

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

In the Matter of the Appeal  
of:

**THE GILL CORPORATION**  
4050 Easy Street  
El Monte, CA 91731

Employer

DOCKETS 15-R4D4-1806  
through 1809

**DECISION**

**Statement of the Case**

The Gill Corporation (Employer) manufactures products for commercial aircraft. Beginning February 26, 2015, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Leticia Reyes, conducted an accident inspection at a place of employment maintained by Employer at 4050 Easy Street, El Monte, California (the site). On April 21, 2015, the Division issued four citations to Employer all pertaining to Employer's shear machine operations.<sup>1</sup>

Employer filed timely appeals contesting the existence of the alleged violations and their classifications.

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 March 1, 2016. Ella Serrano Morales, Esq., Employer's Contracts and Legal Affairs Counsel, represented Employer. James Clark, Staff Counsel, represented the Division. The matter was submitted for decision on March 15, 2016.

**Issues**

1. Did Employer effectively implement its Injury and Illness Prevention Program with regard to handling and cutting smaller size material on its shear?

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

2. Was Citation 1 properly classified as general?
3. Did Employer guard its foot-operated shear from unintended operation?
4. Did Employer's shear have a guard to prevent the fingers of the operator from entering the zone traveled by the knives while in motion?
5. Did Employer's shear have a chain, barrier, or other means of guarding to prevent entry to the rear of the shear during operation?
6. Did the Division establish a rebuttable presumption that Citations 2, 3, and 4 were serious?
7. Were Citations 3 and 4 accident-related?
8. Were the proposed penalties reasonable?

### **Findings of Fact**

1. On October 27, 2014, Quality Technician Luis B. Casunuran (Casunuran), pursuant to his assigned duties, cut a small piece of material on Employer's Wysong foot powered shear. He had not cut a piece that small before. This was a new job duty.
2. Because the piece was so small, Casunuran had to stand at the end of the shear and hold it from the back. This was a new position. Normally, he stood in front of the shear.
3. When Casunuran operated the shear, the blade injured the tip of his left index finger, causing an avulsion. To treat the injury, some of the bone was shaved off, permanently shortening his finger. Casunuran suffered serious physical harm.
4. Employer did not train Casunuran on the safe manner to handle and cut smaller material on the shear.
5. The shear was operated by depressing a foot pedal. There was no foot guard or other device to prevent unintentional operation.
6. The shear did not have a guard to prevent the fingers of the operator from entering the zone from the rear that was traveled by the knives while in motion.
7. Employer's shear did not have a chain, barrier, or other means of guarding to prevent entry to the rear of the shear during operation.
8. The proposed penalties for Citations 1, 2, and 3 were calculated in accordance with the Division's policies and procedures. One abatement measure would eliminate the violative conditions cited in Citations 3 and 4. The penalty for Citation 4 is duplicative.

### **Analysis**

#### **1. Did Employer implement its Illness and Injury Prevention Program (IIPP) with regard to handling and cutting smaller size material on its shear?**

The Division cited Employer for a violation of section 3203, subdivision (a)(4), (6) and (7) which read, in pertinent part, 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:
- (1) ...
  - (2) ...
  - (3) ...
  - (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) ...
    - (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.
  - (5) ...
  - (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; ...
    - (B)...
  - (7) Provide training and instruction:
    - (A)...
    - (B)...
    - (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) ...
    - (F) ...

The Division alleged the following:

Prior to and during the course of the inspection, the following elements of the employer's Injury and Illness Prevention Program were not implemented, including, but not limited to procedures for identifying and evaluating work place hazards, training and/or hazard correction, including, but not limited to:

(a)(4): Procedures associated with the introduction of a new process involving the handling/cutting of a smaller size of fiberglass material. Employee(s) were exposing themselves to cutting hazards resulting from their proximity to the shear blades.

(a)(6): The employer did not determine methods of mitigation of the hazards associated with the shears and the smaller size.

(a)(7): In addition, employees working with smaller size fiberglass sheets were not trained in the safe manner to cut the material and the use of extension tools. Employee(s) used his hands to hold the smaller material, allowing his hands to come within the zone of danger.

To establish the violation, the Division must prove<sup>2</sup> that flaws in Employer's IIPP amount to a failure to implement or maintain an effective program. (See *Los Angeles County Department of Public Works*, Cal/OSHA App. 96-2470, Decision After Reconsideration (Apr. 5, 2002).) An IIPP can be proved not effectively implemented on the ground of one deficiency, if that deficiency is essential to the overall program. (*Mountain Cascade, Inc.*, Cal/OSHA App. 01-3561, Decision After Reconsideration (Oct. 17, 2003); *Keith Phillips Painting*, Cal/OSHA App. 92-777, Decision After Reconsideration (Jan. 17, 1995).)

The Board has held that training<sup>3</sup> as to the hazards presented by places of employment is a critical element and the touchstone of any effective IIPP. (*Mountain Cascade, Inc.*, Cal/OSHA App. 01-3561, Decision After Reconsideration (Oct. 17, 2003); citing *Cranston Steel Structures*, Cal/OSHA App. 98-3268, Decision After Reconsideration (Mar. 26, 2002).)

Implementation involves questions of fact, such as whether the employer responded to known or reported hazards, provided its employees with training, held safety meetings, posted information about employee safety and conducted periodic inspections to evaluate workplace 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 to train employee in accordance with its own sufficient written training program was failure to implement the training portions of an

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<sup>2</sup> The Division has the burden of proving a violation by a preponderance of the evidence. (*Ja Con Construction*, Cal/OSHA App. 03-441, Decision After Reconsideration (Mar. 27, 2006); *Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).)

<sup>3</sup> In *Siskiyou Forest Products*, Cal/OSHA App. 01-1418, Decision After Reconsideration (Mar. 17, 2003), the Board held that "the purpose of section 3203, subdivision (a)(7) is to provide employees with the knowledge and ability to recognize, understand and avoid the hazards they may be exposed to by a new work assignment through 'training and instruction.'" It held that "the generally accepted and approved meaning of the word 'training,' when used to describe the process of providing employees with that knowledge and ability in this context is 'to instruct so as to make proficient or qualified.'" (Webster's New World Dictionary, Third College Edition (1989), p. 1418.)"

IIPP as required by § 3203, subdivision (a)]; *Ironworks Limited*, Decision After Reconsideration, Cal/OSHA App. 93-024 (Dec. 20, 1996).)

Casunuran was assigned to cut a small piece of material (approximately 3" x 12") on Employer's foot powered shear. He had never cut a piece that small before. Casunuran told Associate Safety Engineer Leticia Reyes (Reyes) that he learned how to cut small pieces by watching other employees. He had not received any formal training. Reyes asked Employer for Casunuran's training records on cutting small pieces. There were none. Casunuran lacked essential training for the task at hand.

Supervisor Ricardo Lopez<sup>4</sup> (Lopez) told Reyes that Casunuran had to hold the piece the way he did because the piece was so small and that they had to be careful about the blade when cutting small pieces with the shear. Lopez admonished Casunuran to be careful because of the possibility of cutting a finger. At hearing, Vice President of Human Resources Gabriel Esparza (Esparza) referred to multiple signs on the front of the shear warning about the hazard of fingers being cut.<sup>5</sup> Esparza testified that he was aware that small pieces were cut on the shear and that there was a danger of fingers being cut when an operator's hand was in the back. Lopez and Esparza were aware of the hazards associated with cutting small pieces.

Casunuran showed Reyes how his index finger fit in the gap in the shear, failing to keep his finger out of the path of the shear blade. His finger was exposed to the gap because he had to stand at the end of the shear in order to hold the piece. Normally, he stood in front of the shear. The fact that the tip of Casunuran's left index finger was injured when he operated the shear demonstrates the existence of a new hazard related to his new job assignment.

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<sup>4</sup> Phonetic spelling. Lopez was Casunuran's immediate supervisor.

<sup>5</sup> Exhibit 3M depicted a sign with a drawing of two hands and written in English, "10 GOOD REASONS TO KEEP FINGERS CLEAR OF THIS MACHINE."<sup>5</sup> Exhibit 3N stated, in part, as follows:

SUPERVISOR, MAKE SURE THE OPERATOR UNDERSTANDS THE FOLLOWING

## **W A R N I N G**

### **TO PREVENT SERIOUS BODILY INJURY**

**NEVER** PLACE ANY PART OF YOUR BODY AT THE POINT OF OPERATION (UNDER THE HOLDDOWN OR THE KNIFE BAR) OR UNDER MATERIAL BEING SHEARED

[three additional warnings omitted]

IT IS THE EMPLOYER'S RESONSIBILITY TO IMPLEMENT THE ABOVE INSTRUCTIONS AND TO PROVIDE PROPER SAFETY MEASURES NECESSARY FOR EACH PARTICULAR USE, OPERATION, SETUP OR SERVICE OF THE MACHINE.

Thus, the Division, by a preponderance of the evidence, established that a job hazard existed when cutting small pieces, Employer was aware of the hazard, and that the injured employee was not trained about the hazard. Identifying, evaluating, mitigating, and training employees about workplace hazards are essential elements of an IIPP. Therefore, the Division established that Employer did not effectively implement its IIPP. As such, the Division has met its burden of proof, and the violation of section 3203, subdivision (a), is sustained.

## **2. Was Citation 1 properly classified as general?**

Section 334, subdivision (b) defines a general violation as “a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.”

In order to show a general violation, the Division need only show that the safety order was violated and that the violation has a relationship to occupational safety and health of employees. (*California Dairies, Inc.*, Cal/OSHA App. 07-2080, Denial of Decision After Reconsideration (June 25, 2009), citing *A. Teichert & Sons, Inc.* Cal/OSHA App. 97-2733 (Dec. 11, 1998).)

Here, an effectively implemented IIPP has an effect on employee health and safety by definition. Specifically, effective hazard identification, hazard mitigation, and training regarding the shear machine hazards have an effect on how safely the machine is operated. Therefore, the violation was properly classified as general.

## **3. Did Employer guard its foot-operated shear from unintended operation?**

The Division cited Employer for a violation of section 4185, which provides as follows:

All foot-operated devices (i.e., treadles, pedals, levers, bars, valves, and switches) shall be protected from unintended operation, if such operation creates a hazard.

The Division alleged the following:

Prior to and during the course of the inspection, including, but not limited to, February 26, 2015, at least one employee in the “Cutting Room” (located in Building 5) operated the “Wysong” Shear (Model 1652) (S/N: F01-706) and the foot-operated device was not protected from unintended operation.

Employer's shear was operated by pressing a foot pedal<sup>6</sup>, which caused a knife to come down. The descent of the knife created a hazard, and the pedal was not protected from unintentional operation. Reyes testified, and the photographs<sup>7</sup> showed, that when an operator stood at the end of the shear, it was necessary to bend or lean to reach the foot pedal. Esparza testified that it was an awkward position. It is found that an operator could lean on the foot pedal and unintentionally operate it.

Esparza testified that unintentional operation was virtually impossible because the pressure required to lower the foot pedal was like the pressure needed to climb up a stair. Esparza's field was human resources, not operation of the shear. He did not refer to the manufacturer's manual. It is not clear how much pressure is needed to climb a stair, or how that pressure differed from the pressure required to operate the foot pedal. The foot pedal was not protected. An employee at the end of the shear was in an awkward position, and could possibly lose his balance. Esparza's testimony is not credible and is not credited.

More importantly, it is not entirely clear whether Casunuran depressed the foot pedal when he actually intended to depress it, which may have caused him to stick his finger into the line of travel of the shear knife.

Therefore, it must be found that the shear was not protected from unintended operation and that it presented a hazard. As such, the Division has met its burden of proof and the violation is established.

**4. Did Employer's shear have a guard to prevent the fingers of the operator from entering the zone traveled by the knives of the shear while they were in motion?**

The Division cited Employer for a violation of section 4227, subdivision (a), which states:

Mechanical power and foot and hand power metal shears shall be provided with a guard which will prevent the hands of the operator from entering the zone traveled by the knives of the shears while they are in motion. This guard may be a fixed barrier, set not more than 3/8 of an inch above the table (or in accordance with Figure G-3 of Section 4186), or a self-adjusting barrier with a limit of 3/8 inch above the table, but that will automatically rise to the thickness of the material.

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<sup>6</sup> Exhibit 3L

<sup>7</sup> Exhibit 3O

The Division alleged as follows:

Prior to and during the course of the inspection, including, but not limited to, February 26, 2015, at least one employee in the “Cutting Room” (located in Building 5) operated the “Wysong” Shear (Model 1652) (S/N:F01-706) without a guard to prevent the hands of the operator from entering the zone travelled by the knives of the shear while they are in motion. As a result, on or about October 27, 2014, an employee operating the unguarded “Wysong” Shear suffered a Serious injury.

Employer’s shear had a guard in the front of the shear knives that kept hands away from the knives. Employer agreed that Casunuran injured himself on the back side of the machine where there was no guard. When he held the small piece of material in place, Casunuran had to hold the piece in the back, exposing his fingers to an opening that permitted his finger to enter the path traveled by the knives<sup>8</sup>.

Thus, because there was no guard in back, and an employee’s hands or fingers could enter the zone traveled by the knives, the Division met its burden of proof. The violation is established.

**5. Did Employer’s shear have a chain, barrier, or other means of guarding to prevent entry to the rear of the shear during operation?**

The Division cited Employer for a violation of section 4227, subdivision (e), which states:

Chains, barriers or other means of guarding shall be provided to prevent entry to the rear of the shear during operation

The Division alleged:

Prior to and during the course of the inspection, including, but not limited to, February 26, 2015, at least one employee in the “Cutting Room” (located in Building 5) operated the “Wysong” Shear (S/N: F01-706) without a guard to prevent entry to the rear of the shear during operation. As a result, on October 27,

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<sup>8</sup> Exhibit 3B is a demonstration using his right hand, showing the size of the hole relative to the size of Casunuran’s hands and fingers. Exhibit 3D shows how he held the piece and placed his left hand.

2014, an employee using the unguarded “Wysong” Shear suffered a Serious injury.

A wall was behind the shear<sup>9</sup>. Reyes testified that the space between the rear of the shear and the wall was wide enough for her to walk through. There was no chain, guard, or other device to prevent someone from accessing the back of the machine when it was in operation. Employer did not rebut her testimony.

Therefore, the Division met its burden of proof, and the violation is established.

**6. Did the Division establish a rebuttable presumption that Citations 2, 3, and 4, were serious?**

Labor Code § 6432, subdivision (a) states:

(a) There shall be a rebuttable presumption that a “serious violation” exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm<sup>10</sup> could result from the actual hazard created by the violation. The actual hazard may consist of, among other things: ...

(2) The existence in the place of employment of one or more unsafe or unhealthful practices that have been adopted or are in use.

“Realistic possibility” is not defined in the safety orders. However, the Appeals Board has defined “realistic possibility” to mean a prediction that is within the bounds of human reason, not pure speculation. (*Bellingham Marine Industries, Inc.*, Cal/OSHA App. 12-3144, Decision After Reconsideration (Oct. 16, 2014), citing *Janco Corporation*, Cal/OSHA App. 99-565, Decision After Reconsideration (September 27, 2001), citing *Oliver Wire & Plating Co., Inc.*, Cal/OSHA App. 77-693, Decision After Reconsideration (April 30, 1980).)

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<sup>9</sup> Exhibits 3F, 3I, 3L

<sup>10</sup> Labor Code section 6432, subdivision (e), provides as follows:

“Serious physical harm” as used in this part, means any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment that results in any of the following:

- (1) Inpatient hospitalization for purposes other than medical observation.
- (2) The loss of any member of the body.
- (3) Any serious degree of permanent disfigurement.

- (4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

Opinions about possibility must be based on a valid evidentiary foundation, such as expertise on the subject, reasonably specific scientific evidence, experience-based rationale, or generally accepted empirical evidence. (*California Family Fitness*, Cal/OSHA App. 03-0096, Decision After Reconsideration (Mar. 20, 2009); (*R. Wright & Associates, Inc. dba Wright Construction & Abatement*, Cal/OSHA App. 95-3649, Decision After Reconsideration (Nov. 29, 1999).)

Labor Code section 6432, subdivision (g), provides, “A division safety engineer or industrial hygienist who can demonstrate, at the time of the hearing, that his or her division-mandated training is current shall be deemed competent to offer testimony to establish each element of a serious violation, and may offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.”

Reyes testified that she classified Citations 2, 3, and 4 as serious because, in her opinion, serious physical harm was a realistic possibility in the event of an accident caused by any of the violations. The hazard associated with all three violations<sup>11</sup> and the potential injuries from all three violations are the same. The hazard is that an employee’s hand or fingers will inadvertently contact the knives of the shear while they are in operation, which is what happened here. Reyes testified that the most likely injury is amputation. Other likely injuries are severe lacerations and a serious degree of permanent disfigurement. Here, the initial injury was an avulsion, followed by bone loss which made a finger shorter, and is considered an amputation.

Reyes is current in her Division-required training. In addition, she has conducted inspections involving accidents with the type of machine involved here. Reyes’s opinion was based upon her education, training, and experience. Employer did not offer any evidence in rebuttal. Reyes’s opinion is credited.

Therefore, it is found that serious physical harm was a realistic possibility as a result of unintended operation of the foot pedal (Citation 2), failure to have a guard to prevent the fingers of the operator from entering the zone traveled by the knives of the shear while they were in motion (Citation 3), or failure to have a chain, barrier, or other means of guarding to prevent entry to the rear of the shear during operations (Citation 4). The Division established a rebuttable presumption that Citations 2, 3, and 4 were properly classified as serious.

## **7. Were Citations 3 and 4 accident-related?**

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<sup>11</sup> Cit. 2: unintended operation of the foot pedal; Cit. 3: failure to have a guard to prevent the fingers of the operator from entering the zone traveled by the knives of the shear while they were in motion; Cit. 4: failure to have a chain, barrier, or other means of guarding to prevent entry to the rear of the shear during operation.

A violation is accident-related where there is a causal nexus between the violation and the injury. (*MCM Construction, Inc.*, Cal/OSHA App. 13-3851, Decision After Reconsideration (Feb. 22, 2016) p. 11.) “The violation need not be the only cause of the accident, but the Division must make a ‘showing [that] the violation more likely than not was a cause of the injury. (*Mascon, Inc.*, Cal/OSHA App. 08-4278, Denial of Petition for Reconsideration (Mar. 4, 2011); *Siskiyou Forest Products*, Cal/OSHA App. 01-1418, Decision After Reconsideration (Mar. 17, 2003); *Davey Tree Surgery Company*, Cal/OSHA App. 99-2906, Decision After Reconsideration (Oct. 4, 2002).)’ ” (*Id.* p. 11-12)

A violation is not accident-related if the injury is not serious. Employer argued that the injury was not serious<sup>12</sup> because the bone loss was the result of an elective procedure to treat an avulsion. Although the employee may have chosen to lose bone as part of his treatment for his injury, the bone loss would not have occurred absent the accident. Therefore, the bone loss is a result of the violation. The loss of the bone caused his left index finger to become shorter permanently. Since that is partial loss of a body member, the injury is defined as serious.

Regarding Citation 3, the knife would not have contacted Casunuran’s finger if there had been a guard to prevent his hand from entering the zone traveled by the shear knives. Failure to have a guard in the back was a cause of his injury because it would have kept his finger away from the path traveled by the knife. Therefore, the Division met its burden of proof to establish that Citation 3 is accident-related.

Regarding Citation 4, a chain, barrier, or other guard would have prevented Casunuran from entering the rear of the shear while it was operating. However, his body did not enter the rear of the shear. He reached around with his arm to access the back of the shear<sup>13</sup>. His injury would have occurred even if section 4227, subdivision (e), had not been violated. Therefore, the Division did not meet its burden of proof to establish that the violation was accident-related.

## **8. Were the proposed penalties reasonable?**

Penalties calculated in accordance with the penalty setting regulations<sup>14</sup> are presumptively reasonable and will not be reduced absent evidence that the amount was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

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<sup>12</sup> “Serious injury or illness,” has virtually the same definition in Labor Code section 6302, subdivision (h) and section 330, subdivision (h) as “serious physical harm” in Labor Code section 6432, subdivision (e), *supra*.

<sup>13</sup> Exhibits 3D, 3O

<sup>14</sup> sections 333-336

At the hearing, Employer stipulated that the penalties were calculated in accordance with the Division's policies and procedures<sup>15</sup>, except for the penalty for Citation 2. At the hearing, the Division moved to reduce the proposed penalty for Citation 2 from \$9,000 to \$3,375 by applying the stipulated penalty adjustment factors of 15% for good faith and 10% for good history, followed by application of the 50% abatement credit. Good cause appearing, the motion was granted. Employer stipulated that the penalty calculation of \$3,375 was correct if a violation were found.

When two penalties address a hazard which can be eliminated by a single means of abatement, it is improper to impose two penalties. (*Thyssenkrupp Elevator Corporation*, Cal/OSHA App. 11-2299, Denial of Petition for Reconsideration (Mar. 11, 2013).) As discussed above, the hazard addressed by Citations 3 and 4 are the same: injury resulting from a body part coming in contact with the knife blade when it was moving. Here, if the rear of the blade had been guarded, this one measure would abate the hazard for both violations. There would be no hazard to anyone walking behind the shear. Therefore, the penalty for Citation 4 for a violation of section 4227, subdivision (e), is eliminated as duplicative of the penalty imposed in Citation 3 for the violation of section 4227, subdivision (a).

### **Conclusions**

For Citation 1, the evidence supports a finding that Employer violated section 3203, subdivision (a), by failing to implement its Illness and Injury Prevention Program. The proposed penalty is reasonable.

For Citation 2, the evidence supports a finding that Employer violated section 4185 by failing to guard its foot-operated shear from unintended operation. The serious violation is sustained. The proposed penalty, as modified at the hearing, is reasonable.

For Citation 3, the evidence supports a finding that Employer violated section 4227, subdivision (a), by failing to have a guard on its shear to prevent the fingers of the operator from entering the zone traveled by the knives of the shear while they were in motion. The Division established a causal nexus between the violation and serious physical harm. The serious accident-related violation is sustained. The proposed penalty is reasonable.

For Citation 4, the evidence supports a finding that Employer violated section 4227, subdivision (e), by failing to have a chain, barrier, or other means of guarding to prevent entry to the rear of the shear during operation. One means of abatement will eliminate the hazards cited in Citations 3 and 4. The penalty for Citation 4 is vacated as duplicative of the penalty for Citation 3.

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<sup>15</sup> Exhibit 2. Employer stipulated that the penalty of \$750 for Citation 1 and \$18,000 for Citations 3 and 4 were calculated in accordance with the Division's policies and procedures.

**Order**

Citation 1 and the proposed \$750 penalty are affirmed.

Citation 2 and the amended proposed \$3,375 penalty are affirmed.

Citation 3 and the proposed \$18,000 penalty are affirmed.

Citation 4 is affirmed. The penalty is vacated.

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

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**DALE A. RAYMOND**  
Administrative Law Judge

DAR: ao

Dated: April 14, 2016

**APPENDIX A**

**SUMMARY OF EVIDENTIARY RECORD  
THE GILL CORPORATION  
Dockets 15-R3D1-1806 through 1809**

**Date of Hearing: March 1, 2016**

**Division's Exhibits**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Admitted</b>
1	Jurisdictional Documents	Yes
2	Cal/OSHA Form C-10—Proposed Penalty Worksheet	Yes
3A, 3B, 3D, 3I, 3L, 3M, 3N, 3O, 3P, 3S	Photographs of shear machine	Yes
3C, 3E, 3F, 3G, 3H, 3J, 3K, 3Q, 3R	Photographs of shear machine	No
4A-4F	Photographs of injured employee	No
5	Cal/OSHA Form 36—Accident Report	Yes
6	Manual for Wysong Foot Power Squaring Shears	Yes

**Employer's Exhibits**

<b>Exhibit Letter</b>	<b>Exhibit Description</b>	<b>Admitted</b>
	No additional exhibits	

**Witnesses Testifying at Hearing**

1. Leticia Reyes
2. Gabriel Esparza

**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.*

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**DALE A. RAYMOND**

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April 14, 2016

**Date**

## SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**THE GILL COPORATION**  
**Dockets 15-R4D4-1806 through 1809**

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

IMIS No. 1043827

DOCKET	C I T I O N	I T E M	SECTION	T Y P E	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
15-R4D4-1806	1	1	3203(a)	G	ALJ affirmed violation	X		\$750	\$750	<b>\$750</b>
15-R4D4-1807	2	1	4185	S	DOSH increased good faith and history adjustments and applied abatement credit	X		\$9,000	\$3,375	<b>\$3,375</b>
15-R4D4-1808	3	1	4227(a)	S	ALJ affirmed violation	X		\$18,000	\$18,000	<b>\$18,000</b>
15-R4D4-1809	4	1	4227(e)	S	ALJ vacated penalty as duplicative	X		\$18,000	\$18,000	<b>\$0</b>
<b>Sub-Total</b>								<b>\$45,750</b>	<b>\$40,125</b>	<b>\$22,125</b>

**Total Amount Due\***

**\$22,125**

(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: DR/ao  
 POS: 04/14/2016