

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

IRWIN INDUSTRIES, INC.
325 Rocklite Road
Ventura, CA 93001

Employer

Docket 08-R6D4-1454

**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 ordered reconsideration of the Administrative Law Judge's Decision (Decision) in this proceeding on its own motion, renders the following decision after reconsideration.

JURISDICTION

Irwin Industries, Inc. provides oil field services to its customers. On February 11, 2008, the Division of Occupational Safety and Health (Division) commenced an accident investigation at a place of employment operated by Employer at an ExxonMobil facility in McKittrick, California. On March 27, 2008, the Division issued three citations to Employer alleging violations of occupational health and safety standards codified in California Code of Regulations, Title 8.¹

Employer timely appealed the citations and administrative proceedings followed, including a contested evidentiary hearing before an Administrative Law Judge (ALJ) of the Board. On September 25, 2008, the ALJ issued her Decision (later amended by an Erratum issued July 7, 2011 on a point not pertinent here). The Decision found, *inter alia*, Employer had committed a General violation of section 3400(b) as alleged in Citation 1, and imposed a civil penalty.

On October 17, 2008, the Board on its own motion ordered reconsideration of the Decision. The parties filed answers to the Board's Order of Reconsideration.

¹ Unless otherwise specified, all citations are to California Code of Regulations, Title 8.

ISSUE

Did the [ALJ] properly interpret and apply section 3400(b)?

EVIDENCE

The Board ordered reconsideration of the Decision only as to Citation 1. The Board incorporates by reference the summary of evidence set forth in the Decision. For clarity and ease of reference, we briefly restate the evidence pertaining to Citation 1.

One of Employer's employees suffered a head injury while welding a section of pipeline at the ExxonMobil facility. That facility was located about 10 to 12 miles from the nearest clinic or medical facility. Employer did not have any employees at the worksite who were adequately trained to render first aid.

DISCUSSION

In making this decision, the Board relies upon its independent review of the entire record in the proceeding. The Board has taken no new evidence. The Board has reviewed and considered the briefs and arguments of the parties made during the hearing and in their respective responses to the Order of Reconsideration.

Citation 1 alleged a General violation of section 3400(b), which provides:

In the absence of an infirmary, clinic, or hospital, in near proximity to the workplace, which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Training shall be equal to that of the American Red Cross or the Mining Enforcement and Safety Administration.

Because she found that Employer did not have any personnel at the worksite with current first aid certifications, the ALJ focused on the issue of whether the site was in "near proximity" to the nearest medical facility.

The ALJ took into consideration both the distance from the worksite to the nearest medical facility, which was 10 to 12 miles, and the nature of the roads and terrain between the two. She held that under the circumstances the worksite was not within "near proximity" to the medical facility.

We agree with that determination. The term "near proximity" is not defined in the safety order, and therefore the ALJ properly considered the plain meaning of the term. (*McDonald's*, Cal/OSHA App. 03-4116, Decision After

Reconsideration (May 31, 2007) [well settled that undefined terms given their plain and ordinary meaning].) The Decision explained that “near” is defined as “at a short distance in space or time” and as “close in distance or time.” (Decision, p. 6, citing Webster’s New World Dictionary and Thesaurus, Second Ed. (2002) p. 1312.) The evidence showed that travel time from the worksite to the medical facility was at least 10 minutes each way, and that there was no ambulance at the worksite to transport an injured worker to the facility. Therefore, the time needed to have first responders pick up and then transport an injured worker would be at least 20 minutes. We conclude that under the circumstances present in this matter, the distance and nature of the countryside between the two sites caused them not to be in “near proximity” to each other. This is especially so since injuries (like the one sustained here) can require slower travel over the roads in order to not exacerbate the injuries themselves, therefore adding to the total time required for travel. Thus, while the “nearness” in space would remain the same, the time required to traverse that distance could be increased in order to avoid further injuring an injured worker.

In a different setting or circumstance, it is conceivable that 10 miles can be “near” a medical facility. Here, however, the distance involved, the roundtrip ambulance ride, and the time needed to travel that distance while accounting for the nature of the terrain, leads us to conclude that the worksite was not near enough to the medical facility. Employer thus was required to have adequately trained first aid personnel on site.

Our review of this matter raised other questions as well. The record shows that the Division requested Employer to provide it with records showing what first aid training its employees on site had received. Employer responded with a document stating that none of its employees on site on the date of the accident had current first aid certifications. In view of that admission, the ALJ went on to determine whether the worksite was in near proximity to a medical facility. The terms of section 3400(b), however, do not make it immediately obvious whether a current first aid certification is necessary to comply with the safety order.

We consider the provisions of section 3400(b) in view of the command of section 3400(a) that an “[e]mployer shall ensure the ready availability of medical personnel for advice and consultation on matters of industrial health or injury.” We conclude the intent of section 3400(b) is that a person “adequately trained to render first aid” shall be readily available if the workplace is not in near proximity to a medical facility. The safety order does not explicitly require or define such “adequate[] train[ing]” to mean currently certified. However, it does refer to training “equal to that of the American Red Cross[,]” which certifies first aid trainees, and also provides for those certifications to expire after a period of years. We conclude, therefore, that since the American Red Cross in its wisdom has decided that persons should be retrained periodically, it believes that past training becomes inadequate with the passage of time, due to the nature of

memory and the development of new medical knowledge and technique. Thus, we hold that the ALJ's implicit determination that Employer did not have "adequately trained" first aid personnel on site was correct.

The language of section 3400(b) also raises the question whether an employer must have one of its own employees be the adequately trained first aid person on site. We do not read section 3400(b) as stating that one's own employees are the only persons who can meet the requirement. Section 3400(b) does not explicitly so provide, and section 3400(a) requires the employer to ensure "the ready availability of medical personnel," not availability of medical employees of its own. The evidence in this proceeding was the Exxon Mobil personnel were on site at the same time as Employer's employees, but there is no evidence that Exxon Mobil's personnel were appropriately trained and currently certified, nor that Employer had made an agreement or contract with Exxon Mobil that the latter would have personnel on hand to satisfy section 3400(b)'s requirement.

DECISION AFTER RECONSIDERATION

For the reasons stated above, we affirm the Decision of the ALJ as to Citation 1.

ART R. CARTER, Chairman
ED LOWRY, Board Member
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
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