by Garcia Caraballo's investigation and testimony at the hearing. Barendse and Cashmere acknowledged their mistake of failing to check the groundings before beginning their assigned tasks.

The Division asserted that IEAD is not applicable. The Division asserted that applying *Mercury Service Inc., supra*, to excuse conduct of more than one employee excuses conduct and promotes a bad safety culture. The Division noted that the Board acknowledged "that in certain circumstances that IEAD will apply to more than one employee. Yet the Division maintained that since the Board has not enunciated the circumstances where IEAD is available to more than one employee, there is no basis for the application of the IEAD defense for two employees. The Division cited *Frank M. Booth., Cal/OSHA App. 12-0601, DPR (May 30, 2014)*, where a serious injury accident occurred when an employee, a qualified rigger, failed to ensure a load was secured before detaching it from a crane. During the incident, another employee, a forklift operator, was having difficulty transferring the suspended load to the forks of a forklift. The rigger went over to assist the forklift operator and in the process, the rigger detached the load from the crane without confirming it was properly supported. The Board held that because the rigger acted alone in detaching the load from the crane, the employer only had to prove the first element of the IEAD as it pertained to the rigger.

To the contrary, Employer argued that the Division has no legal authority to support the assertion that "IEAD relieves the employer of conduct of one employee" and not in instances where more than one employee violates safety rules. The Employer asserts that *Mercury Service Inc., supra*, simply provides the elements of the IEAD defense without any discussion regarding whether the defense applies when more than one employee violates a safety rule. Further, the Employer countered that the Board in *Frank M. Booth, supra*, did not hold that the defense does not apply when more than one employee violates safety rules; but the Board did hold that "[In certain circumstances the IEAD will apply to more than one employee."

In reviewing Employer and the Division's positions regarding the defense applying to more than one employee, the Employer's position is in line with the Board's position taken in *Frank M. Booth, supra*, which supports a finding that the IEAD applies to more than one employee in an incident where both employees violated a safety order. Given that the IEAD is generally applicable, the next issue is whether Employer satisfied each of its five elements.

Here, the evidence shown by Employer demonstrates that Employer met all five elements with respect to both employees, which is supported by *Mercury Service Inc., supra*, and is supported by the Board's position in *Frank M. Booth, supra*. As such, Citation 1 and Citation 2 are dismissed.

## Conclusions

The Division established that Employer failed to ensure all noncurrent-carrying metal parts of portable and fixed equipment including their associated fences, housings, enclosures, and supporting structures, were grounded. The resulting electrical contact demonstrates that the equipment was not grounded and not in compliance with safety order section 2743, subdivision (b). However, since Employer proved all five elements of the independent employee action defense, the violation of section 2743, subdivision (b) is dismissed.

The Division established that Employer failed to prevent a possibility of a hazardous induced voltage buildup a conductor that was not grounded in violation of section 2941, subdivision (i)(1)(D). Since the safety order's third and fourth elements are in the disjunctive, the third element established a violation of the safety order because Cashmere and Barendse failed to ground the conductor. Considering the disjunctive fourth element of whether Employer failed to insulate or isolate the employees is not necessary pursuant to the Board's holding in *Golden State Erectors, supra*. Again, since Employer proved all five elements of the independent employee action defense, the violation of section 2941, subdivision (i)(1)(D) is also dismissed.

The Division failed to establish that Employer did not have effective hazard identification procedures in place to ensure employees installing the dead end boards were safe. The Division failed to prove that flaws in the Employer's written IIPP amounted to a failure to "establish" or "implement" or "maintain" an "effective" program. As such, the alleged violation of section 1509, subdivision (a) is dismissed.

## Order

It is hereby ordered that the Citation 1, Citation 2 and Citation 3 are dismissed as set forth above and in the attached Summary Table.

Dated: November 18, 2015

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**CLARA HILL-WILLIAMS**  
Administrative Law Judge

CHW: ao

**APPENDIX A**

**SUMMARY OF EVIDENTIARY RECORD**

**WILSON CONSTRUCTION COMPANY  
Dockets 13-R4D3-1597 and 1599**

**Date of Hearing:** May 21, 2014 and September 24, 2014

**Division's Exhibits**

| <b>Exhibit Number</b> | <b>Exhibit Description</b>                 | <b>Admitted</b> |
|-----------------------|--|-----------------|
| 1                     | Jurisdictional Documents                   | X               |
| 2                     | Form 36                                    | X               |
| 3                     | Employer Incident Report & Analysis        | X               |
| 4                     | Document Request Form                      | X               |
| 5                     | Second Employer Incident Report & Analysis | X               |
| 6                     | Photo of dead-end board                    | X               |
| 7                     | 1By Notice                                 | X               |
| 8                     | Employer's First Report                    | X               |
| 9                     | Task Hazard Analysis Form                  | X               |

**Employer's Exhibits**

| <b>Exhibit Letter</b> | <b>Exhibit Description</b>              | <b>Admitted</b> |
|-----------------------|---|-----------------|
| A                     | Appendix/tabs A-N                       | X               |
| B                     | Inspector's inspection file – ER's IIPP | X               |
| C                     | IPP high hazard                         | X               |
| D                     | Diagram of Tower work site              | X               |
| E                     | Black/white photo Tower end             | X               |
| F                     | Declaration & Disciplinary records      | X               |

**Witnesses Testifying at Hearing**

1. Fred Porter
2. Rene Garcia-Caraballo
3. Michael McGinnis

**CERTIFICATION OF RECORDING**

*I, Clara Hill-Williams, 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.*

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Signature

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Date

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

In the Matter of the Appeal of:

**WILSON CONSTRUCTION COMPANY**

1190 NW Third Avenue  
Canby, Oregon 97013

Employer

**DOCKETS 13-R4D3-1597  
Through 1599**

**TRANSMITTAL**

The attached Decision was issued on the date indicated therein. If you are dissatisfied with the Decision, you have thirty (30) days from the date of service of the Decision in which to petition for reconsideration. The petition for reconsideration must be sent to:

**Occupational Safety and Health Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833**

Your petition for reconsideration must fully comply with the requirements of Labor Code Sections 6616, 6617, 6618, and 6619 and with Title 8, California Code of Regulations, Section 390.1.

For further information, call: (916) 274-5751

**OSHAB 20 (9/99)**

## **DECLARATION OF SERVICE BY MAIL**

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is Occupational Safety and Health Appeals Board, 100 North Barranca Street, Suite 410, West Covina, California, 91791.

On November 18, 2015, I served the attached **Decision** by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at West Covina, California, with first-class postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

Jeffrey A. Johnson, Executive Vice President  
WILSON CONSTRUCTION COMPANY  
P.O. Box 1190  
Canby, OR 97013

District Manager  
DOSH – Van Nuys  
6150 Van Nuys Blvd., Suite 405  
Van Nuys, CA 91401

Chief Counsel  
DOSH - Legal Unit  
1515 Clay Street, 19<sup>th</sup> Floor  
Oakland, CA 94612

Kathryn Woods, Staff Counsel  
DOSH – Legal Unit  
320 W. Fourth Street, Suite 400  
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 18, 2015 at West Covina, California.

\_\_\_\_\_  
Declarant

/ao

## SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**WILSON CONSTRUCTION**  
**Dockets 13-R4D3-1597/1599**

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

IMIS No. 316668391

| DOCKET           | C<br>I<br>T<br>A<br>T<br>I<br>O<br>N | I<br>T<br>E<br>M | SECTION       | T<br>Y<br>P<br>E | DESCRIPTION                             | A<br>F<br>F<br>I<br>R<br>M<br>E<br>D | V<br>A<br>C<br>A<br>T<br>E<br>D | PENALTY<br>PROPOSED<br>BY DOSH<br>IN<br>CITATION | PENALTY<br>PROPOSED<br>BY DOSH<br>AT<br>HEARING | FINAL<br>PENALTY<br>ASSESSED<br>BY BOARD |
|------------------|--------------------------------------|------------------|---------------|------------------|---|--------------------------------------|---------------------------------|--|---|--|
| 13-R4D3-1597     | 1                                    | 1                | 2743(b)       | S                | ALJ dismissed citation pursuant to IEAD |                                      | X                               | \$6,750  | \$6,750   | <b>\$0</b>                               |
| 13-R4D3-1598     | 2                                    | 1                | 2941(i)(1)(D) | SAR              | ALJ dismissed citation pursuant to IEAD |                                      | X                               | \$18,000   | \$18,000  | <b>\$0</b>                               |
| 13-R4D3-1599     | 3                                    | 1                | 1509(a)       | S                | ALJ dismissed citation                  |                                      | X                               | \$6,750  | \$6,750   | <b>\$0</b>                               |
| <b>Sub-Total</b> |                                      |                  |               |                  |   |                                      |                                 | \$31,500   | \$31,500  | <b>\$0</b>                               |

**Total Amount Due\***

**\$0**

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: Please do not send payments 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: CHW/ao  
POS: 11/18/2015