

REVIEW DECISION

Re: **Review Reference #: R0321070**
 Board Decision under Review: March 8, 2024

Date: **January 21, 2025**

Review Officer: **Alice Edwards**

Introduction and Background

The employer is a construction contractor. On February 8, 2024, two officers of the Workers' Compensation Board ("Board"), operating as WorkSafeBC, attended a construction worksite to conduct a health and safety inspection. The employer was the prime contractor at the worksite. Following this inspection, the Board issued orders to the employer on February 12, 2024 for violations of sections 13.3(2)(a), 4.39(1) 4.55(a), 20.14, 3.17(2), 20.2(1)(a), and 3.5 of the *Occupational Health and Safety Regulation* ("*Regulation*") and section 24(1)(b) of the *Workers Compensation Act* ("*Act*").

The Board instructed the employer to take steps without delay to comply with the orders, including ensuring that the scaffolds were brought into compliance with the applicable standard, providing the Board with evidence that effective guardrails were in place, ensuring that the front roof area was constructed such that it could withstand any stresses likely to be imposed on it, and providing the Board with evidence of regular and effective health and safety inspections at the worksite.

The Board issued follow up inspection reports to the employer on February 23 and March 4, 2024, noting that the orders under sections 13.2(2)(a), 4.55(a), 20.14, 3.17(2), and 3.5 of the *Regulation* and the order under section 24(1)(b) of the *Act* remained outstanding.

On March 8, 2024, the Board imposed citations of \$629.87 upon the employer for each of the violations of sections 13.2(2)(a), 4.55(a), 20.14, and 3.5 of the *Regulation*, for a total amount of \$2,519.48.

The employer requests a review of the citations, and submits that they should be cancelled. In particular, the employer submits that it was not the appropriate employer to receive the citations and that it complied with the orders.

The employer requested an oral hearing. The Review Division granted this request. However, the employer did not provide the required information regarding the hearing participants and scheduling availability. As such, an oral hearing did not proceed. I find that an oral hearing is not required as I am satisfied that I am able to complete this review based on the evidence before me.

Section 20(3) of the *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

Were the citations of \$629.87 each properly imposed upon the employer for the violations of sections 13.2(2)(a), 4.55(a), 20.14, and 3.5 of the *Regulation*?

Reasons and Decision

The Violations

The Board imposed the citations under review based on the employer's violations of section 13.2(2)(a), 4.55(a), 20.14, and 3.5 of the *Regulation*. The employer did not request a review of the initiating February 12, 2024 violation orders. Therefore, I do not have jurisdiction to review the violation orders, and they stand. However, I have examined the facts to determine whether there is a valid underlying factual basis for imposing the March 8, 2024 citations.

The Board officer, in his report for the citations and in his February 12, 2024 inspection report, explained the basis for the violations. The Board officer observed that workers for a subcontractor were at the worksite. He saw that various wood frame scaffolds had been constructed and that several areas that required guarding were unguarded. The orders that are the basis for the citations were related to problems at the worksite with the scaffolding, guardrails, temporary supports, and regular inspections. The Board officer photographed the conditions at the worksite and those photographs are on file. I observe that the photographs show conditions consistent with the Board officer's descriptions of the worksite.

The employer submitted that the orders should have been issued to the subcontractors rather than to the employer. I find that the employer, as the prime contractor at the worksite, had an obligation to ensure that the requirements of the *Act* and *Regulation* were met and that unsafe conditions were not allowed to develop. I have considered the evidence to determine whether the employer met its obligations in this case, to the extent that this question relates to whether there is a valid underlying factual basis for imposing the March 8, 2024 citations.

Part 13 of the *Regulation* addresses ladders, scaffolds and temporary work platforms. Section 13.2(2)(a) requires that, in designing and installing a work platform, appropriate safety factors and minimum rated loads must be used in the

materials and method of installation, in accordance with *WCB Standard WPL 1, Design, Construction and Use of Wood Frame Scaffolds, 2004* ("the *Standard*").

In terms of the scaffolding, the Board officer noted that there were numerous deficiencies. The scaffolds were not constructed with all required components and were not constructed in accordance with the *Standard*. The deficiencies included: missing guardrails, inadequately braced or unbraced supports, missing components including sill plates and bearer blocks, inadequate planking, and work platforms that were too narrow and extended past their supports. Uprights for the scaffolds were not plumb and level, and were spliced without a compliant joint.

The employer has not provided any evidence to suggest that its scaffolds were compliant.

I am therefore satisfied that the underlying facts in respect of the February 12, 2024 violation of section 13.2(2)(a) of the *Regulation* support consideration of a citation.

Section 4.55(a) of the *Regulation* requires that an area accessible to workers must have guards or guardrails installed if a raised floor, open-sided floor, mezzanine, gallery, balcony, work platform, ramp, walkway, or runway is 122 cm (4 ft) or more above the adjacent floor or grade level.

In terms of the guardrails, the Board officer observed that an upper level stairway landing, an upper level walkway area, and four separate balcony areas were unguarded or inadequately guarded with guardrails at an inadequate height or only loosely attached. Workers were at risk of falling to grade.

The employer has not provided any evidence to suggest that its guardrails were compliant.

I am therefore satisfied that the underlying facts in respect of the February 12, 2024 violation of section 4.55(a) of the *Regulation* support consideration of a citation.

Section 20.14 of the *Regulation* addresses temporary support and requires that, during the erection or dismantling of a structure or equipment, the employer must ensure that all partially assembled structures or components are supported as necessary to safely withstand any loads likely to be imposed on them.

In terms of temporary supports, the Board officer noted that a front roof area of substantial size had been constructed above the main entrance to the structure. The roof area was partially supported by lumber cantilevered out from the structure. There was no vertical member present to bear the load of the roof. The Board officer did not observe any engineer's documentation or any building

plans posted at the worksite. He commented that it was apparent that the front roof area had not been supported as necessary to safely withstand any loads likely to be imposed on it, and that the area was therefore at risk of collapse.

The employer has not provided any evidence to suggest that the temporary support for the front roof area was compliant.

I am therefore satisfied that the underlying facts in respect of the February 12, 2024 violation of section 20.14 of the *Regulation* support consideration of a citation.

Section 3.5 of the *Regulation* is a general requirement that every employer must ensure that regular inspections are made of all workplaces, including buildings, structures, grounds, excavations, tools, equipment, machinery and work methods and practices, at intervals that will prevent the development of unsafe working conditions.

In terms of regular inspections, the Board officer commented that, based on the numerous unsafe conditions at the worksite, the employer had not conducted regular inspections.

The employer has not provided any evidence to suggest that it conducted regular inspections to prevent the development of unsafe working conditions.

I am therefore satisfied that the underlying facts in respect of the February 12, 2024 violation of section 3.5 of the *Regulation* support consideration of a citation.

The Citations

On March 8, 2024, the Board imposed citations of \$629.87 upon the employer for each of the violations of sections 13.2(2)(a), 4.55(a), 20.14, and 3.5 of the *Regulation*, for a total amount of \$2,519.48.

Item P2-94-1, *OHS Citations*, explains that citations are tools to address non-compliance with an order or failure to prepare or send a compliance report. It is an administrative penalty imposed on an employer under section 94 of the *Act* and under the *OHS Citations Regulation*.

Guideline G-P2-94-1, *OHS Citations*, provides further guidance regarding citations. It notes that employers are required to comply with the *Act* and *Regulation* at all times, and that Board officers will issue orders to address any violations of the *Act* or *Regulation*. These orders must be complied with promptly or within the time specified in the order. When there is a failure to comply, the Board will follow up with the employer. Citations are a tool the Board may use to address an employer's non-compliance with an order, and multiple citations may be issued if more than one violation is observed during a single inspection.

Item P2-94-1 further provides that a citation may be imposed for a non-compliance violation if all of the following requirements are met on a specific inspection cycle:

- The non-compliance violation is not in circumstances that are high risk,
- The employer committed the non-compliance violation after having received a citation warning,
- A penalty or penalty warning letter has not already been imposed for the same non-compliance violation or underlying violation, and
- A citation for the statutory maximum has not already been imposed.

In considering whether the above criteria have been met for the four citation orders under review, I note first that the Board officer determined that the non-compliance violations at issue were not in high-risk circumstances. While the absent and ineffective guardrails potentially created a high risk of injury to the workers, I accept the Board officer's assessment of the risk in these particular circumstances and find that the violations were not high risk. I also note that the Board officer issued citation warnings on February 23, 2024 and March 4, 2024 and the Board had not issued a penalty for the violations or imposed a citation prior to those currently under review.

I have determined that there is a factual basis for the citations issued to the employer under sections 13.2(2)(a), 4.55(a), 20.14, and 3.5 of the *Regulation*. The evidence does not suggest that the employer had taken measures to comply with those orders by March 8, 2024. At the time of the Board officer's March 4, 2024 inspection, he noted that multiple scaffolds remained in a noncompliant and unsafe condition, that an upper level walkway and four balcony areas remained ineffectively guarded or substantially unguarded, that the front roof area remained ineffectively supported and was unsafe, and that the employer had not provided him with any evidence of regular and effective inspections regarding health and safety at the workplace.

The employer submitted that it had complied with all of the orders issued by the Board officer and that the citations should not have been imposed. While I acknowledge that the employer eventually complied with the orders issued by the Board officer, it had not done so by the time of the March 8, 2024 citation orders.

In this case, I am satisfied that citations were appropriate and in accordance with Board policy.

I confirm the citation orders that were imposed for the failure to comply with sections 13.2(2)(a), 4.55(a), 20.14, and 3.5 of the *Regulation*.

Conclusion

As a result of this review, I confirm the March 8, 2024 citation orders.

Alice Edwards
Review Officer
Review Division