BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1626625**
KENYON PLASTERING OF SOUTHERN CALIFORNIA, INC. **525 GREEN STREET** **MARTINEZ, CA 94553** **Employer**	**DECISION**

Statement of the Case

Kenyon Plastering of Southern California, Inc. (Employer) is a contractor. Beginning on October 6, 2022, the Division of Occupational Safety and Health (the Division) conducted an accident inspection at a workplace maintained by Employer at The Hub at Scripps Ranch, 9850 Carroll Canyon Road, San Diego, CA 92131 (the site). Employer was a subcontractor working at the site, which was a multi-unit residential project under construction. On December 21, 2022, the Division issued one citation alleging a single violation of a safety order found in California Code of Regulations, title 8,[1] for failing to report to the Division a serious injury suffered by an employee at the site.

Employer filed a timely appeal of the citation on the grounds that there was no violation and that the proposed penalty was unreasonable.

This matter was heard by Howard Isaac Chernin, Administrative Law Judge (ALJ), for the California Occupational Safety and Health Appeals Board (Appeals Board) in Los Angeles, California, on April 8, 2025. ALJ Chernin conducted the hearing with all participants appearing remotely via the Zoom video platform. J. Steve Barnett, Staff Counsel, represented the Division. Brian Chien, Attorney, represented Employer. Prior to the hearing, the parties agreed to submit stipulations of fact, joint exhibits (Exhibits 1 through 25), and briefs and to have the appeal decided on the submissions without witness testimony. Unless otherwise noted herein, the undersigned ALJ reviewed all of the stipulations and joint exhibits and the parties' separate briefs in determining the outcome of this appeal, and no outside evidence was considered.

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

This appeal was submitted for decision on May 9, 2025, to allow for the filing of post-hearing briefs.

Issues

1. Did Employer violate section 342, subdivision (a), by failing to timely report a serious occupational injury to the Division?

2. Is the proposed penalty for Employer's violation of section 342, subdivision (a), reasonable?

Findings of Fact

As noted, the parties submitted 27 stipulated facts (Exhibit 25) prior to the hearing. The stipulations that the undersigned ALJ adopted as findings of fact relevant to the determination of the issues raised on appeal are summarized here:

1. Guadalupe Sanchez Arguello (Sanchez Arguello) was an employee of Employer on March 21, 2022, the date of the accident.

2. Sanchez Arguello was performing housekeeping and other cleaning work at the site on the date of the accident.

3. Sanchez Arguello suffered a serious injury on March 21, 2022, during her lunch break at the site.

4. Sanchez Arguello was taking her lunch while sitting on a curb in the parking area at the site. When Sanchez Arguello attempted to get up, she tripped on the curb and fell onto her back, and appeared to have suffered an injury to her ankle and foot.

5. An ambulance was called, and Sanchez Arguello was stabilized and transported to a local hospital by ambulance for further examination.

6. The following day (March 22, 2022), Employer learned that Sanchez Arguello would be undergoing foot or ankle surgery.

7. Employer did not report the accident to the Division.

In addition, the undersigned ALJ has made the following findings of fact based on the undisputed evidence jointly submitted by the parties:

8. The parking area at the site where the accident occurred was within the overall project area identified in a Subcontract Agreement between the general contractor and Employer. The parking area was readily accessible to Sanchez Arguello.

9. Employer took photographs of the location of the accident and prepared a report for the general contractor on March 24, 2022. The report contained Employer's observations about Sanchez Arguello's accident, including that Sanchez Arguello was "taking lunch" while sitting on a curb in the "North West part of the job site".

10. The Division correctly calculated the penalties it proposed for Employer's violations.

Analysis

1. Did Employer violate section 342, subdivision (a), by failing to timely report a serious occupational injury to the Division?

Section 342 (Reporting Work-Connected Fatalities and Serious Injuries), subdivision (a), states:

> Every employer shall report immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment.
>
> Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.
>
> Serious injury or illness is defined in section 330(h), Title 8, California Administrative Code.
>
> Section 330, subdivision (h), defines "serious injury or illness" as:
>
> [A]ny injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation […].[2]
>
> Citation 1 alleges:
>
> Employer failed to immediately report to the Division the serious injury of an employee that occurred at the workplace or in connection with any employment as required. An employee was seriously injured at employer's place of employment on March 21, 2022, and was taken away from the work site by ambulance and hospitalized for the injury from March 21, 2022 until March 25, 2022. The employer did not report the hospitalization to the Division. [The] Division became aware of the serious injury on September 27, 2022.

[2] The remainder of the definition is not relevant to the facts at hand and has been omitted.

The elements of the violation are: (1) the employer had actual or constructive knowledge of an employee's serious injury or illness or death; (2) the employer failed to immediately report the employee's serious injury, illness or death to the Division of Occupational Safety and Health, (3) the serious injury, illness or death occurred in a place of employment or in connection with any employment.

"Section 342(a) requires employers to report to the Division any and all serious injuries occurring in the workplace, within 8 hours of the employer obtaining knowledge of the gravity of the injury using reasonable diligence." (*Allied Sales and Distribution, Inc.*, Cal/OSHA App. 11-0480, Decision After Reconsideration (Nov. 29, 2012).) "The purpose of the reporting requirement is to allow the Division to quickly respond to injuries or illnesses occurring on the job." (*Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision after Reconsideration (Apr. 24, 2003).) This rapid response is "necessary to [enable the Division to] inspect potentially dangerous conditions close to the time of the accident…and to examine any equipment that may have caused an injury." (*Id.*, citing *Alpha Beta Company*, Cal/OSHA App. 77-853, Decision After Reconsideration (Nov. 2, 1979).)

The time period within which an employer must report is controlled by section 342, subdivision (a). (*Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, *supra.*) Section 330, subdivision (h), on the other hand, provides "objective guidance to what constitutes a 'serious injury' which does not preclude employer knowledge at an earlier time where, under particular circumstances, an employer knows or with diligent inquiry could know that hospitalization for more than 24 hours is either required **or substantially probable**." (*Id.*, emphasis added.) Thus, "it is the facts giving rise to [an employer's] actual or constructive 'knowledge' of the serious injury which are dispositive for determining a violation of the eight-hour rule in section 342(a)." (*Id.*)

The Appeals Board has addressed the constructive knowledge component of section 342, subdivision (a), in *Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, *supra*, by stating:

> [I]n addressing the constructive knowledge requirement in section 342(a), the circumstances must be examined in order to determine whether Employer would have known in the exercise of reasonable diligence the nature of the injury as being serious. Facts which are relevant include, but are not limited to, the type and location of the injury or illness suffered by the employee, Employer's knowledge of the cause of the injury or illness, Employer's observations of the employee following the injury or illness, steps taken to obtain or provide medical treatment, Employer's efforts to determine the nature of the hospitalization (e.g. for observation, tests, treatment, duration, etc.) and the timeline and events following Employer learning of the injury or illness. Thus, the facts in a particular

> case must be examined to determine if an employer knew or with diligent inquiry would have known of the nature of the serious injury that requires the hospitalization described in section 330(h).

(*Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, *supra.*)

In determining whether the Division met its burden of proof by a preponderance of the evidence, "[f]ull consideration is to be given to the negative and affirmative inferences to be drawn from all the evidence, including that which has been produced by defendant." (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001), citing *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483, review denied.)

a. Employer knew or should have known that Sanchez Arguello suffered a serious injury

1. Type and location of injury

Here, the parties do not dispute that Employer's employee Sanchez Arguello suffered a serious injury. According to the undisputed evidence submitted by the parties, Sanchez Arguello suffered a "right distal tib-fib fracture as a result of the accident." (Exhibit 7, p. 2.) The accident occurred at the site where Sanchez Arguello was employed, in a parking area at the site. The parking area is described on the first page of the Subcontract Agreement between Employer and the general contractor (Exhibit 11), which identifies the scope of work ("project") as follows:

> The project for which Subcontractor is to perform construction work on hereunder Ten (10) residential buildings (260 residential units); with 2,618 SF of amenity space; a 5,293 SF clubhouse/leasing. 3,810 SF of retail (shell only); two (2) free standing retail pads 7,766SF; appurtenant parking facilities; and one (1) swimming pool.[3]

The project area at the site is also depicted in Exhibit 12, and the location of the accident is depicted in Exhibit 12 by a red dot placed in the top portion of the image. (See Exhibit 25.) Exhibits 13 through 24 are photographs depicting where the accident occurred, taken from various angles and vantage points. (See Exhibit 25.) Exhibit 12 is consistent with the Subcontract Agreement as it shows appurtenant parking facilities surrounding a multi-family residential complex. Furthermore, the photographs show indicia of construction activity which the undersigned ALJ infers is related to the construction of the project. Relying on the evidence summarized above, it is found that the parking area where the accident occurred was a part of the overall project area at the site where Employer was contracted to perform work.

[3] The parties submitted an unexecuted draft copy of the Subcontract Agreement. Nonetheless, neither party disputes that the quoted language accurately describes the scope of project, and nothing in the record suggests that it is inaccurate with respect to the description of the project.

2. Employer's knowledge of the cause of Sanchez Arguello's injury

Employer investigated Sanchez Arguello's accident and documented its observations regarding her accident in a report dated March 24, 2022. (Exhibit 10.) In the report, Employer noted that Sanchez Arguello was "taking lunch" while sitting on a curb in the "North West [*sic*] part of [*sic*] job site." When Employer's safety manager arrived, Sanchez Arguello "was on her back." The report notes that there was a trench behind the curb where Sanchez Arguello was sitting, and the photographs in evidence depict the area as under construction, and construction materials are visible in the photographs. All of this information should have at minimum placed Employer on inquiry notice that Sanchez Arguello was injured due to a potentially hazardous condition at the site, specifically in the appurtenant parking facility where she was taking her lunch break.

3. Steps taken to provide or obtain medical treatment

There is no dispute that an ambulance was called for Sanchez Arguello, that she was stabilized at the site and was then transported by ambulance to a hospital for treatment. (Exhibit 25.)

4. Employer's efforts to determine the nature of the hospitalization (e.g. for observation, tests, treatment, duration, etc.)

The record is silent as to any efforts by Employer to determine the nature of Sanchez Arguello's hospitalization. Even if Employer *unsuccessfully* attempted to learn more about the nature of the hospitalization, this would have placed it on inquiry notice that Sanchez Arguello may have suffered a serious, reportable injury.

As the Appeals Board held in *Burbank Recycling, Inc*., Cal/OSHA App. 10-0562, Decision After Reconsideration (June 30, 2014):

> When an employer has doubts as to whether an injury is serious, we have long thought the employer should resolve any doubt in favor of reporting the event. (*Dubug # 7 Inc. dba Wood-Ply Forest Products*, Cal/OSHA App. 92-1329, Decision After Reconsideration (Jun. 26, 1995), citing, *Alpha Beta Company*, Cal/OSHA App. 77-853, Decision After Reconsideration (Nov. 2, 1979) and *Phil's Food Market, Inc.*, Cal/OSHA App. 78-806, Decision After Reconsideration (Feb. 6, 1979).) After an employer receives objective indicators that suggest the injury in question may have been serious, even if it cannot be definitively resolved prior to expiration of the eight hour reporting deadline contained in section 342(a), the employer should resolve all doubt in favor of making a timely report of the incident to the Division.

Here, Employer was faced with objective indicators that Sanchez Arguello had suffered a serious injury. Sanchez Arguello was on her back when the safety manager arrived at the site.

She was taken by ambulance from the site to a hospital. Employer's apparent failure to determine the extent of Sanchez Arguello's injuries after she left the site, when reviewed in the context of the above undisputed facts, placed Employer on inquiry notice that Sanchez Arguello had likely suffered a serious injury. Furthermore, the day following the accident, Employer learned that Sanchez Arguello was hospitalized and was going to undergo surgery for her injury. Therefore, it is determined that Employer had both actual and constructive knowledge that Sanchez Arguello suffered a serious injury at the site, and that it obtained this knowledge no later than March 24, 2022, when it prepared a report containing observations concerning the accident.

b. Employer failed to report Sanchez Arguello's serious injury, illness or death to the Division of Occupational Safety and Health

The parties stipulated that Employer did not report Sanchez Arguello's accident or her injury to the Division.

c. Sanchez Arguello's serious injury occurred in a place of employment or in connection with any employment

Employer argues that it was not required to report Sanchez Arguello's injury to the Division because it occurred in a parking area that it did not control. Furthermore, Employer argues that, because the accident occurred during an unpaid lunch break, Sanchez Arguello was not Employer's employee at that time. Neither of Employer's arguments, however, are availing. The Appeals Board has previously stated that:

> Requiring reports of illnesses, injuries and deaths occurring at work, or that have a tangible connection to work, even if not ostensibly work related, provides the Division with the opportunity to acquire data that may allow it to recognize patterns indicating workplace hazards, which employers might not have sufficient expertise or experience to recognize on their own.

(*Western Digital Corporation*, Cal/OSHA App. 1200858, Decision After Reconsideration and Order of Remand (May 16, 2019).)

The Appeals Board has also stated that:

> The legislature's intent in requiring employers to report serious injuries or illnesses to the Division "shows a strong policy interest in thus providing the Division the opportunity to investigate such events shortly after they occur. ... It would defeat or frustrate that legislative intent to allow employers ... to preempt the Division's investigation by deciding that the illness, injury or death was not work-related and thus need not be reported."

(*Orange County Fire Authority*, Cal/OSHA App. 10-3667, Decision After Reconsideration (Jan. 3, 2013).)

Regarding Employer's first argument, Employer entered into a Subcontract Agreement that described the project area as including construction of parking facilities appurtenant to the buildings where Employer's employees were assigned to work. Employer knew or should have known that its employees would have access to the appurtenant parking facilities while at the site. In fact, it is undisputed that on the date of her accident Sanchez Arguello parked her car and took her lunch break in the appurtenant parking facilities during construction of the project. Employers are obligated to take measures to protect their employees from known and discoverable hazards in areas where employees are assigned to work as well as areas accessible to employees such that it is reasonably predictable that they may enter these areas and be exposed to a hazard there. (See *Dynamic Construction Services Inc.*, Cal/OSHA App. 1005890, Decision After Reconsideration (Dec. 1, 2016).)

Regarding Employer's second argument, an Employer's duty to report a serious accident is not suspended while the employee is on a lunch break. (See *Honeybaked Hams*, Cal/OSHA App. 13-0941, Denial of Petition for Reconsideration (June 25, 2024) [Holding that an employee's death that occurred during a lunch break was reportable under section 342, subdivision (a)].) Employer knew that the appurtenant parking facilities at the site were part of the project, and knew or should have known that its employees had access to these facilities at the site. Indeed, the evidence establishes that Sanchez Arguello parked in the appurtenant parking facilities where her accident occurred and took her lunch break there. Although Employer argues that employees were not required to take breaks there, nothing in the record suggests that employees were prohibited from accessing the area where the accident occurred. Under the facts at bar, Employer had a duty to report a serious injury that occurred in an area of the site that its employees were exposed to and had access to by virtue of their employment at the site. Areas at a worksite that are readily accessible to employees, and which employees are known to access, indisputably bear a sufficiently tangible connection to work, and therefore, accidents occurring in such locations are reportable under section 342, subdivision (a).

For all of the foregoing reasons, therefore, the Division established a violation of section 342, subdivision (a), and Citation 1 is affirmed.

2. Is the proposed penalty for Employer's violation of section 342, subdivision (a), reasonable?

Section 336, subdivision (a)(6), states:

> Any employer who fails to timely report an employee's injury or illness, or death, in violation of section 342(a) of Title 8 of the California Code of Regulations, shall be assessed a minimum penalty of $5,000.

The minimum $5,000 penalty for failing to make a report required under section 342, subdivision (a), has been recognized and upheld by the Appeals Board. (*Allied Sales and Distribution, Inc.*, Cal/OSHA App. 11-0480, *supra*.)

Here, the Division issued Citation 1 to Employer with a proposed penalty of $5,000. (Exhibit 3.) That penalty was proposed in conformance with section 336, subdivision (a)(6), and Appeals Board precedent. Accordingly, the penalty proposed by the Division is reasonable, and will be assessed against Employer.

Conclusion

Employer failed to report a serious occupational injury to the Division in violation of section 342, subdivision (a).

The Division proposed a reasonable penalty for Employer's violation of section 342, subdivision (a).

Order

Citation 1 is affirmed as set forth in this Decision. A total penalty of $5,000 is affirmed as set forth in the attached Summary Table.

/s/ Howard I. Chernin
_____
Howard I. Chernin
Administrative Law Judge

Dated: 05/29/2025

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.