

REVIEW DECISION

Re: Review Reference #: R0324729
Board Decision under Review: May 31, 2024

Date: January 7, 2025

Review Officer: Sarah Frost

Introduction and Background

The employer is a regional district that administers a number of voluntary fire departments. On May 21, 2024, an officer of the Workers' Compensation Board ("Board"), which operates as WorkSafeBC, inspected a worksite where the employer was working regarding the following topics: the employer's alcohol policy, Joint Health and Safety Committees, and equipment inspections.

Following the inspection, the Board issued an inspection report dated May 31, 2024 documenting the inspection and referring to sections 32.4(1)(a), 32.4(1)(b), and 32.4(1)(c) of the *Occupational Health and Safety Regulation* ("*Regulation*").

A worker requested a review of the May 31, 2024 inspection report. He is represented by the Workers' Advisers Office, and submits that the Board officer failed to issue orders under sections 32.4, 32.5, and 32.6 of the *Regulation*.

The Board officer who issued the order was asked for comments regarding the worker's submissions. His comments were provided to the worker and his representative, who made a response. The employer is participating as an interested party and is represented by the Employers' Advisers Office, but did not make submissions. All submissions have been disclosed in accordance with the Review Division's *Practices and Procedures*.

In the course of my review, I obtained further documents from the Board officer, which I disclosed to the parties for comment. Only the worker provided a response.

Section 268(1)(a) of the *Workers Compensation Act* ("*Act*") allows me to review an order regarding an occupational health and safety matter, a refusal to make such an order, or a variation or cancellation of such an order. As the May 31, 2024 inspection report contained no orders, I can only review a refusal to issue an order. The Board officer specifically referenced section 32.4 of the *Regulation* in the inspection report, and I am satisfied that he turned his mind to the application of this provision. In deciding not to issue an order under section 32.4 of the *Regulation*, he determined that the employer's actions in regard to the requirements for ropes used only for rescue or evacuation or training in procedures was adequate. This is an issue raised by the worker. As such, I will take jurisdiction over this matter.

That said, the worker also disputed the Board's failure to issue orders under sections 32.5 and 32.6 of the *Regulation*. In the course of this review, I confirmed with the Board officer that he did not consider whether to issue orders under sections 32.5 and 32.6. Therefore, as I advised the worker in a November 7, 2024 letter, I do not have jurisdiction to consider these matters on review, and will not address these submissions further.

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

The issue on this review is the Board's decision to not issue an order under section 32.4 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.

Section 32.4 of the *Regulation* sets out the requirements for ropes used only for rescue or evacuation or training in procedures. Specifically, it states that:

- 1) Ropes and associated rigging equipment used only for rescue or evacuation or training in such procedures must:
 - (a) be of low stretch (static) kernmantle construction or equivalent,
 - (b) when new, have a minimum safety factor of 10 to 1, based upon a one-person load of 140 kilograms (300 pounds), and
 - (c) be replaced at intervals stated by the manufacturer, but not exceeding 5 years.
- 2) A worker suspended on a rope for rescue purposes other than from a helicopter must where practicable be secured to an independent lifeline or belay line.

There is note after the section advising that ropes used for purposes other than just rescue are required to meet the applicable requirements provided in the other parts of the *Regulation*.

In the inspection report, the Board officer wrote that in regard to inspections, the employer and the firefighters present advised that ropes stored in bags at the fire trucks were checked during truck checks. The Board officer said that records of truck checks were first presented in a “bulky record off Fire-Pro system”, which was also summarized in a spreadsheet with basic information only.

In the updated information provided on review, the Board officer provided the spreadsheets obtained from the employer showing its equipment/personal protective equipment (“PPE”) inventories and records of its truck checks. As noted above, the employer advised that PPE is inspected after each use and that ropes are checked during truck checks. The Board officer confirmed that he had reviewed copies of additional records relating to equipment checks during his workplace inspection, but did not retain or formally request that the employer provide copies of these records.

On review, the worker submits that the disclosure for this review included an equipment list, but no logbook documenting inspections or maintenance records, which it submits are necessary to identify any expired ropes. In a submission to the Board, the worker said that while ropes may be on a check list, they do not get taken out of the bags and checked on truck checks. He said this was why ropes could be equipment that was years past expiry. The worker also stated that the firefighters did not know how to check expiry of the ropes until he showed them the prior year.

In response to the additional records I obtained on review, the worker noted that there was “no rope log/no records”. In regard to truck checks, he said that “out of a year of pre trip truck checks they don’t have enough to be in compliance with everytime the truck rolls for calls and practices (no post trip) it doesn’t even show what trucks were checked”. He also provided notes that are not relevant to the matters at issue, which I will not address here.

The issue before me on this review is whether the employer was in violation of section 32.4 of the *Regulation* such that the Board officer should have issued an order to the employer under this section. The requirements of subsection (2) do not appear to be in dispute. Therefore, I have considered whether the ropes met the following requirements:

- 1) Ropes and associated rigging equipment used only for rescue or evacuation or training in such procedures must:
 - (a) be of low stretch (static) kernmantle construction or equivalent,

(b) when new, have a minimum safety factor of 10 to 1, based upon a one-person load of 140 kilograms (300 pounds), and

(c) be replaced at intervals stated by the manufacturer, but not exceeding 5 years.

The worker only provided submissions regarding whether the ropes were adequately checked. There is no evidence to suggest that the ropes do not meet the requirements of (a) and (b). I am not satisfied that an order should have been issued under these subsections.

The Board officer did not issue an order under section 32.4(1)(c), as I understand he considered that the employer had established that the ropes were replaced at intervals as stated by the manufacturer, but not exceeding 5 years. The worker disagrees. He submits that the employer's records are not sufficient to establish that the ropes were not used past their expiry dates. Specifically, he notes the absence of a logbook, says that the employer does not actually check the ropes during truck checks, and says that the firefighters had not even known how to check expiry of the ropes until he showed them the prior year.

Having reviewed the evidence and submissions, I am not satisfied that there is a sufficient basis for issuing an order under section 32.4 of the *Regulation*. The standard for record keeping is not perfection, and I am satisfied based on the spreadsheets provided and the Board officer's documented interactions with the employer that the employer has a sufficient process in place to ensure that it complies with section 32.4 by inspecting the ropes on a regular basis to ensure they are replaced at regular intervals. While the firefighters may not have previously known how to check the expiry of the ropes, by the worker's own evidence he had shown them the prior year. I am not persuaded that the employer was in violation of section 34.2 of the *Regulation* such that an order should have been issued.

As a result, I deny the worker's request.

Conclusion

As a result of this review, I confirm the Board's May 31, 2024 decision.

Sarah Frost
Review Officer
Review Division