

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

In the Matter of the Appeal of:

ROLLED STEEL PRODUCTS CORP.  
2187 South Garfield Avenue  
Commerce, CA 90040

Employer

Dockets. 10-R6D2-4047 and 4048

**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 on its own motion, renders the following decision after reconsideration.

**JURISDICTION**

Beginning on December 10, 2010, the Division of Occupational Safety and Health (Division) conducted an inspection at a place of employment in Commerce, California maintained by Rolled Steel Products Corp. (Employer). On December 20, 2010 the Division issued two citations to Employer alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.<sup>1</sup>

The citation at issue here alleged a Serious violation of section 2473.1(a) [opening for circuit breaker not effectively closed].

Employer filed timely appeals of the citations.

Administrative proceedings were held, including a contested evidentiary hearing before an Administrative Law Judge (ALJ) of the Board. After taking testimony and considering the evidence and arguments of counsel, the ALJ issued a Decision on November 9, 2011. The Decision denied Employer's appeal but changed the Serious classification to General, imposing a civil penalty of \$325.

The Board ordered reconsideration on its own motion.

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

## **ISSUE**

Did the evidence establish that the alleged violation was Serious?<sup>2</sup>

## **EVIDENCE**

The Decision summarizes the evidence adduced at hearing in detail. We summarize that evidence briefly below, focusing on the portions relevant to the issue presented.

Employer is a manufacturer of steel products. Associate Safety Engineer Zohri Ali (Ali) testified to inspecting Employer's site on December 10, 2010. During the course of the inspection, Ali observed a 240-volt electrical panel which was energized. An exposed bus bar was at the back of the panel, which Ali testified posed a danger of electrical burns, shock and electrocution. There was room for an employee to place a finger into the opening and come into contact with the bus bar. Two employees used the panel daily to turn lights on and off.

## **DECISION AFTER RECONSIDERATION**

In making this decision, the Board relies upon its independent review of the entire evidentiary record in the proceeding. The Board has taken no new evidence.

To demonstrate that a violation is serious, the Division must present evidence that shows that there is a substantial probability of death or serious injury as a result of an accident or exposure resulting from a violation of the standard. The definition of "serious injury" includes a permanent loss of any member of the body or disfigurement, or hospitalization for 24 hours. (Labor Code sections 6302(h) and 330(h); *Brunton Enterprises dba Plas-Tal Mfg Co.*, Cal/OSHA App. 09-2239 Decision After Reconsideration (Mar. 26, 2014).) In order to establish that a violation is serious, the Division may present opinion testimony on the matter.

Here, the Division's sole witness, Associate Safety Engineer Ali, testified that serious physical harm would result in every accident caused by the violation of section 2473.1(a), as the injury would not be one that could be handled with simple first aid measures, and could, in a "worst case scenario", lead to death. Ali explained that the exposed bus bar created a risk to employees of electrical burns, shock, or electrocution by electric current passing through the body. Ali did not elaborate on the point further.

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<sup>2</sup> Labor Code 6432 had been revised, with an effective date of January 1, 2011. We apply the statute as in effect at the time of the citation.

Generally, a witness is considered qualified to testify as an expert on a subject when he or she has special knowledge, skill, experience, training or education sufficient for the court to deem the person qualified to testify on the subject about which he or she is asked to express an opinion. This knowledge, experience, or training must be shown where an opposing party raises an objection; no such objection was raised against Ali's testimony.<sup>3</sup> Ali did not describe past experience, education, or training related to her opinion of substantial probability. Nor did Ali testify as to scientific information, empirical research or any other source used as a basis for her assertion that should an employee suffer an accident or exposure as a result of the violation, it would be substantially probable that a serious injury would occur. A trier of fact may consider the credibility of an expert witness, the reasoning that he or she provides to explain that opinion, as well as the facts and other information provided as the basis for forming the opinion, in determining the amount of weight, if any, to give that opinion. (*People v. Prince* (1988) 203 CA 3d 848, 858).

Here, the ALJ found that a lack of foundation for Ali's opinion regarding the serious classification of the citation made Ali's testimony unpersuasive. While the Board will not arbitrarily reject the uncontradicted conclusion of an expert, we agree that Ali's testimony did not provide a basis for her opinion that exposure to the 240 volt electrical panel bus bar created the substantial probability of serious injury or death. (See, *In re Marriage of Battenburg* (1994) 28 C.A. 4<sup>th</sup>, 1338, 1345, citing 1 Witkin, Cal. Evidence (3d ed. 1986) section 524, pp. 494-495). Although the Board has expertise in the area of occupational safety and health, we cannot presume facts not in evidence. (*Overaa Construction v CA Occupational Safety and Health Appeals Bd.* (2007) 147 Cal.App. 4<sup>th</sup> 235, 244-245) [The Cal/OSHA Appeals Board is an agency with expertise with regard to the statute and regulations it is charged with enforcing.] The record contains no evidence regarding Ali's knowledge about electrical equipment or foundation for her conclusory statement. Thus her opinion, though admissible, was of no weight.

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<sup>3</sup> While the Board is not bound by the California Rules of Evidence, we look to them for guidance in these proceedings. See, California Evidence Code Section 720: (a) A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert. (b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.

Therefore, we affirm the result of Decision sustaining the citation but reclassifying the violation as general.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: June 30, 2014