

REVIEW DECISION

Re: Review Reference #: R0332268
Board Decision under Review: November 20, 2024

Date: May 8, 2025

Review Officer: Jefferson Rappel

Introduction

On November 18, 2024, an officer of the Workers' Compensation Board ("Board"), which operates as WorkSafeBC, conducted an inspection of a worksite where a four-storey building was under construction. The employer, a wall and ceiling industry supplier, was delivering drywall using a truck mounted drywall crane. The employer was lifting drywall sheets to workers on a second-floor balcony, observed to be about 20 feet high. The Board officer noted that a worker for the employer was wearing a full body harness, but the worker was not attached to a lifeline.

In the November 20, 2024 Inspection Report ("IR") that is the subject of this review, the Board issued an order to the employer for a violation of section 11.2(1)(a) of the *Occupational Health and Safety Regulation* ("Regulation").

The employer requests a review of this order and argues that it should be cancelled. The employer submits that the Board officer determined that the employer had exercised due diligence, noting that the Board had issued an order to the worker. The employer states that it does not feel that this order should be part of its compliance history.

The employer's Joint Health and Safety Committee worker representative was given notice of this review and is not participating.

In the course of this review, the Review Division requested additional comments from the Board officer who wrote the order to the employer. These comments were disclosed to the employer who did not provide additional submissions.

Section 20(3) of the *Workers Compensation Act* ("Act") gives me the authority to conduct this review. Section 339(2) of the *Act* requires me to make a decision on the merits and justice of the case, applying the policies of the Board's board of directors applicable in the case. The policies are found in the *Prevention Manual*. The standard of proof that applies to this review is the balance of probabilities.

Issue

This is a review of the Board's decision to issue an order to the employer for a violation of section 11.2(1)(a) of the *Regulation*.

Reasons and Decision

Section 84 of the *Act* gives the Board the authority to make orders for carrying out matters and things regulated, controlled or required by the *Act*. Section 84(2)(b) gives the Board the authority to make orders requiring persons to take measures to ensure compliance with the *Act* and the *Regulation*. Policy item P2-84-1, *OHS Compliance Orders*, states that when identifying violations at a workplace, the Board will ordinarily write orders. In this case, the Board issued an order to the employer for a violation of section 11.2(1)(a) of the *Regulation*, which concerns fall protection.

Section 11.2(1)(a) of the *Regulation* states that an employer must ensure that a fall protection system is used when work is being done at a place from which a fall of three metres (10 feet) or more may occur.

At the November 18, 2024 inspection, the Board officer observed a worker working from the edge of the second-floor balcony, which was estimated to be approximately 20 feet high. The worker was wearing a full body harness, but it was not attached to a lifeline. The Board officer included photographs taken at the inspection that I am satisfied show that the second-floor balcony was well above 10 feet.

I note as well that the employer has not disputed that the worker was working above 10 feet without the use of a fall protection system. Rather, the employer submits that the Board officer determined that the employer had exercised due diligence, and as a result, the order should not be part of its compliance history.

In his comments on review, the Board officer states that the order under review is an absolute liability provision, and therefore, the issue of due diligence is not relevant to whether the violation occurred. The Board officer noted that while he determined that the employer exercised sufficient due diligence so as not to warrant an administrative penalty, the fall protection violation occurred at a time when the employer was responsible for providing adequate supervision to correct unsafe conditions, which is why the order was issued.

I note that the Review Division has considered the issue of whether due diligence applies to a violation of section 11.2(1)(a) of the *Regulation*. In a July 18, 2016 Review Division decision (R0204300), a Review Officer noted that while due diligence is a factor considered when imposing a penalty, the defence of due diligence applies did not apply in determining whether or not the employer

violated section 11.2(1)(a) of the *Regulation*. The Review Officer noted that some sections of the *Act* and *Regulation* impose broad obligations that may require different steps or activities depending on the context. Where the legislation imposes obligations that are broad and general, and the obligations may vary on context, it is appropriate to consider due diligence, as it would otherwise place an undue burden on employers to fulfill these obligations

However, the Review Officer also observed that the fall protection obligation in section 11.2(1)(a) is narrowly defined, and the precision of the language in section 11.2(1)(a) makes clear that an employer must ensure fall protection is used at the prescribed height. As a result, the Review Officer concluded that the rationale for applying a defence of due diligence did not apply and the only question is whether the employer ensured its workers were using a fall protection system while doing work at a place from which a fall of three metres (10 feet) or more may occur. While I am not bound by precedent, the Review Officer's analysis is consistent with my view that the defence of due diligence does not apply to a violation of section 11.2(1)(a) of the *Regulation*.

In summary, given the Board officer's evidence that a worker for the employer was working above 10 feet without the use of a fall protection system, I am satisfied that the employer was in violation of section 11.2(1)(a) of the *Regulation*.

Accordingly, I deny the employer's request on this review.

Conclusion

As a result, I confirm the Board's order dated November 20, 2024.

Jefferson Rappell
Review Officer
Review Division