BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No.
CERCA TROVA STEAKHOUSE LP **dba OUTBACK STEAKHOUSE**	**1512604**
Employer	**DECISION**

Statement of the Case

Cerca Trova Steakhouse LP (Employer) operates a restaurant. On January 20, 2021, the Division of Occupational Safety and Health (the Division) commenced an investigation of a work site located at 18711 Devonshire Street in Northridge, California (the job site). The investigation was commenced by Associate Safety Engineer Jesus Reyes, but was shortly thereafter reassigned to Associate Safety Engineer Jose Morales (Morales).

On June 25, 2021, the Division issued two citations to Employer alleging three violations of California Code of Regulations, title 8.[1] Employer withdrew its appeal of Citation 1, Item 1, during the first day of hearing. Citation 1, Item 2, alleges a failure to provide foot protection. Citation 2 alleges a failure to provide slip protection by using mats or equivalent protection.

Employer filed timely appeals of the citations. Employer appealed all citations on the ground that the safety order was not violated. Employer appealed Citation 2 on the additional grounds that the classification is incorrect and the proposed penalty is unreasonable. Additionally, Employer asserted a series of affirmative defenses to each citation.[2]

This matter was heard by Mario L. Grimm, Administrative Law Judge (ALJ) for the Occupational Safety and Health Appeals Board (the Appeals Board). The hearing was conducted on April 9, 2025, and September 30, 2025, from West Covina, California, with the parties and witnesses appearing remotely via the Zoom video platform. Kevin D. Bland and Haidy Rivera, attorneys with Ogletree, Deakins, Nash, Smoak & Stewart, P.C., represented Employer. Sesilya

[1] Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

[2] Except where discussed in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (*RNR Construction, Inc.,* Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

Saraydarian, Staff Counsel, represented the Division. The matter was submitted on August 17, 2026.

Issues

1. Was Employer required to provide foot protection?

2. Did Employer provide required slip protection by using mats or equivalent protection?

3. Does the evidence establish a rebuttable presumption of a Serious violation in Citation 2?

4. Does the evidence rebut the presumption of a Serious violation for Citation 2?

5. Was the violation in Citation 2 a cause of a serious injury?

6. Is the proposed penalty for Citation 2 properly calculated?

Findings of Fact

1. Employer's employees are not exposed to foot injuries.

2. Employer's operations necessitate that employees work in the kitchen.

3. Employer did not use mats, grates, or cleats on the kitchen floor.

4. Employer required employees to wear non-slip shoes.

5. Employer required employees to pay for their own non-slip shoes.

6. Employee Roberto Rivera (Rivera) slipped on the wet floor while working in the kitchen.

7. Rivera suffered serious physical harm, as stipulated by the parties.

8. Rivera suffered a serious injury, as stipulated by the parties.

9. Employer's kitchen floor tiles do not provide slip protection equivalent to mats, grates, or cleats.

10. The lack of appropriate slip protection was a cause of Rivera's injury.

11. The proposed penalty for Citation 2 was calculated properly.

Analysis

1. Was Employer required to provide foot protection?

Section 3385, subdivision (a), requires foot protection as follows:

> Appropriate foot protection shall be required for employees who are exposed to foot injuries from electrical hazards, hot, corrosive, poisonous substances, falling objects, crushing or penetrating actions, which may cause injuries or who are required to work in abnormally wet locations.

Citation 1, Item 2, alleges:

> Prior to and during the course of the inspection, including but not limited to, on November 20, 2020, the employer did not provide employees with slip resistant shoes it required to protect against slipping hazards.

To prove a violation of section 3385, subdivision (a), the Division must establish that (1) employees were exposed to foot injuries from conditions such as crushing or penetrating actions, and (2) the employer failed to require or provide appropriate foot protection. (*United Parcel Service*, Cal/OSHA App. 1158285, Decision After Reconsideration (Nov. 15, 2018).) The Division must prove employee exposure to a violative condition addressed by the cited safety order. (*Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (April 24, 2003).)

Here, the cited safety order addresses hazards to the foot. The safety order explicitly refers to "foot injuries." It further refers to potential sources of foot injuries, such as falling objects and corrosive substances. At hearing, neither the evidence nor the arguments indicate that employees were exposed to foot injuries or potential sources of foot injuries.

Rather than relating to foot injuries, the evidence and the arguments relate to whether employees were exposed to slipping hazards. Even the alleged violation description refers to non-slip shoes and slipping hazards. Importantly, slipping hazards and non-slip shoes do not address foot injuries. By contrast, slipping hazards concern injuries that result from slipping and falling. The cited safety order does not mention slipping hazards or non-slip shoes, which are addressed by a different safety order.

In particular, the Division contends the safety order was violated because Employer required employees to pay for their own non-slip shoes. Although Employers are not permitted to require employees to pay for required personal protective equipment, this does not show a violation of the cited safety order because slipping hazards are not a violative condition addressed by the safety order cited here. (See *Benicia Foundry & Iron Works, Inc.*, *supra*, Cal/OSHA App. 00-2976.)

Accordingly, Citation 1, Item 2, is vacated.

2. Did Employer provide required slip protection by using mats or equivalent protection?

Section 3273, subdivision (a), requires employers to provide slip protection where the work necessitates working on slippery floors:

> Permanent floors and platforms shall be free of dangerous projections or obstructions, maintained in good repair, and reasonably free of oil, grease, or water. Where the type of operation necessitates working on slippery floors, such surfaces shall be protected against slipping by using mats, grates, cleats, or other methods which provide equivalent protection. Where wet processes are used drainage shall be maintained and false floors, platforms, mats, or other dry standing places provided:

Citation 2 alleges:

> Prior to and during the course of the inspection, including but not limited to, on November 20, 2020, the floor by the Pitco deep fryer was not protected against slipping by using mats, grates, cleats, or other methods which provide equivalent protection. As a result, on or about November 20, 2020, an employee was seriously injured when he slipped on the floor and fell while walking by said Pitco deep fryer.

On November 20, 2020, Rivera was working as a fryer cook in Employer's restaurant. Rivera was walking in the kitchen area and slipped. (Ex. 6.) As he slipped, his hand went into a deep fryer. He was taken to a hospital where he received treatment but was not admitted at that time. Three days later, Rivera was admitted to a burn center. Director of Risk Stephanie Aishton (Aishton) reported Rivera's injury to the Division upon Rivera's admission in the hospital. (Ex. 6.)

The parties do not dispute that Employer did not use mats, grates, or cleats, to prevent slipping in the kitchen area. Additionally, the parties do not dispute that Employer required employees to wear non-slip shoes.

The issue here is whether Employer satisfied the safety order by using "other methods which provide equivalent protection" against slipping. In its post-hearing brief, Employer contends that it provided equivalent protection through its "slip-resistant quarry tile flooring combined with mandatory slip-resistant shoes."

A. *Non-slip shoes*

The Appeals Board has held that Employers must pay for necessary safety equipment. (*UPS Ground Freight Inc DBA UPS Freight*, Cal/OSHA 1111325, Denial of Petition for Reconsideration (Nov. 22, 2017) (*UPS Freight*).)

In *UPS Freight*, the issue was whether the employer was required to pay for required foot protection. (*UPS Freight*, *supra*, Cal/OSHA 1111325.) The parties in *UPS Freight* did not dispute that the employer required employees to wear foot protection, that the employees paid for their own foot protection, and that the employees wore their foot protection. The employer argued that the safety order required employer to ensure that its employees wore appropriate foot protection but that the safety order did not require Employer to pay for the footwear. The Appeals Board cited its own precedent, the Labor Code, and California Supreme Court precedent, to affirm that the employer violated the safety order by not paying for the footwear required by the employer. (*Id.*)

Here, Employer required employees to wear non-slip shoes and to pay for the non-slip shoes. Some employees paid for their non-slip shoes directly. Other employees had the price of the shoes deducted from their pay. (Ex. E, p. 6.) Because employees had to pay for their own non-slip shoes, it would violate the safety order if the shoes contributed to providing the required protection. (See *UPS Freight*, *supra*, Cal/OSHA 1111325.) However, Employer argues that it also provided slip protection through slip-resistant floor tiles.

B. *Slip-resistant floor tiles*

In its post-hearing brief, Employer contends that its kitchen floor tiles satisfy the safety order by providing slip protection that is equivalent to mats, grates, and cleats. Employer offered Exhibit J, which is a specification sheet for a grade of tile known as "quarry tile." Aishton testified that quarry tile is more slip-resistant than other types of tile. Aishton testified that Employer's kitchen uses quarry tile (although she could not recall whether Employer uses the product in Exhibit J or the quarry tile of a different manufacturer).

Employer also introduced Exhibit K, which shows the results of slip-resistance testing on floor tiles. Aishton testified that the testing was performed by Employer's insurance company

using six floor tiles provided by Employer. On cross-examination, Aishton testified that the tested tiles were brand new tiles that were not in use at the time of Rivera's accident.

Exhibit K is dated August 24, 2021, which is after the date that the citations were issued. (Ex. K, p. 1.) Exhibit K states that it relates to testing of "prospective tiles" for use in Employer's locations. (*Id.* at 5.) Exhibit K further states that it "does not purport to indicate any comparison to similar tiles not tested." (*Id.* at 3.) Exhibit K does not compare the floor tiles to mats, grates, or cleats. It does not otherwise reference mats, grates, or cleats.

Morales testified that Employer did not tell him during the investigation that it uses slip-resistant tiles. He further testified that Employer did not provide any invoices or receipts for installation of slip-resistant tiles.

Morales's notes from his interviews of employees were admitted as Exhibit E. The notes indicate that Morales discussed slip protection with the interviewees. Each employee confirmed to Morales that mats are not used and that non-slip shoes are required. One employee stated that she was sent home when she did not have her non-slip shoes. (Ex. E, p. 2.) Morales's notes do not indicate that any employees (including both managers on site at the time of the accident) referenced slip-resistant tiles.

Here, it is important that Employer did not tell the Division about slip-resistant tiles during the investigation. Both managers and non-managers discussed slip protection with Morales. It would be expected that an employer would tell an inspector about a critical protection while discussing various forms of protection. This supports an inference that Employer did not believe its tiles provided slip protection.

It is also significant that Employer did not introduce documentary evidence of its kitchen floor tiles, such as invoices or hazard assessments referencing the tiles. Such evidence can indicate the tile specifications or that an employer sought to satisfy the safety order through its floor tiles.

Additionally, it is important that Exhibit K does not state that the tested tiles provide protection equivalent to mats, grates, or cleats. The absence of such information receives great weight because the testing was performed after the citations were issued. The issue was clear at the time of the testing, yet the testing results do not squarely address the issue. This supports an inference that, even if they had been in place at the time of the accident, the tiles do not provide protection equivalent to mats, grates, or cleats.

For the above reasons, the weight of the evidence indicates that the floor tiles did not provide protection equivalent to mats, grates, or cleats. It is further found that Employer relied

upon non-slip shoes as its form of slip protection, which is not permissible where employees paid for their own footwear.

Accordingly, Employer violated section 3273, subdivision (a).

3. Does the evidence establish a rebuttable presumption of a Serious violation in Citation 2?

Labor Code section 6432, subdivision (a), defines a Serious violation as follows:

> 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 could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:
>
> (1) A serious exposure exceeding an established permissible exposure limit.
> (2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

With respect to the term "realistic possibility," the Appeals Board has defined it as a prediction that is within the bounds of human reason, not pure speculation. (*A. Teichert & Son, Inc. dba Teichert Aggregates*, Cal/OSHA App. 11-1895, Decision After Reconsideration (Aug. 21, 2015), citing *Janco Corporation*, Cal/OSHA App. 99-565, Decision After Reconsideration (Sep. 27, 2001).)

"Serious physical harm" is any injury or illness occurring in the place of employment that results in:

> (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.

(Lab. Code § 6432, subd. (e).)

Additionally, the Labor Code authorizes inspectors to testify regarding Serious violations as follows:

> 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.

(Lab. Code § 6432, subd. (g).)

Here, the violation is the failure to use mats, grates, cleats, or equivalent protection against slipping in the kitchen. The actual hazard created by the violation is that an employee could slip and fall. In the present matter, Rivera slipped and fell while working in the kitchen. The parties stipulated that Rivera did, in fact, suffer serious physical harm. As discussed below, the violation was a cause of Rivera's injuries. Thus, the evidence establishes a realistic possibility that the violation can result in serious physical harm.

Accordingly, the evidence establishes the rebuttable presumption that the violation was a Serious violation.

4. Does the evidence rebut the presumption of a Serious violation for Citation 2?

Labor Code section 6432, subdivision (c), provides that an employer may rebut the presumption that a Serious violation exists by "demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation." In order to satisfactorily rebut the presumption, the employer must demonstrate both:

> (1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b) [; and]
>
> (2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

(Lab. Code, § 6432, subd. (c).)

Labor Code section 6432, subdivision (b), provides that the following factors may be taken into account: (i) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards; (ii) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards; (iii) Supervision of employees exposed or potentially exposed to the hazard; and (iv) Procedures for communicating to employees about the employer's health and safety rules and programs.

An employer bears the burden of rebutting the presumption established by the Division as to a Serious violation. (*Kaiser Steel Corporation*, Cal/OSHA App. 75-1135, Decision After Reconsideration (Jun. 21, 1982).)

With regard to the steps a reasonable and responsible employer in like circumstances should be expected to take before the violation occurred, an employer should be expected to use mats, grates, or cleats, or, in the alternative, to ensure that the use of other means will provide equivalent protection to mats, grates, or cleats. In this case, Employer did not ensure that the floor tiles provided equivalent protection. The only assessment of the floor tiles was performed after Rivera's injury and after the Division issued a citation. Moreover, given the circumstances, the silence of the testing results regarding mats, grates, and cleats, supports an inference that the tiles do not provide equivalent protection to mats, grates, and cleats. With regard to the non-slip shoes, although they provide a measure of slip protection, a reasonable and responsible employer would not require employees to pay for the non-slip shoes.

With regard to taking effective action to eliminate employee exposure to the hazard as soon as the violation was discovered, Employer did not offer evidence to show the actions it took or to show when it took such actions.

In sum, the evidence does not establish that Employer took all of the steps a reasonable and responsible Employer should be expected to take before the violation occurred or once the violation was discovered. Therefore, the evidence does not rebut the presumption that the violation is a Serious violation.

Accordingly, Citation 2 is properly classified as a Serious violation.

5. Was the violation in Citation 2 a cause of a serious injury?

Citation 2 characterizes the violation as Accident-Related. A violation is Accident-Related if an employee suffers a "serious injury" or death and a causal nexus exists between the

violation and the injury. (*United Parcel Service*, Cal/OSHA App. 1158285, Decision After Reconsideration (Nov. 15, 2018); see § 336, subds. (c)(2), (d)(7).)

A. *Serious injury*

A "serious injury" is defined as any injury or illness occurring in a place of employment that results in:

(1) inpatient hospitalization for other than medical observation;
(2) an amputation;
(3) the loss of an eye; or
(4) any serious degree of permanent disfigurement.

(§ 330, subd. (h).)

Here, the parties stipulated that Rivera suffered a serious injury. Thus, the serious injury element of the accident-related characterization is met.

B. *Causal nexus*

The Division must show that the violation more likely than not was a cause of the injury. The Division need not show that the violation was the only cause of the injury. (*United Parcel Service*, *supra*, Cal/OSHA App. 1158285.)

In its post-hearing brief, Employer argues that "the precise mechanism of the accident remains unknown and speculative." However, in its prior statements to the Division, Employer indicated that Rivera was walking in the kitchen area and slipped. (Ex. 6.) This account is consistent with Rivera's description that the kitchen floor was wet and he slipped. (Ex. E, p. 18.)

Moreover, Employer did not offer evidence that other factors caused Rivera's accident. The absence of evidence of such other factors is significant because employers are required to investigate occupational injuries. (§ 3203, subd. (a)(5).) Here, Employer did not offer evidence of its investigation of Rivera's injury. Not offering such evidence supports an inference that the results of Employer's investigation are consistent with the Division's conclusion that a wet kitchen floor was a cause of Rivera's slip and resulting injury. (*BHC Fremont Hospital, Inc.*, Cal/OSHA App. 13-0204, Decision After Reconsideration (May 30, 2014); Evid. Code, §§ 412, 413.). For these reasons, the evidence establishes that it is more likely than not that the violation was a cause of the injury.

Accordingly, Citation 2 is properly characterized as Accident-Related.

6. Is the proposed penalty for Citation 2 properly calculated?

Penalties calculated in accordance with the penalty-setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence that the amount of the proposed civil penalty was miscalculated, that the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*RNR Construction, Inc.*, *supra,* Cal/OSHA App. 1092600, citing *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

The Division submitted its Proposed Penalty Worksheet showing the penalty calculation for Citation 2. (Ex. A.) Morales testified to the calculation of the penalty. Employer did not present evidence or argument that the penalty was improperly calculated.

Accordingly, the proposed penalty for Citation 2 is reasonable.

Conclusion

The evidence does not support a finding that Employer violated section 3385, subdivision (a).

The evidence supports a finding that Employer violated section 3273, subdivision (a), for failure to provide protection against slipping where the type of operation necessitates working on slippery floors. The violation is properly classified as Serious Accident-Related. The proposed penalty is reasonable.

Order

It is hereby ordered that Citation 1, Item 1, and the $335 penalty are affirmed.

It is hereby ordered that Citation 1, Item 2, is vacated.

It is hereby ordered that Citation 2, Item 1, and the $22,500 penalty are affirmed.

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

/s/ Mario L. Grimm

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Dated**:** 09/15/2026

Mario L. Grimm
Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.