

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

In the Matter of the Appeal of:

COX COMMUNICATION  
dba COX COMMUNICATIONS  
5159 Federal Boulevard  
San Diego, CA 92105-5486

Employer

Docket No. 03-R3D2-1942

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the petition for reconsideration filed in the above entitled matter by Cox Communication, dba Cox Communications (Employer) under submission, renders the following decision after reconsideration.

**JURISDICTION**

On October 21, 2002, a representative of the Division of Occupational Safety and Health (the Division) conducted an accident inspection at a place of employment maintained by Employer at 1218 Spruce Street, San Diego, California.

On April 8, 2003, the Division cited Employer for two alleged violations of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.<sup>1</sup> Employer filed a timely appeal contesting the alleged violations.

The appeal came on regularly for hearing on June 14, 2005 before an Administrative Law Judge (ALJ) for the Board, and the matter was submitted on that date. At hearing, the Division moved, without objection, to withdraw one of the two alleged violations on the grounds of insufficient evidence. The motion was granted, and the hearing accordingly involved the question of whether Employer had violated section 342(a) [reporting of serious injuries].

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

The ALJ rendered the decision on June 28, 2005, which upheld the remaining violation and assessed a civil penalty of \$375.

Employer timely filed a petition and a supplemental petition for reconsideration of the ALJ's decision. The Division filed answers to the petition and supplemental petition. The Board took the petitions under submission.

After taking the petition under submission, the Board remanded this matter to the ALJ for further proceedings in light of the Board's *Bill Callaway & Greg Lay dba Williams Redi Mix*, Cal/OSHA App. 03-2400 Decision After Reconsideration (July 14, 2006). The ALJ issued a Decision After Remand which held that the *Callaway* ruling did not require any modification of the penalty assessed in the original Decision, and therefore ordered it remain in effect.

The Board now considers the issue raised in Employer's petition for reconsideration: whether the facts of this case constitute a violation of section 342(a).

### **EVIDENCE**

On Friday morning October 11, 2002, an employee of Employer was injured in a fall of about 18 feet from a ladder. The employee was transported to a hospital by ambulance. Two of Employer's managerial and/or supervisory staff went separately to the hospital that Friday afternoon. One went into the hospital to check on the condition of the employee, whom he located in the "trauma room." A nurse on duty in there told him the employee had been examined and given a "scan," neither of which revealed broken bones.<sup>2</sup> The nurse also said the employee would be kept overnight for observation. On Saturday morning another of Employer's managers visited the employee in the hospital. The employee said he was to be released later that morning. It appeared that no surgery had been performed, though either later Saturday or on Sunday the employee did have surgery. The manager visiting on Saturday did not speak to any hospital personnel, just the employee and his wife.

On Monday morning the employee's wife called Employer's human resources department and reported that the employee had in fact not been released on Saturday, was still in the hospital, and had had hand surgery to repair a broken bone. Employer then reported the injury to the Division at approximately 10:18 a.m. Monday. The Division cited Employer for not "immediately" reporting the accident. For purposes of section 342(a), "immediately means as soon as practically possible but no longer than 8 hours after employer knows or with diligent inquiry would have known" of the injury. The question before us is when Employer's duty to report the injury was triggered.

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<sup>2</sup> We believe the "scan" was some form of imagining of the employee's head and/or brain to check for head injuries.

## ISSUE

Did the ALJ properly uphold the section 342(a) violation?

### FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION

As the ALJ noted in her decision, “The question becomes when Employer’s duty to report arose.” The ALJ held that Employer had “a duty to use reasonable diligence to determine [its] employee’s medical status.” Further, she held the manager who visited the employee in the hospital on Saturday should have inquired of medical personnel regarding the employee’s condition and medical status, and followed up further over the weekend. The Division also argues that Employer should have known from the height of the fall that it was more likely than not that serious injuries resulted.

Employer takes the position that it went to the hospital twice to check on its employee, and both times received consistent information – namely that tests were negative regarding fractures and/or serious injury, and that the employee would be released after an observation period.

Employer’s belief and understanding of its employee’s medical condition and prognosis was reasonable under the circumstances. It had made two visits to the hospital on two consecutive days, and received consistent information regarding the employee’s condition: there were no serious injuries; the employee was being held for observation only; and his release was expected on Saturday. See, Labor Code section 6302(h).

In a ruling on a writ petition arising from *Rudolph & Sletten, Inc.*, Cal/OSHA App. 99-1291, Denial of Petition for Reconsideration (Jan. 16, 2001), a superior court ruled that an employer’s reporting obligation under section 342(a) is triggered only when the employer knows or in the exercise of reasonable diligence would have known that a serious injury has occurred to one of its employees. Restated, the reporting obligation is triggered when employer learns, or reasonably could learn, of the serious injury.

In the circumstances here, Employer behaved with reasonable diligence and reasonably relied on the information it had been given. Given the information Employer received, Employer was not required to ask again about the employee later on Saturday or on Sunday. Further, when it learned after the opening of business on Monday morning that its employee’s condition had apparently been re-evaluated and surgery performed, it promptly reported the injury to the Division.<sup>3</sup> We find that Employer’s duty to report the injury was triggered Monday morning when it learned of the serious injury and that it reported timely.

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<sup>3</sup> The Division’s accident investigation was not delayed due to the time which passed between the injury and Employer’s report.

The petition and supplemental petition and the Division's answers to each discuss the significance of Employer's accident report, which was dated the day of the accident but contained information which was not then available. The implication is that Employer has been dishonest. We decline to find any duplicity by Employer and instead infer that Employer either added to the report as more information was learned or dated it the date of accident. The Decision did not rely on the report or its date. Accordingly the report is not dispositive here.

### **DECISION AFTER RECONSIDERATION**

The Board reverses the ALJ's Decision and grants Employer's appeal from the citation.

ROBERT PACHECO, Board Member  
MICHAEL J. WIMBERLY, Deputy Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: December 30, 2008