WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MIGUEL MOSQUEDA, *Applicant*

vs.

CITY OF CLEARLAKE, permissibly self-insured, *Defendants*

Adjudication Number: ADJ9170309
Santa Rosa District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant Miguel Mosqueda seeks reconsideration of the July 25, 2025 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant's injuries were not caused by the serious and willful misconduct of the employer and that applicant's injuries were not the result of the employer's violation of any statute or safety order.

Applicant contends that defendant City of Clearlake, through its managing and supervising employees, intentionally acted with wanton and reckless disregard of applicant's safety. Specifically, applicant contends that defendant (1) violated Cal. Code Regs., tit. 8, § 3203 because defendant failed to identify the hazard in this case by not training groundman Nick Lambert; (2) violated Cal. Code Regs., tit. 8, 3276(d)(1) because applicant used the pole ladder for something not designed for; (3) violated Cal. Code Regs., tit. 8, § 3276(e)(15), which prohibits ascending or descending a ladder without maintaining 3 points of contact; (4) violated Cal. Code Regs., tit. 8, § 3421(b) because the tree trimming in question was not under the direction of a qualified tree worker and because neither applicant or Mr. Lambert was wearing hard hats; (5) violated Cal. Code Regs., tit. 8, § 3421(d) because applicant was not satisfactorily trained prior to the job assignment of tree trimming; (6) violated Cal. Code Regs., tit. 8, 3421(f) because the job briefing was not conducted by a qualified tree worker; (7) violated Cal. Code Regs., tit. 8, § 3276(d)(1)(A), which required scaffolds or other worker position equipment; (8) violated Cal. Code Regs., tit. 8, § 3276(e)(14),

which dictates that ladders cannot be placed in a location where they may be displaced by other work unless protected by barricades; and (9) violated Cal. Code Regs., tit. 8, § 3276(f), which requires training in the safe use of ladders.

We received an answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on the Report, which we adopt and incorporate, and for the reasons discussed below, we deny reconsideration.

I.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on September 2, 2025 and 60 days from the date of transmission is Saturday, November 1, 2025. The next business day that is 60 days from the date of transmission is Monday, November 3, 2025. (See Cal. Code

Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on Monday, November 3, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on September 2, 2025, and the case was transmitted to the Appeals Board on September 2, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 2, 2025.

II.

"It must be recognized at the outset that the statute in question does not make the employer an insurer of safety and that it does not authorize the additional award upon a showing of mere negligence, or even of gross negligence. Under the provisions of section 4553 the awards of increased benefits can be sustained only if the employes [*sic*] were 'injured by reason of the *serious and wilful misconduct*' (italics added) of the employer, and where, as here, the employer is a corporation, such misconduct must be 'on the part of an executive, managing officer, or general superintendent' of the employer corporation." (*Mercer-Fraser Co. v. Industrial Acci. Com.*, (1953) 40 Cal.2d 102, 108 [18 Cal. Comp. Cases 3].)

Serious and willful conduct is defined as conduct that "necessarily involves deliberate, intentional, or *wanton* conduct in doing or omitting to perform acts, with knowledge or appreciation of the fact, on the part of the culpable person, *that danger is likely to result therefrom*."

[1] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> [1] Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

(emphasis in original.) "Wilfulness necessarily involves the performance of a deliberate or intentional act or omission regardless of the consequences." (*Id.* at p. 117.)

Here, we agree with the WCJ that the facts here do not amount to a serious and willful conduct on the part of the employer. We further agree that the proximate cause of applicant's injuries was not due to any violation of safety orders. Thus, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant Miguel Mosqueda's Petition for Reconsideration of the July 25, 2025 Findings and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 3, 2025

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

MIGUEL MOSQUEDA
MASTAGNI HOLSTEDT, APC
LENAHAN, SLATER, PEARSE & MARJERNIK, LLP

LSM/*pm*

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

1. Applicant's occupation: Maintenance worker
2. Age at injury: 60
3. Date of injury: October 10, 2013
4. Parts of body injured: Spine and compensable consequences thereof
5. Manner of injury: Fall from ladder while trimming tree
6. Identity of petitioner: Applicant. The Petition was timely and verified. The applicant seeks reconsideration of the undersigned's decision dated July 25, 2025 finding that the applicant's injuries were not the result of the employer City of Clearlake's serious and willful misconduct.

II
FACTS

Applicant was hired as a maintenance worker by the City of Clearlake as a Maintenance Worker I and was later promoted to Maintenance Worker II. Over the course of his 18 year career, he did a variety of tasks, which included landscaping, and specifically, tree trimming. Moreover, prior to his employment with the City of Clearlake, he worked at Orchard View Farms, where he used ladders in the course of his duties as well. (Minutes of Hearing and Summary of Evidence ("MOH/SOE") dated August 5, 2024 at pg. pg. 2:16 -17) Applicant was well versed in both tree trimming and the use of pole, or orchard, ladders.

Applicant's employer provided safety training regularly through "tailgate meetings." (Id. At pg. 3:1 – 6). A review of the one year preceding the applicant's accident, there is no indication that ladder safety was ever addressed at a tailgate meeting.

On October 10, 2013, applicant sustained catastrophic injuries when he fell from a ladder. The accident resulted in applicant suffering a broken back leaving the applicant

paraplegic. The court believes that the case was settled by stipulations with request for award at 100%, however, the stipulations do not appear to be in FileNet.

On the day of the accident, applicant was informed by his supervisor, Chuck Davis, that his task for the day was to trim branches on a tree located in front of the Clearlake Youth Center. (See transcript of Charles Davis at pg. 9 - 10). Accompanying applicant, and acting as a "groundsman" was Nick Lambert, a part time employee with the City of Clearlake. Like applicant, Mr. Lambert had not received ladder safety training.

Notably, the city had access to a cherry picker, a work truck with a bucket which could be used for tree trimming. Testimony suggested that the truck was the preferred method of tree trimming as it was able to get branches higher in the tree, however, the bucket truck was not available the day of the accident as it was being repaired. (MOH/SOE 8/5/2024 Pg. 5:29 – 32). Doug Herren, through Chuck Davis, indicated that in doing the job, applicant should just "get what he could" and ignore branches that were too high to trim using the ladder. (Testimony of Charles Davis, 12/11/23, pg. 18:25-19:11)

Applicant proceeded to the work site. He used a pole ladder, a ladder commonly used for landscaping type jobs. The pole ladder was placed with its feet resting on dirt. (Testimony Miguel Mosqueda, dated 8/5/2024 pg. 30:2-10) This is consistent with the proper uses of a pole ladder. Applicant was aloft, trimming branches while Nick Lambert was on the ground removing downed branches and loading them into the truck for disposal.

The accident occurred when Nick Lambert attempted to remove a branch that, unbeknownst to him, had become entangled with one of the feet of the ladder. Pulling on the branch caused the entire ladder to twist and tip over and applicant fell to the ground, suffering catastrophic injuries.[2] Nick Lambert had not received any training regarding the proper and safe conduct of a groundsman. When asked, Mr. Lambert testified that he was aware that he should not be pulling branches that were entagled with the ladder and if he had known he would not have pulled on the particular downed branch. (MOH/SOE dated 12/11/2023 pg. 8:5 – 7).

[1] Although this conclusion was supported by the testimony of Defense Expert Mack Quan, the court reached this conclusion independently by virtue of viewing of security camera footage played in court. Observation of the video made it obvious that the ladder did not slip, and that applicant did not lose his balance, rather, Nick Lambert pulled on a branch that was caught up on the right foot of the ladder, causing the ladder to twist and tip over.

III
DISCUSSION

Preliminarily, the court notes that the CalOSHA report concerning the accident was admitted into evidence, however it was not properly authenticated and the court felt it to be of limited use. Witness Joseph Crocker did not author the report and was only made aware of it by virtue of applicant's attorney in connection with the instant case. Mister Crocker essentially acted as an expert in analyzing its contents. The conclusions contained in the report were not his own. He did not participate in the investigation.

Applicant bears the burden of proof to establish that the employer was aware of a significant danger and failed to take steps to safeguard the employee from it. This requires knowledge of the danger by any of the following:

(a) The employer, or his managing representative.

(b) If the employer is a partnership, on the part of one of the partners or a managing representative or general superintendent thereof.

(c) If the employer is a corporation, on the part of an executive, managing officer, or general superintendent thereof.

Cal Lab Code § 4553

In the present case the managing representative would be Doug Herren, the head of the Public Works department. He was the employee who had "general discretionary powers." Charles Davis, who conveyed the job instructions to applicant was a "lead worker" with supervisory duties but was not an executive.

No evidence was presented that Mr. Herren was aware of any risk, or violation of any safety order, prior to the accident. He did not instruct the applicant to use any particular ladder. Additionally, presumably aware that the bucket truck was not available, he gave instruction that h applicant should "get what he could" from the ladder. Nothing suggests that he ignored an obviously hazardous situation.

As far as liability under Labor Code § 4553.1, the court found that the accident had a single proximate cause – the groundsman pulled on a downed branch that was entangled with the ladder, causing the ladder to twist and tip over. No violation of any safety ordinance was a proximate cause.

As an aside, the court believes that the defendant is correct in its assertion that the only safety ordinance violations asserted by applicant are 8 Cal. Code Regs § 3276(d)(1) (selection of proper ladder), 8 Cal. Code Regs § 3276(e)(15) (maintaining 3 points of contact while ascending a ladder) and 8 Cal. Code Regs § 3421(m) (first aid training). This is because the applicant is required to plead serious and willful violations separately and with specificity.

(a) Any claim(s) that an injury was caused by either the serious and willful misconduct of the employee or of the employer must be separately pleaded and must set out in sufficient detail the specific basis upon which a claim is founded. When a claim of serious and willful misconduct is based on more than one theory, the petition shall set forth each theory separately.

(b) Whenever a claim of serious and willful misconduct is predicated upon the violation of a particular safety order, the petition shall set forth the correct citation or reference and all of the particulars required by Labor Code section 4553.1.

8 Cal Code Regs § 10525 (formerly 10440 and 10445)

The requirement that these items must be pled, not just asserted, the court believes, means that adding them as issues on the pre-trial conference statement is insufficient. The only pleading setting forth the allegations was the Application for Increase of Award for Serious and Willful Misconduct of Employer filed October 6, 2014. That pleading only identifies the regulations listed above. As previously noted, however, none of the safety statutes alleged either in the petition or on the PTCS were a proximate cause of the accident.

Regarding applicant's specific claims, particularly violations of several safety orders, even if Doug Herren was arguably made aware of these alleged dangerous conditions, none of the alleged violations were even actual violations.

The assertion that the orchard ladder was the incorrect ladder for the job, this is incorrect. The ladder was placed with all feet resting on soil, as per the manufacturer's recommendation (See Defense Exhibit C). The ladder did not slip or "splay." It was mechanically tipped over. Moreover, Doug Herren did not specify which ladder should be used, so would not have been aware of any supposed risks.

The applicant likely ascended the ladder without maintaining three points of contact but the applicant ascended the ladder without incident. The fact that Mr. Lambert was not trained in CPR or first aid is not of any consequence as that would only have been a factor after the incident.

Moreover, performing any kind of first aid would have been risky as applicant had a broken spine and any attempt to move applicant would have exposed him to increased risk of further injury.

The court found that applicant mischaracterizes the requirement of 8 Cal. Code Regs. § 3267(e)(14) as prohibiting Mr. Lambert from clearing branches while applicant was aloft as this would be "other work" for purposes of that regulation. However, the trimming of branches and the removal of felled limbs would be part and parcel of the same activity. Moreover, Mr. Lambert, as the groundsman, would be acting as a "barrier or guard" safeguarding the public from falling limbs.

In addition there is no indication that the bucket truck, which had been out of commission for some 5 months, would have been a better option. There is no requirement for the use of a bucket truck, and the bucket truck could not have been used to complete the job in any event – a ladder would have had to be used in either event.

Finally, the fact that the City of Clearlake did not follow the ANSI standards is irrelevant. Clearlake, as employer, is not required to follow "best practices" or "industry standards," at least not as far as a serious and willful violation is concerned. The applicant was not required to have fall protection when using a freestanding ladder in accordance with manfacturer's recommendations.

The only possible violation that might have made a difference is the hypothetical situation where Mr. Lambert, as groundsman, was required to undergo some sort of "groundsman training." But the fact of the matter is that there is no such requirement in any applicable safety rule. Perhaps "best practices" require groundsman training, as was suggested by applicant's expert witness, but again, the City of Clearlake is not obligated to follow best practices.

IV
RECOMMENDATION

The court recommends that applicant's Petition for Reconsideration be denied.

DATE: 09/02/2025

JASON E. SCHAUMBERG
Workers' Compensation Judge