

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

In the Matter of the Appeal of:

KEY ENERGY SERVICES, LLC  
5080 California Avenue  
Bakersfield, CA 93309

Employer

Docket No. 13-R4D3-2239

**DENIAL OF PETITION  
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Key Energy Services, LLC (Employer).

**JURISDICTION**

Commencing on December 12, 2012, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On June 7, 2013, the Division issued four citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.<sup>1</sup>

Employer timely appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board, including a duly-noticed contested evidentiary hearing.

On October 8, 2014, the ALJ issued a Decision<sup>2</sup> (Decision) which sustained the violations alleged in Citation 1 and 2, and granted Employer's appeals of Citations 3 and 4.

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<sup>1</sup> References are to California Code of Regulations, Title 8 unless specified otherwise.

<sup>2</sup> The Summary Table incorporated into the Decision was amended by an "Erratum" issued on October 16, 2014, which related back to the date of the Decision.

Employer timely filed a petition for reconsideration of the Decision solely with respect to its holding that Employer had violated the requirements of section 14300.29(a) as alleged in Citation 1 [failure to fully complete log of workplace injury].

The Division did answer the petition.

### **ISSUE**

Did Employer violate the requirements of section 14300.29(a)?

### **REASON FOR DENIAL OF PETITION FOR RECONSIDERATION**

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

Employer's petition contends the Decision was issued in excess of the ALJ's powers, the evidence does not support the findings of facts, and the findings of fact do not support the Decision.

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. Based on our independent review of the record, we find that the Decision was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

Section 14300.29 is part of a regulatory scheme which requires employers to record or log workplace injuries and illnesses of certain types.<sup>3</sup> It is not disputed that the injury in question was required to be logged.

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<sup>3</sup> California promulgated these regulations in order to remain consistent with certain federal regulations and thereby comply with the federal Occupational Safety and Health Act (29 USC § 650 et seq.) which, among other provisions, requires states, such as California, with authorized state programs to promulgate regulations at least as effective as those established for the federal occupational safety and health program.

The evidence shows that Employer did not fill in all the information called for by section 14300.29(a), specifically the information to be entered in Column F on the “Form 300,” the identity the object which caused the injury in question. Employer contends that section 14300.29(a) does not require it to fill out the Form 300 in the detail required by the Form itself, further arguing that the instructions on the Form are an underground regulation. Section 14300.29(a) provides:

“Basic requirement. You must use Cal/OSHA 300, 300A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The Cal/OSHA 300 Form is called the Log of Work-Related Injuries and Illnesses, the Cal/OSHA Form 300A is called the Summary of Work-Related Injuries and Illnesses, and the Cal/OSHA Form 301 is called the Injury and Illness Incident Report. Appendices A through C give samples of the Cal/OSHA forms. Appendices D through F provide elements for development of equivalent forms consistent with Section 14300.29(b)(4) requirements. Appendix G is a worksheet to assist in completing the Cal/OSHA Form 300A.”

The issue here is whether the language quoted above which states employers “must use Cal/OSHA Form 300 . . . for recordable injuries” means Employer must fill in all the information called for on the Form itself.

We begin our analysis by considering the language of the regulation using the rules of statutory interpretation.

The rules of statutory construction also apply to interpreting regulations. (*The Home Depot*, Cal/OSHA App. 98-2236, Decision After Reconsideration (Dec. 20, 2001), citing *Auchmoody v. 911 Emergency Services*, (1989) 214 Cal.App.3d 1510, 1517.) Perhaps the prime rule of statutory interpretation is that courts and agencies apply the plain meaning of the words of the regulations. If the plain, commonsense meaning of the words is unambiguous, the plain meaning controls. (*Borikas v. Alameda Unified School Dist.*, (2013) 214 Cal. App. 4th 135, 146; *Neville v. County of Sonoma*, (2012) 206 Cal. App. 4th 61, 70.) “If the statutory language is unambiguous, ‘we presume the Legislature meant what it said, and the plain meaning of the statute governs.’ (Citations.)” (*Michels Corp, dba Michels Pipeline Construction*, Cal/App. 07-4274, Denial of Petition for Reconsideration, (Jul. 20, 2012), citing *People v. Toney*, (2004) 32 Cal.4th 228, 232; *In re Marriage of Bonds*, (2000) 24 Cal.4th 1, 15-16.). Where a statutory or regulatory term “is not defined, it can be assumed that the Legislature was referring to the conventional definition of that term.” (*Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement*, (2011) 192 Cal. App. 4th 75, 82.)

To obtain the ordinary meaning of a word the Court may refer to its dictionary definition. (*Stamm Theatres v. Hartford Casualty Ins. Co.*, (2001) 93 Cal. App. 4th 531, 539; *Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement*, (2011) 192 Cal. App. 4th 75, 82.) Webster’s defines *must* as: “1 used to express compulsion, obligation, requirement or necessity[.]”

(Webster's New World Dict. (3rd college edition 1991) p. 895.) In the context of section 14300.29(a) it is synonymous with "shall." Webster's definition of *use* most apt in the context of section 14300.29(a) is: "1 to put or bring into action or service; employ for or apply to a given purpose[.]" (*Id.*, p. 1469.)

Another rule is to avoid reading the regulation at issue in isolation and rather to consider it in reference to the whole regulatory scheme of which it forms a part. (*Devcon Construction Inc.*, Cal/OSHA App. 12-2062, Denial of Petition for Reconsideration (Mar. 13, 2014), citing *People ex rel. Younger v. Superior Court*, (1976) 16 Cal.3d 30, 41.

Applying these principles to the "you must use" language of § 14300.29(a), we hold that the plain and ordinary meaning of "must use" is that an employer is required to fill in the information called for on the form. (*Irby Construction*, Cal/OSHA App. 03-2728, Decision After Reconsideration (Jun. 8, 2007) [words used in safety order given ordinary meaning and need not be construed if clear and unambiguous]; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

We take note that the regulation allows employers to use "equivalent forms" which they may develop themselves or acquire from other sources, and goes on to state that Appendices D through F provide elements for the creation of such alternative forms. Appendix D, the guidance for developing an equivalent to Form 300, specifies that information about the object/substance which caused the injury must be included in the employer's equivalent form.

Thus, reading the regulation as a whole and applying ordinary meaning to its terms, "must use" in the context of filling in Form 300 to record injuries is properly read to mean fill in all the information called for on the Form.

Employer also argues that the instructions printed in Form 300 for filling it out are an "underground regulation" (citing the Administrative Procedures Act, Government Code section 11340 et seq., and California Code of Regulations, title 1, section 250(a) ["underground regulation" defined]) because the instructions are not included in section 14300.29(a) itself. We disagree.

First, the forms were included in the regulatory notice when section 14300.29 was promulgated, and therefore the content of the forms is a properly issued regulation. Second, it would be an absurd result to hold that a regulation such as section 14300.29 must within its own text state all the instructions already stated on a referenced form which "must [be] use[d]" in order to be valid. (*Flannery v. Prentice*, (2001) 26 Cal.4<sup>th</sup> 572, 578 [absurd results to be avoided].) Doing so seems to us an unnecessary duplication of effort and waste of State resources. Alternatively, to include the instructions in the regulation instead of on the form itself would make using the form harder, making compliance more difficult and wasting resources in the regulated community.

Also, taken to its logical conclusion, Employer's argument would mean that section 14300.29(a) does not require one to enter any information on Form 300, since § 14300.29(a) does not say that one must enter information on the Form. But Employer does not explain how one "must use" Form 300 and yet not be required to fill it in. (§ 14300.29(a).)

Employer also points to section 14300.29(b)(1), which specifically requires employers to enter "a one or two line description of each recordable injury or illness[.]" Employer then argues that entering only descriptions of the injury without adding other details called for by Form 300 is full compliance. We disagree. A better interpretation of the "one or two line description" language of section 14300.29(b)(1) is that it is telling employers to fill in one or two lines of information about the event being recorded in each column of the Form 300. Moreover, as Employer acknowledges in its petition for reconsideration, the Division did not cite it for violating section 14300.29(b)(1).

Finally, Employer contends it did not enter any information into Column F on Form 300 because the only person to witness the accident was the victim, and he could not remember what occurred due to the nature of the injury he suffered. Yet the record contains substantial evidence that the injured employee was struck by a piece of equipment on the well drilling rig called a "mud bucket." In view of that evidence, it is reasonable to require Employer to have included that information in the Form 300. Further, although not at issue in this proceeding, Employer's Form 300 log in evidence has no entries in Column F either for any of the injuries or illnesses recorded, which indicates a history of noncompliance, though whether due to ignorance or other reason we need not resolve here.

## **DECISION**

For the reasons stated above, the petition for reconsideration is denied.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: December 24, 2014