BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No.
GENERAL DYNAMICS NASSCO	**1551180**
Employer	**DECISION**

Statement of the Case

General Dynamics NASSCO (Employer) is a shipbuilder. On September 2, 2021, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Louis Vicario (Vicario), commenced an investigation of a work site located at 2798 East Harbor Drive in San Diego, California (the job site).

On February 22, 2022, the Division issued four citations to Employer alleging violations of California Code of Regulations, title 8.[1] At the start of the hearing, Employer withdrew its appeal of Citation 1, Item 1. Citation 1, Item 2, alleges a failure to withdraw from service a ladder with structural defects. Citation 2 alleges a failure to establish, implement, and maintain an effective injury and illness prevention program (IIPP). Citation 3 alleges a failure to provide required ladder training.

Employer filed timely appeals of the citations. Employer appealed all citations on the ground that the safety orders were not violated. Employer appealed Citations 2 and 3 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 February 26, 2025, and September 23 and 24, 2025, from West Covina, California, with the parties and witnesses appearing remotely via the Zoom video platform. Kevin D. Bland, attorney

[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).)

with Ogletree, Deakins, Nash, Smoak & Stewart, P.C., represented Employer. Luciane Yeh, Staff Counsel, represented the Division. The matter was submitted on July 1, 2026.

Issues

1. Did Employer fail to withdraw a damaged ladder from service?

2. Did Employer implement its procedures for identifying and evaluating hazards?

3. Did Employer fail to provide ladder training to Manu Maosi prior to the accident?

Findings of Fact

1. Manu Maosi (Maosi) inspected the ladder prior to using it on the day of the accident.

2. Giovanni Furlan (Furlan) inspected the ladder prior to using it on the day of the accident.

3. The ladder did not have a long crack in the rail when Maosi and Furlan selected it for use.

4. The handwriting on the ladder indicates the date that the ladder was built.

5. Employer has procedures to identify and evaluate unsafe work practices and conditions.

6. Employer identified, evaluated, and devised rules to mitigate the hazards related to defective ladders, securing ladders, and storage of ladders.

7. Employer trained Maosi in the safe use of ladders prior to his accident.

Analysis

1. Did Employer fail to withdraw a damaged ladder from service?

Section 3276, subdivision (e)(3), requires employers to withdraw from service ladders that have developed defect:

> Damaged Ladders. Ladders that have developed defects shall be withdrawn from service for repair or destruction; and tagged or marked as "Dangerous, Do Not

> Use" or with similar language. Ladders with broken or missing steps, rungs, cleats, safety feet, side rails, or other defects shall not be used.
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> Citation 1, Item 2, alleges:
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> Prior to and during the course of the investigation, including, but not limited to 8/24/2021, the employer did not withdraw from service for repair or destruction a ladder with structural defects and did not tab or mark the ladder as "Dangerous, Do Not Use" or with similar language.

It is undisputed that on August 24, 2021, Employer was installing two engines, i.e., moving the engines from the yard to a ship. The process involves using a crane to lift an engine from the yard and place it in the ship. Employees must get on top of the engine to manually attach shackles from the crane. The engines were approximately 15 feet tall. (Ex. 31, p. 2.)

Maosi and Furlan were part of the crew on the day at issue here. Maosi and Furlan selected a ladder that was approximately 20 feet long. The first engine was installed without incident. Furlan then had to leave work due to illness. Keenan Holt (Holt) replaced Furlan for the installation of the second engine. The crew continued to use the ladder that was used in the installation of the first engine.

Maosi and Holt were on top of the second engine when a supervisor instructed them to obtain additional equipment from the tool room. Maosi obtained his equipment first and exited the tool room. Holt then obtained his equipment and exited the tool room. Holt returned to the engine where he found Maosi and the ladder on the ground near the engine. Maosi was transported to the hospital.

Vicario visited the shipyard approximately one week later to open the Division's investigation. Employer showed him the location of the accident and the ladder involved. Vicario took pictures of the location and the ladder. (See Ex. 31 (note that page 2 is a photograph taken by Employer).) Vicario observed a long crack on the side of the ladder that passed through a handwritten date of "6/03/21." (Ex. 31, p. 14.) Vicario testified that he examined the writing and the crack. He concluded that the handwritten date meant that Employer observed the long crack, wrote the date of the observation, and left the ladder in service.

Safety Manager Harry Bowden (Bowden) testified credibly that the ladder was built by Employer and that the handwritten date indicates the date that the ladder was built. Bowden and Maosi both testified that Employer has a Ways Department that inspects ladders regularly. Maosi testified that he and Furlan inspected the ladder prior to using it and did not see any problems with the ladder.

Vicario interviewed Furlan and Maosi as part of the Division's investigation. Vicario's interview notes with both employees state that they inspected the ladder prior to using it on the day of the accident. (Ex. 9, pp. 4-7.) The interview notes also state that the ladder was a "job-built ladder." (Ex. 9, p. 7.)

Here, there is no evidence to corroborate the Division's conclusion that the date on the ladder means that Employer observed a long crack in the ladder more than two months before the accident. Rather, the evidence indicates that two employees inspected the ladder on the morning of the accident and found no problems with it. The ladder was then used by, at least, Maosi, Furlan, and Holt. There is no evidence that any employees noticed the long crack while moving or using the ladder. Moreover, Bowden testified credibly that the handwriting signifies the date that the ladder was built. Finally, there is no dispute that the ladder received substantial damage as a result of the accident. Thus, the weight of the evidence indicates that the crack in question occurred as a result of the accident. Therefore, the safety order did not require Employer to withdraw the ladder from service prior to the accident.

Accordingly, Citation 1, Item 2, is vacated.

2. Did Employer implement its procedures for identifying and evaluating hazards?

Section 3203, subdivision (a)(4), requires employers to establish, implement, and maintain procedures for identifying and evaluating hazards:

> (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:
>
> [. . .]
>
> (4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.

Citation 2 alleges:

> Prior to and during the course of the investigation, the employer did not implement procedures for identifying and evaluating workplace hazards listed in the General Dynamics NASSCO Safety Procedure Manual related to Scaffolding and Ladders, including, but not limited to failing to inspect a wooden ladder before use, not securing the ladder from the top and bottom to prevent movement, failing to have co-workers hold the ladder from the top and bottom to prevent movement, failing to have co-workers hold the ladder while employees were

> climbing and descending, and storing wooden ladders outdoors where they are directly exposed to a variety of weather conditions such as, but not limited to, sun, rain, and salt air. As a result, on or about 8/24/2021, an employee climbing a wooden ladder that was not inspected prior to use and was not secured on the top or bottom and was not being held by a co-worker, was seriously injured when the ladder broke and he fell to the ground below.

The Division does not contend that Employer's written IIPP procedures are deficient. Rather, the Division contends that Employer failed to implement and maintain its IIPP. Implementation of an IIPP is a question of fact. (*Papich Construction Company Inc*., Cal/OSHA App. 1236440, Decision After Reconsideration (Mar. 26, 2021).)

Although the Division contends that Employer did not implement procedures for identifying and evaluating workplace hazards, neither the citation nor the Division's post-hearing brief identifies which of Employer's IIPP procedures for identifying and evaluating hazards were not implemented. In fact, the parties did not offer Employer's IIPP procedures for identifying and evaluating hazards. Instead of identifying Employer's IIPP procedures for identifying and evaluating hazards, the Division refers to a section of Employer's Safety Procedure Manual relating to Scaffolding and Ladders (the Ladders Manual). (See Exs. 21, 35, B.) In its post-hearing brief, the Division refers to the Ladders Manual as Employer's procedures for identifying and evaluating workplace hazards. However, there is no evidence that the Ladders Manual is the IIPP's procedures for identifying and evaluating hazards (including periodic inspections). Rather, the exhibit is clearly limited to rules regarding scaffolding and ladders.

The Division identifies several rules from the Ladders Manual that, according to the Division, were not followed on the day of Maosi's accident. Even if these allegations were true, they would not show the alleged violation because they are not part of Employer's IIPP procedures for identifying and evaluating hazards. An employer can have many safety rules aside from procedures to identify and evaluate hazards. Violating such other safety rules is not a failure to implement procedures for identifying and evaluating hazards. On the contrary, the fact that Employer had the rules in the Ladders Manual indicates that Employer had identified and evaluated the potential hazards and then devised rules to effectively mitigate the hazards. (See *Coast Waste Management, Inc.*, Cal/OSHA App. 11-2385, Decision After Reconsideration (Oct. 7, 2016).) Thus, the Division's argument that Employer violated rules in its own Ladders Manual does not establish that Employer failed to implement its IIPP procedures for identifying and evaluating workplace hazards.

Additionally, it is significant that the Division requested a copy of Employer's IIPP and did not cite Employer for a deficiency in the written IIPP. (Ex. 6.) This supports an inference that Employer's written IIPP includes the necessary procedures.

In sum, the evidence supports a conclusion that Employer established procedures for the identification and evaluation of workplace hazards. Additionally, the evidence establishes that Employer had identified, evaluated, and devised rules regarding the hazards specified in the citation. The evidence does not show that Employer failed to implement its procedures for identifying and evaluating hazards. Accordingly, Citation 2 is vacated.

3. Did Employer fail to provide ladder training to Manu Maosi prior to the accident?

Section 3276, subdivision (f), requires employers to train an employee in the safe use of ladders before the employee uses a ladder:

> Employee Training. Before an employee uses a ladder, the employee shall be provided training in the safe use of ladders, unless the employer can demonstrate that the employee is already trained in ladder safety as required by this subsection. Supervisors of employees who routinely use ladders shall also be provided ladder safety training, unless the employer can demonstrate that the supervisor is already trained in ladder safety as required by this subsection. The training may be provided as part of the employer's Injury and Illness Prevention Program required by Section 3203. The training shall address the following topics, unless the employer can demonstrate a topic is not applicable to the safe use of ladders in the employer's workplace.
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> (1) Importance of using ladders safely, including: frequency and severity of injuries related to falls from ladders.
> (2) Selection, including: types of ladders, proper length, maximum working loads, and electrical hazards.
> (3) Maintenance, inspection, and removal of damaged ladders from service.
> (4) Erecting ladders, including: footing support, top support, securing, and angle of inclination.
> (5) Climbing and working on ladders, including: user's position and points of contact with the ladder.
> (6) Factors contributing to falls, including: haste, sudden movement, lack of attention, footwear, and user's physical condition.
> (7) Prohibited uses, including: uses other than designed, climbing on cross bracing, maximum lengths, and minimum overlap of extension ladder sections

Citation 3 alleges:

> Prior to and during the course of the investigation, Rigging Department employees who routinely use ladders were not provided training in the safe use of

> ladders in accordance with the requirements of this subsection. As a result, on or about 8/24/2021, a Rigging Department employee was seriously injured when the damaged, unsecured wooden ladder he was working on broke and caused him to fall to the ground below.

Here, the Division requested Employer's training records for Maosi during the inspection. (Ex. 6.) Vicario testified that the Division did not receive Maosi's training records within the time period specified on the document request. Vicario further testified that he had interviewed Maosi regarding ladder training. According to both Vicario's testimony and his interview notes, Maosi told Vicario that he had not received formal ladder training and that he had received only tips from supervisors. (Ex. 9, p. 7.)

Maosi testified at hearing, however, that he had received ladder training and identified several topics on which he had received training. He further testified that, at the time of his ladder accident, he had been working a double-shift and he was "rushing" to perform the work. He further testified that it was unusual to not have someone else holding the ladder when an employee climbed or descended a ladder. Vicario's interview notes with Furlan state that Furlan and Maosi held the ladder for each other during the installation of the first engine. (Ex. 9, p. 5.)

On cross-examination, Vicario testified that the Division eventually received Maosi's training records. Vicario acknowledged that the documentation showed at least some formal ladder training for Maosi. (See Ex. G1, pp. 11-12.) Vicario noted that the documentation did not specify all of the topics that were covered in the ladder training and that it did not show as much ladder training as the documentation for other employees, such as Holt. Vicario acknowledged that he himself received ladder training from the Division and that his own training records do not specify all of the topics on which he received training. (See Ex. 30.)

It is significant that the Division eventually received Maosi's training records and that Maosi himself testified to receiving ladder training. This evidence is consistent with Furlan's statements to Vicario that they held the ladder for each other. With regard to the training documentation, it is not unusual that Maosi's training records do not specify all of the topics covered in his trainings, as Vicario's records from the Division do not specify the topics covered in his own trainings.

With regard to Vicario's testimony and notes relating to his interview of Maosi, that evidence receives less weight because Vicario's notes are contradicted multiple times: (i) the training documentation and Maosi's testimony contradict the notes that Maosi did not receive any formal ladder training; and (ii) the testimony of Maosi and Holt, along with Employer's accident investigation report, contradict Vicario's notes that Holt was already on top of the engine when Maosi fell from the ladder. (Ex. 9, pp. 7-8.) These contradicted notes indicate either

that Maosi provided inaccurate information to Vicario or that Vicario inaccurately documented Maosi's answers. Ultimately, the evidence regarding Vicario's interview of Maosi is not reliable.

In its post-hearing brief, the Division argues that Maosi's testimony failed to list each of the seven required topics and this fact establishes that he did not receive training on all of the seven topics. This argument is not persuasive. Notably, none of the other witnesses were tested regarding their ability to remember each topic on which they have received training.

In sum, the Division did not meet its burden to establish that Employer failed to provide required ladder training to Maosi or any other employees. Accordingly, Citation 3 is vacated.

Conclusion

The evidence does not support a finding that Employer violated section 3276, subdivision (e)(3).

The evidence does not support a finding that Employer violated section 3203, subdivision (a)(4).

The evidence does not support a finding that Employer violated section 3276, subdivision (f).

Order

It is hereby ordered that Citation 1, Item 1, and the $795 penalty are affirmed.

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

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

It is hereby ordered that Citation 3, Item 1, is vacated.

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

/s/ Mario L. Grimm

Dated: 07/22/2026

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.