BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1498595**
Western Oilfields Supply Company **5101 Office Park Drive, Suite 100** **Bakersfield, CA 93309** **Employer**	**DECISION AFTER RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code, issues the following decision after reconsideration.

JURISDICTION

Western Oilfields Supply Company, doing business as Rain for Rent and also doing business as Lake Company (Employer), provides clients with irrigation solutions.

On October 21, 2020, the Division of Occupational Safety and Health (the Division), through Assistant Safety Engineer Napoli Sams (Sams), commenced an inspection of a work site located at 1515 North Shirk Road in Visalia, California, after report of an injury at the site on September 25, 2020.

On March 11, 2021, the Division cited Employer for two violations: Citation 1, Item 1, asserted a General violation of section 3203, subdivision (a) [failure to identify and evaluate the hazards posed by a hydraulic press machine]. Citation 2, Item 1, asserted a Serious, Accident-Related violation of section 4207, subdivision (a)(1)[1] [failure to adequately guard the point of operation on a hydraulic clamp]. Employer filed a timely appeal of the citations, contesting the existence of the violations for both citations. For Citation 2, Employer appealed the classification of the violation and the reasonableness of the penalty. Employer asserted a series of affirmative defenses for both citations.

On January 5, 2023, the Division filed a motion to amend Citation 2 to assert in the alternative a violation of section 4002, subdivision (a) [failure to adequately guard a pinch point on the hydraulic clamp]. Employer opposed the amendment. On January 26, 2023, Kerry Lewis, Presiding Administrative Law Judge (ALJ), granted the amendment, but continued the hearing several months to allow Employer additional time to prepare its defense based on this alternate theory of liability.

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

This matter was heard by ALJ Lewis with the parties and witnesses appearing remotely via the Zoom video platform on May 25 and 26, 2023, and September 28, 2023. David Donnell, Attorney, of Donnell, Melgoza & Scates LLP, represented Employer. Tanya Michelle Henson, Staff Counsel, represented the Division. The matter was submitted on April 30, 2024.

On May 10, 2024, the ALJ issued a Decision vacating Citation 1, but affirming Citation 2. For Citation 2, the ALJ's Decision found a violation of section 4207, subdivision (a)(1), which asserted that Employer failed to adequately guard the point of operation. However, the ALJ found that the Division's alternate theory of liability—section 4002, subdivision (a)—was not applicable.

Employer filed a timely petition for reconsideration challenging the ALJ's affirmance of Citation 2. Employer's petition argues that the ALJ's decision erred by finding the following: that the clamp was a hydraulic press, that the clamp was a point of operation, that the employee fed pipe into the point of operation, by concluding that an employee suffered injury when the hydraulic clamp closed on his hand, and by affirming the Accident-Related classification. Employer also challenges the ALJ's Decision to allow an amendment of the citation to plead an alternate theory of liability.[2]

ISSUES

1. Does either section 4207 or section 4002 apply to the machine at issue?

    a. Is the machine covered by the point of operation safety orders?

    b. Is the hydraulic clamp a "point of operation"?

2. Did the ALJ properly affirm the violation set forth in Citation 2, which asserted that Employer failed to adequately guard the point of operation?

3. Did the ALJ err in allowing the Division to amend Citation 2 to plead the violation of another safety order in the alternative?

4. If the clamp is not a point of operation or not subject to Article 55, did Employer violate section 4002 as alleged in the alternative?

5. If the ALJ properly affirmed the violation set forth in Citation 2, did the ALJ err in affirming the Accident-Related classification?

FINDINGS OF FACT

1. On September 25, 2020, Moises Terriquez (Terriquez) suffered an injury to his right hand that required inpatient hospitalization.

[2] The petition does not challenge the Serious classification or penalty calculation for Citation 2. Anything not raised in the petition is waived. (Lab. Code, § 6618.)

2. At the time of his accident, Terriquez was feeding pipes into a machine that had two relevant components. The first component was a clamp that pressed around the pipe to hold it in place as the second, a hydraulic press, pressed a fitting, or "sleeve," onto the end of the pipe.

3. After feeding the pipe into the machine through the clamp, Terriquez left his hand on the pipe as the machine started, which resulted in the clamp closing on his hand and causing injury.

4. At the time of the accident, the guard surrounding the clamp had an opening of approximately four or five inches and the opening was less than six inches from the point where the pipe was fed into the clamp.

5. After the accident, Employer added an extended guard to the part of the machine where the pipes were fed into the clamp. The extended metal guard was not present at the time of the accident.

DECISION AFTER RECONSIDERATION

1. Does either section 4207 or section 4002 apply to the machine at issue?

Citation 2 originally asserted a violation of section 4207, subdivision (a)(1), which sets forth guarding requirements for points of operation. That section provides:

> (a) Every point of operation guard shall meet the following design, construction, application, and adjustment requirements:
> (1) It shall prevent entry of hands or fingers into the point of operation by reaching through, over, under or around the guard;

The citation was amended to assert, in the alternative, a violation of section 4002, subdivision (a), which requires guarding at other parts of machines that have hazardous motions or pinch points. Section 4002 provides,

> (a) All machines, parts of machines, or component parts of machines which create hazardous revolving, reciprocating, running, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing or similar action, including pinch points and shear points, not guarded by the frame of the machine(s) or by location, shall be guarded.

The alleged violation description (AVD) was not amended. In Citation 2, the Division's AVD states:

> Prior to and during the course of the investigation, the hydraulic pipe fitting press used at employer's facility was not guarded adequately over the clamps. As a result, on or about September 25, 2020, an employee using the hydraulic press suffered a serious finger injury.

Importantly, only one of the two asserted safety orders can apply. A note within section 4002 states, "Section 4002 does not apply to points of operation. For point-of-operation requirements, refer to Group 8, commencing with Section 4184." Therefore, we first consider whether section 4207 applies.

There are several important criteria that must be considered when determining whether section 4207 applies to the machine, and parts of the machine, at issue. It is first necessary to refer to the scope and application provisions within the point of operation safety orders to determine whether the machine at issue is covered by those orders, and specifically covered by section 4207. Next, assuming the machine is covered by the point of operation safety orders, we must determine whether the clamp was a point of operation or a pinch point. We address each issue in order.

a. Is the machine covered by the point of operation safety orders?

Employer's petition for reconsideration initially asserts that the ALJ erred in finding that the hydraulic clamps met the definition of a hydraulic press. Although Employer asserts that this argument goes to whether the clamps constitute a point of operation, the argument may also be understood as contending that the clamps fall outside the scope or coverage of the point of operation safety orders, since those orders are limited to certain types of machinery, such as power operated presses. Therefore, we address the coverage issue first.

The "Point of Operation" safety orders are contained in Title 8, Chapter 4, Subchapter 7, Group 8, Articles 54-74. Section 4184, contained in Article 54, sets forth the generalized scope of the Group 8 safety orders. It states:

> (a) Machines as specifically covered hereafter in Group 8, having a grinding, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing or similar action, in which an employee comes within the danger zone shall be guarded at the point of operation in one or a combination of the ways specified in the following orders, or by other means or methods which will provide equivalent protection for the employee. (Underline added.)
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> (b) All machines or parts of machines, used in any industry or type of work not specifically covered in Group 8, which present similar hazards as the machines covered under these point of operation orders, shall be guarded at their point of operation as required by the regulations contained in Group 8.

Based on the aforementioned provision, we first determine whether the machine at issue is "specifically covered" by the Group 8 safety orders. (*City of San Luis Obispo*, Cal/OSHA App. 89-065, Decision After Reconsideration (May 2, 1990).) Since the citation asserts a violation of section 4207, we first look to the Scope provision for Article 55, where section 4207 is located. (*Ibid*.)

Section 4189 contains the Scope provision for Article 55. It limits the application of Article 55 "only to those mechanically or hydraulically powered machines that shear, punch, form, or assemble metal or other material by means of tools or dies attached to slides, commonly referred to as power operated presses." (§ 4189 [the Scope provision].) "Power operated presses" are defined to "include all mechanically powered machines that shear, punch, form, or assemble metal or other materials by means of tools or dies attached to or actuated by slides, commonly referred to as mechanical power presses (punch presses), press brakes, hydraulic power presses (punch presses), and rivet setting machines." (§ 4188 [Definitions].) A hydraulic power press, in turn, is defined as "a machine which is hydraulically powered that shears, punches, forms, draws, or assembles metal or other material by means of tools attached to or actuated by slides." (§ 4188 [Definitions].) Therefore, the first question that must be answered is whether the machine constitutes a "power operated press." (§ 4189.)

Here, the ALJ held that the machine had two hydraulic presses: "the first pressed a large clamp around the pipe to hold it in place as the second pressed a fitting, or 'sleeve,' onto the end of the pipe." (Decision, p. 3 [Finding 5].) Employer, in turn, argues that the ALJ partially erred when she made these findings. The clamp, the petition argues, "was not a 'hydraulic press' that performed an operation on a pipe, and the evidence established that employees did not feed the pipe into a point of operation." (Petition, pp. 5-6.) Employer argues, "The clamp was not a hydraulic press and did not perform any operation on the pipe which may have been governed by the point of operation safety orders." (Petition, p. 7.)

Employer may be partially correct as to one point. It is difficult to conclude on this record that the clamp, considered alone, constituted a "hydraulic press," or other "power operated press," as defined in the safety orders. The clamp appears to be a component of a larger machine and does not by itself necessarily meet the definition of a power operated press. (§ 4188 [Definitions].) It merely holds the pipe in place and does not, by itself, shear punch, form, draw, or assemble metal or other material. However, even if the clamp itself is not a press, the argument is not dispositive as to whether the machine falls with the scope of the point of operation safety orders.

Employer's argument that the clamp is not a hydraulic press is only material if the clamp is considered in isolation, not in its capacity as a component of a larger machine. However, when determining whether something constitutes a "power operated press," within the scope of Article 55, the plain language of section 4189 (the Scope provision) says that we should consider the "machine" as a whole, not just its individual components. The provision states that Article 55 applies to "those mechanically or hydraulically powered machines that shear, punch, form, or assemble metal or other material by means of tools or dies attached to slides, commonly referred to as power operated presses." (§ 4189 [underline added].) Even if the clamp itself does not constitute a power operated press when considered alone, it is a component of a larger machine that is and/or contains a power operated or hydraulic press. Employer's petition does not dispute that the machine had a hydraulic press that pressed a metal sleeve onto the end of the pipe. (E.g., Petition, pp. 2-3, 8-9.) As such, the machine itself, of which the clamp is a component, is a power operated press and falls within the scope of Article 55.

Therefore, having found that the machine at issue is governed by the safety orders in Article 55, we next consider whether the clamp constitutes a point of operation of the machine, requiring guarding under section 4207.

b. Is the hydraulic clamp a "point of operation"?

The fact that the clamp may not be a hydraulic press when considered alone does not mean that it cannot be a point of operation for a machine that is a press. The definition of a point of operation is not coterminous with the definition of a power operated press or hydraulic press; the terms are not synonymous. (§ 4188.) In other words, a component of a power operated press may be a point of operation for that press even if the component, when considered in isolation, is not itself a power operated press.

Section 4207, subdivision (a), specifies guarding requirements for points of operation for those machines falling within the point of operation safety orders. A point of operation is defined in section 4188, subdivision (a) as: "That part of a machine which performs an operation on the stock or material and/or that point or location where stock or material is fed to the machine. A machine may have more than one point of operation." Parsing the definition of a "point of operation", the hydraulic clamp may be deemed a point of operation if the Division demonstrated either or both of the following: (1) that the hydraulic clamp performed an operation on the stock; and/or (2) the hydraulic clamp is a point or location where stock or material was fed into the machine. The ALJ found that the hydraulic clamp constituted a point of operation under both of the aforementioned criteria.

First, the ALJ held, "[t]he clamp that held the pipe in place was directly performing an operation, securing the pipe against displacement, on the 'stock or material' at issue." (Decision, p. 11.) This conclusion appears well-supported. The term is operation is not defined so we apply the plain or ordinary meaning, which can be derived from the dictionary. (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1122.) An operation is broadly defined as, relevant here, a "performance of a practical work," "an exertion of power or influence," "the quality or state of being functional or operative," and "a method or manner of functioning."[3] It is reasonable to conclude that the hydraulic clamp performs an operation on the pipe when it holds it in place while the press presses the fitting onto the end of the pipe.

Employer cites to the Board's Decision in *Douglas Aircraft Company*, Cal/OSHA App. 78-1568, Decision After Reconsideration (June 29, 1984) for the assertion that the term point of operation should be narrowly interpreted to only those components that perform an operation on the stock. There, the Board held that section 4188, subdivision (a), "limits a point of operation to only those parts which directly perform an operation on the material." (*Douglas Aircraft Company*, *supra*, Cal/OSHA App. 78-1568.) However, that decision does not dictate a different result. The clamp did perform an operation on the pipes; it held them in place while the hydraulic press or ram pressed a fitting onto the end. The clamp, although perhaps not itself a press, performs an operation on the stock by holding the stock in place. The operation of the clamps is essential to the proper

[3] Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/operation> [accessed August 2, 2024].

function of the press. If the clamp did not hold the pipe in place, the press could not place a fitting, or "sleeve," onto the end of the pipe.

The Board has previously held that those parts of a machine that hold the stock in place so that the moving parts of the machine can perform an action on the stock may also be considered a point of operation, or at least part of it. (*Jensen Precast*, Cal/OSHA App. 05-2377, Decision After Reconsideration (Mar. 26, 2012).) In *Jensen Precast*, an employee's hand was caught between the moving and stationary parts of a machine. The Board held,

> [W]e see that Employer's employee's hand was in a zone of danger and injured when caught in the point of operation. His hand was "caught between moving and stationary objects or parts of the machine [.]" The part of the machine involved in the accident also falls within the definition of a point of operation, because the stationary plate holds the rebar to be bent so that the force generated by the moving plate can be exerted against the rebar and bend it, thus performing an operation on the material being worked on (the rebar). If there was no place or part of the machine to hold the rebar, the moving part would just push the rebar without bending it.
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> (*Jensen Precast*, *supra*, Cal/OSHA App. 05-2377.)[4]

We also observe that safety orders are to be liberally interpreted to achieve a safe working environment. (*Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303.)

Second, the ALJ properly found that the clamp was in an area where stock was fed into the machine. Feeding is defined to mean, "The process of placing or removing material within or from the point of operation." (§ 4188.) The ALJ held, "each pipe was placed into the machine through the clamp so that the end would be in the correct position in relation to the hydraulic press at the far end of the machine." (Decision, p. 11.) The ALJ concluded, "[t]he opening through which the pipe was fed into the machine was, therefore, a point of operation under the second provision of the definition of 'point of operation' found in section 4188, subdivision (a)." (Decision, p. 11.) We agree with the ALJ's conclusion.

Having found that the machine at issue falls within the scope of the relevant safety orders and that the clamp constitutes a point of operation, the next issue is whether the point of operation was properly guarded.

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[4] We also find the decision in *Star-Kist Foods*, *Inc*., Cal/OSHA App. 83-781, Decision After Reconsideration (Oct. 16, 1987) to be distinguishable. In that case lifters and spindles were used in a machine to hold cans. (*Star-Kist Foods*, *Inc*., *supra*, Cal/OSHA App. 83-781.) The Board indicated it was a close question of whether lifters and spindles inside the door were a point of operation. The Board found that the Division failed to demonstrate that the lifters and spindles aided in performing an operation on the stock, noting that a conveyor is not per se a point of operation. The Board noted that the evidence "left uncertain whether the lifters and spindles directly inside the door were holding cans before, during or after the seaming operation." (*Star-Kist Foods*, *Inc*., *supra*, Cal/OSHA App. 83-781.) However, unlike *Star-Kist* foods, it is clear the clamp holds the pipe during the pressing operation and thus aids in the operation of the press. As noted above, the clamps are a necessary component for the press to accomplish its task.

2. Did the ALJ properly affirm the violation set forth in Citation 2, which asserted that Employer failed to adequately guard the point of operation?

Employer was cited for a violation of Section 4207, subdivision (a)(1), which requires that the point of operation be guarded to "prevent entry of hands or fingers into the point of operation by reaching through, over, under or around the guard." As further instruction for employers, section 4207, subdivision (a)(2), provides prescriptive standards for the size of any guard opening. It directs that guards "shall conform to the maximum permissible openings of Figure G-8 and Table G-3." Figure G-8 and Table G-3, located in section 4186, provide the measurements for the width of guards based on the distance from the point of operation. As the ALJ noted, "The closer to the point of operation a guard is, the smaller the permissible opening." (Decision, p. 13.)

After reviewing Exhibits 28, 30, and 31, and considering relevant testimony, the ALJ estimated that the edge of the original opening of the clamp was less than six inches from the edge of the edge original guard. (Decision, p. 13.) The ALJ's Decision states,

> There was an expanded metal guard around the clamp on the machine. After the accident, Employer added an extended guard to the part of the machine where the pipes were fed into the clamp. Sams took photographs of the extended guard and made his measurements based on the machine in its condition at the time of his inspection of the machine involved in the accident, which was after the extended guard had been added. (See Exh. 28, 30, and 31.) The measuring tape reflects an opening of four to five inches. Based on the photographs, the opening of the extended guard did not significantly change the width of the original opening, it just extended the opening farther from the point of operation. Looking at the photographs, including the pictures with measuring tape giving a base of comparison, it is a reasonable estimate that the edge of the clamp was less than six inches from the edge of the original guard. Based on Figure G-8 and Table G-3, if the point of operation is only six inches from the guard, the opening is only permitted to be three-quarters of an inch in width.
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> The opening of the guard at the time of the accident was insufficient to "prevent entry of hands or fingers into the point of operation by reaching through, over, under or around the guard." (§ 4207, subd. (a)(1).) It was several inches wide, and Terriquez was able to get his hand through it to contact the point of operation at the clamp.
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> (Decision, p. 13.)

Based on our independent review of the record, we agree with the ALJ's conclusions; the pictures, measurements, and testimony support the ALJ's distance and measurement estimates.

Based on Figure G-8 and Table G-3, if the point of operation is six inches or less from the guard, the opening is only permitted to be three-quarters of an inch wide. (§ 4207). However, as the ALJ concluded, the pictures and testimony demonstrate that the opening "was several inches wide. Terriquez was able to get his hand through it to contact the point of operation at the clamp." (Decision, p. 13.) Therefore, the point of operation was inadequately guarded since it failed to comply with prescriptive requirements of the safety order.[5]

Moreover, even setting aside those prescriptive requirements, a violation exists because it is clear (as discussed further below) that "the opening of the guard at the time of the accident was insufficient to 'prevent entry of hands or fingers into the point of operation by reaching through, over, under or around the guard.'" (Decision, p. 13, citing § 4207, subd. (a)(1).) As the ALJ noted, under this section,"[g]uards must be designed to stop an employee from contacting the point of operation either inadvertently or intentionally." (Decision, p. 13.)

As part of its burden, the Division must also prove employees were exposed to the violative condition. (*Benicia Foundry & Ironworks, Inc.,* Cal/OSHA App. 00-2976, Decision After Reconsideration (April 24, 2003); *Dynamic Construction Services, Inc.,* Cal/OSHA App. 14-1471, Decision After Reconsideration (Dec. 1, 2016).) In other words, as noted in the Group 8 safety orders, there must be some evidence that "an employee comes within the danger zone."[6] (§ 4184.) Exposure may be demonstrated in two different ways. (*Ibid*.) First, the Division may establish exposure by showing an employee was actually exposed to a hazard, i.e., exposed to the zone of danger created by the violative condition. (*Ibid*.) The Division may also establish exposure, without proof of actual exposure, by showing that "the area of the hazard was 'accessible' to employees" such that "it is 'reasonably predictable by operational necessity or otherwise (including inadvertence), that employees have been, are, or will be in the zone of danger.'" (*Ibid*.)

Employer's petition argues there is no evidence in the record identifying where Terriquez injured his hand on the press, much less that his hand was injured by the clamp. We disagree.

Although Terriquez did not testify, Steven Topete (Topete), his co-worker, was present when the accident occurred and saw the accident happen. Topete said that they would put fittings or sleeves on the end of the pipe and Terriquez would lift the pipe into the press location and then hold onto the end of the pipe. (TR [5.25.24], pp. 23-24, 36, 38-39, 70-71.) He said, "So he left his hand on the fitting so it wouldn't fall out. And as he pressed the button, I guess he forgot to remove his hand, and the press got him." (TR [5.25.24], pp. 23-24.) Sams, the Division Associate Safety Engineer, interviewed the injured worker who said his hand had been crushed at the opening of the clamp. (TR [5.25.24], pp. 74.) Sams testified that Terriquez told him that "when he was putting the sleeve onto the pipe and put the pipe into the machine, his right hand was crushed by the clamps[.]" (TR [5.25.24], pp. 74.) The aforementioned testimony demonstrates that Terriquez's

[5] Even if the ALJ's distance estimates were off by a few inches in either direction; the opening would still not comply with the prescriptive requirements in Figure G-8 and Table G-3.

[6] The "danger zone" is defined as "Any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock." (§ 4188.) As the ALJ noted, "The danger zone of this machine was the point where Terriquez fed the material through the clamp because that point is where "an employee may be caught between the material and a moving part of the machine." (Decision, p. 10, citing § 4188, subd. (a).)

hand was injured by the clamp. Although Sam's testimony regarding his interview of Terriquez constitutes hearsay, it may be considered to supplement and explain the testimony of Topete, who observed the injury as it occurred. (§ 376.2—["Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."].) Therefore, actual exposure to the zone of danger has been demonstrated.

For the reasons stated herein, we affirm the ALJ's conclusion that Employer violated section 4207. Further, having found that the clamp was a point of operation, we conclude it is not a pinch point, nor subject to the requirements of section 4002, subdivision (a).

3. Did the ALJ err in allowing the Division to amend Citation 2 to plead a violation of another safety order in the alternative?

The ALJ granted a pre-hearing motion permitting the Division to amend the citation to assert a violation of section 4002, subdivision (a), in the alternative. The ALJ also granted Employer additional time to prepare. Employer's petition argues that the ALJ erred by allowing the Division to assert a violation of another safety order in the alternative. Employer claims that the "particularity" language in Labor Code section 6317 precludes pleading in the alternative in this instance. Further, to the extent that section 371.2 might allow such a pre-hearing amendment, Employer contends that the regulation conflicts with the Labor Code, meaning the regulation is invalid. (Petition, pp. 9-10.)

As a preliminary matter, Employer's argument is moot. A case is moot when the decision of the reviewing court can have no practical impact or provide the parties effectual relief. (*Committee for Sound Water & Land Development v. City of Seaside* (2022) 79 Cal. App. 5th 389, 405.) Even if the Board were to find that the amendment was improper, it would have no practical effect. The Board has affirmed the citation as originally issued, not based on the amendment.

Next, turning to the merits, Employer's arguments are neither new nor novel. Nearly identical arguments, were already rejected by the appellate court in a published decision in *L&S Framing, Inc. v. Occupational Safety & Health Appeals Bd*. (2023) 93 Cal. App. 5th 995, 1011. As the ALJ's Decision noted,

> This issue has been briefed, argued, ruled upon, and decided in a published opinion by the Third Appellate District Court of Appeal. (*L&S Framing, Inc. v. Occupational Safety & Health Appeals Bd*., *supra*, 93 Cal.App.5th 995.) Employer has made no new arguments that necessitate a reconsideration of the amendment. Therefore, the amendment of Citation 2 was appropriate and permissible.
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> (Decision, pp. 8-9.)

Ultimately, we agree with, and are bound, by the Court of Appeal's opinion, which permitted pleading in the alternative.

We also agree with the analysis in the ALJ's Order, wherein she permitted the amendment. Section 371.2, subdivision (a)(1) states, "A request for an amendment that does not cause prejudice to any party may be made by a party or the Appeals Board at any time." Employer has not demonstrated any prejudice. The ALJ provided Employer additional time to prepare to address the amendment. Further, Employer's petition does not assert that the continuance was inadequate to address and/or ameliorate any putative harm or prejudice that might have been caused by the amendment.

4. If the clamp is neither a point of operation nor subject to Article 55, did Employer violate section 4002, as the Division alleges in the alternative?

Next, assuming, *arguendo*, that the clamp does not fall within the scope of Article 55 or does not constitute a point of operation, we would still affirm the citation. The Division cited Employer, in the alternative, with a violation of section 4002, subdivision (a). That section states:

> (a) All machines, parts of machines, or component parts of machines which create hazardous revolving, reciprocating, running, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing or similar action, including pinch points and shear points, not guarded by the frame of the machine(s) or by location, shall be guarded.

Section 3941, defines relevant terms as follows:

> Accidental Contact: Inadvertent physical contact with power transmission equipment, prime movers, machines or machine parts which could result from slipping, falling, sliding, tripping or any other unplanned action or movement.
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> Guarded. Shielded, fenced, enclosed or otherwise protected according to these orders, by means of suitable enclosure guards, covers or casing guards, trough or "U" guards, shield guards, standard railings or by the nature of the location where permitted in these orders, so as to remove the hazard of accidental contact.
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> Guarded by Location: The moving parts are so located by their remoteness from floor, platform, walkway or other working level, or by their location with reference to frame, foundation or structure as to remove the likelihood of accidental contact.

Section 4188, subdivision (b), defines "pinch point" as:

> Any point other than the point of operation at which it is possible for a part of the body to be caught between the moving parts of a press or auxiliary equipment, or between moving and stationary parts of a press or auxiliary equipment or between the material and moving part or parts of the press or auxiliary equipment.

The ALJ concluded that if the clamp was not a point of operation, "then it would be found to be a pinch point, because it is a part of the machine that creates a pressing, squeezing, or similar action hazard that was not guarded by the frame or by location." (Decision, p. 12.) Again, this conclusion is well supported.

It is clear that this clamp was not guarded by the frame or location. The Appeals Board has interpreted guarding by location to mean that the "'likelihood of accidental contact with moving parts is removed by their remoteness,' and decreasing the likeliness of accidental contact is not enough." (*Arriaga USA, Inc. dba Stoneland USA*, Cal/OSHA App. 1279492, Decision After Reconsideration (Dec. 7, 2021), quoting *EZ-Mix, Inc*., Cal/OSHA App. 08-1898, Decision After Reconsideration (Nov. 26, 2013).) The clamp was not so remote from the employee so as to remove the hazard of accidental contact.

Further, the clamp was not sufficiently guarded to remove the hazard of accidental contact. As a preliminary matter, Terriquez's injury was accidental. We infer that Terriquez did not intentionally place his hand inside a closing clamp; he did so inadvertently. Topete specifically noted that the contact was accidental, stating Terriquez "forgot to remove his hand[.]." (TR [5.25.24], pp. 23-24.) Next, the circumstances surrounding the accident make it obvious that the guard was insufficient to prevent accidental contact. To put it simply, we know that the guard was not sufficient to prevent accidental contact because accidental contact occurred. Therefore, if section 4207 were found not to apply, we would find a violation of this alternate safety order.

5. If the ALJ properly affirmed the violation set forth in Citation 2, did the ALJ err in affirming the Accident-Related classification?

In order to sustain an Accident-Related classification, the Division must demonstrate a "causal nexus between the violation and the serious injury." (*Sherwood Mechanical, Inc.,* Cal/OSHA App. 08-4692, Decision After Reconsideration (June 28, 2012) [other citations omitted]).) In other words, where the evidence indicates that a serious violation caused a serious injury the violation is properly characterized as Accident-Related. (*HHS Construction*, Cal/OSHA App. 12-0492, Decision After Reconsideration (Feb 26, 2015).) The Division must show the violation "more likely than not was a cause of the injury," but need not establish the violation as the sole cause of the injury. (*MCM Construction,* Cal/OSHA App. 13-3851, Decision After Reconsideration (Feb 22, 2016).).)

Here, the ALJ's Decision affirmed the Accident-Related classification. The Decision states,

> The violation was that Employer failed to adequately guard a point of operation on the hydraulic press machine. Because the guard was not sufficient to prevent employee contact with the point of operation, Terriquez' hand got caught between a pipe and the clamp. As such, Terriquez' injury was caused by the violation. The parties stipulated that the injury to Terriquez' hand was a "serious injury" as defined by section 330, subdivision (h).
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> (Decision, pp. 16-17.)

We agree with the ALJ's analysis and affirm the Accident-Related classification.

DECISION

For the reasons stated herein, the Board affirms the ALJ's Decision which affirmed Citation 2, and its Serious, Accident-Related classification.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin P. Kropke, Board Member

FILED ON: 10/18/2024

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of: **Western Oilfields Supply Company** 5101 Office Park Drive, Suite 190 Bakersfield, CA 93309 **Employer**	Inspection No. **1498595** ***ERRATA* TO DECISION AFTER RECONSIDERATION**

This errata cures non-substantive clerical errors in the Decision After Reconsideration (DAR). The remainder of the DAR is unaffected.

- At page 5, within the third paragraph, in the fourth sentence, there should be a comma between the words "shear" and "punch" and in the last sentence, the word "with" should be "within."
- At page 6, within the third sentence of the fourth paragraph, the word "is" is used more than once. The first use of the word "is" should be omitted and the word "operation" placed within quotation marks. The sentence should read, "The term "operation" is not defined…"
- At page 8, within the first sentence of the second paragraph (beginning with "After reviewing Exhibits 28, 30, and 31…"), the sentence contains the word "edge" more than once. The last use of the word "edge" in that sentence should be omitted.
- At page 10, in the fourth full paragraph, in the second sentence, the comma after the word arguments should be removed (i.e., Nearly identical arguments were already rejected …) and within the very last sentence on the page, the comma after the word "bound" should be relocated to after the word "by" (i.e., "Ultimately, we agree with, and are bound by,...").
- In footnote 4, in the last sentence, the word "foods" should be capitalized and italicized, (i.e., "*Foods*").

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin P. Kropke, Board Member

FILED ON: 11/12/2024