

REVIEW DECISION

Re: Review Reference #: R0326094
Board Decision under Review: July 16, 2024

Date: April 15, 2025

Review Officer: Seeley Munro

Introduction and Background

On August 22, 2023, an officer of the Workers' Compensation Board ("Board"), which operates as WorkSafeBC, inspected a multi-residential construction site following an incident where a partially extended boom from a concrete pump owned by the employer suddenly broke and fell to the ground.

The Board conducted an investigation and issued a July 5, 2024 Incident Investigation Report. As a result of its investigation, the Board issued a July 16, 2024 Inspection Report ("IR"), with orders to the employer based on violations of 20.26.3(1) and 4.3(2) of the *Occupational Health and Safety Regulation* ("Regulation").

The employer requests a review of the July 16, 2024 decision. A representative has provided written submissions and materials on its behalf.

There are no other parties to this review. At the Review Division's request, the Board officer who issued the July 16, 2024 IR provided comments on the employer's submissions. These comments were disclosed to the employer, who provided further submissions in response.

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 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.

Preliminary Matters

Issue not in dispute

Item A3.6.2 (b) of the Review Division's *Practices and Procedures* states that one Board decision will frequently address several issues, all of which may be the subject of a single request for review. However, the person who requested the review may not be disputing all of these issues. Review Officers will normally only address the issues that have been put into dispute by the parties.

In this case, the employer indicates on its request for review that it disputes the second order in the IR (i.e., the section 4.3(2) violation). Moreover, the employer's submissions focus on this order. Accordingly, I will not address the first order (i.e., the section 20.26.3(1) violation) and that order will stand.

Jurisdiction

A significant part of the employer's submission is its position that the Board should have issued orders against another employer – namely, the engineering company that inspected the concrete pump in question.

As a Review Officer, I only have jurisdiction over the Board decision under review. That means that I can only address the orders issued against the applicant employer. I do not have the authority to issue orders against another employer or to direct the Board to do so. Accordingly, I will not address this matter any further in this review.

Issue

The issue before me on this review is the Board's decision to issue an order to the employer under section 4.3(2) 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 4.3(2) of the *Regulation* states that unless otherwise specified, the installation, inspection, testing, repair and maintenance of a tool, machine or piece of equipment must be carried out

- (a) In accordance with the manufacturer's instructions and any standard the tool, machine or piece of equipment is required to meet, or
- (b) As specified by a professional engineer.

The IR states that the employer failed to ensure that the concrete pump in question was certified by a professional engineer after it put the pump back into service following a March 2023 misadventure. According to the IR, the engineering firm made the employer aware that the inspection process was

incomplete, but the employer put the pump back into use without the full inspection and certification having been completed.

I have reviewed the Board's July 5, 2024 Incident Investigation Report, which sets out the evidence the Board obtained and its conclusions regarding the August 22, 2023 incident. The Board interviewed several relevant people, including representatives of the engineering firm and of the employer. I have reviewed all of the materials the Board obtained, including transcripts from the interviews, but will only reference what is relevant to this review.

According to the Incident Investigation Report, after the March 2023 misadventure, the employer asked the engineering firm to inspect the pump. Representatives of the firm, however, told the Board that the employer did not provide details about the misadventure, nor did it provide a mechanical inspection or incident investigation report. The engineering firm advised that this information was necessary for it to continue with the inspection process, including creating an inspection plan.

Indeed, a March 14, 2023 email from the firm to the employer indicates that "a decal will be affixed to the unit on completion and reinspection of noted repairs." At that time, an engineering certification reference decal with an "inspected on" date of March 14, 2023 was placed on the pump.

I pause here to note that the Board officer explained in her comments that Engineers & Geoscientists British Columbia ("EGBC") guidelines "stipulate that owners are responsible for ensuring their units have current engineering certification." She further explained that the decal the engineering firm placed on the pump in March 2023 did not mean that the inspection process was over. Rather, it was placed "at the beginning of the inspection process as a reference to the engineering documentation work order number that follows the unit throughout the duration of the inspection process."

Indeed, a representative from the engineering firm explained to the Board in an October 24, 2023 interview that it was "common knowledge" with concrete pumping companies that "mechanical inspections, [and] a full certification is required after a misadventure." The representative further indicated that they had previously worked with the employer, and that the employer was:

...well aware... they're not a company of just one concrete pump, and new to the industry...they're well aware that they need certification in the pump.

Moreover, the evidence before me demonstrates that the engineering firm did not receive the necessary information and thus did not complete its investigation and certification. The IR references a June 23, 2023 invoice from the engineering firm to the employer, which includes a charge for the inspection of the pump. I have

reviewed this invoice and note that it also states that “mechanical inspection reports have not been provided to date. Inspection reports will follow after satisfactory completion of the mechanical inspection.”

In her November 13, 2024 comments, the Board officer explained that the engineering certification “signifies the end of an inspection process and constitutes final sign-off.” The officer pointed out various examples of previous certifications the employer had received from the engineering firm. The officer reiterated that the employer did not provide its mechanical inspection records to the engineering firm, as requested, which the firm required to continue its inspection process.

The officer further indicated in her comments that it was the employer’s responsibility to provide the necessary (and missing) information to the engineering firm. However, despite being reminded of this by the engineering firm in the June 23, 2023 invoice, it failed to do so.

The officer noted that the employer is an experienced firm that has previously (and repeatedly) had its concrete pumps inspected. It was aware it had no certification for the pump in question but still put that pump back into service. Furthermore, the officer indicated that at a previous Board inspection it had been reminded that the inspection decal on the machine “does not constitute certification” but is a “visual reminder and a means of associating the inspection with the official engineering certification.”

The employer submits that the engineering firm had previously, and with other pumps, failed to properly communicate. The employer also submits that even if the engineering firm had inspected the pump, it would not have detected the defect that led to the incident that prompted the Board’s investigation. While I have considered these submissions, what I must determine in this case is whether the employer violated section 4.3(2) of the *Regulation*. Having considered the available evidence, I find that it did not.

It is evident to me that the engineering firm in question did not complete its inspection of the pump after the March 2023 misadventure. I accept the Board officer’s evidence that, as per the EGBC guidelines, as owner of the pump, the employer was responsible for ensuring that it had current engineering certification.

I am also satisfied that the engineering firm advised the employer in June 2023 that the inspection was incomplete and that it required further information to finish (and thus certify) the pump. However, the employer did not provide the necessary information, and the pump was put into use despite not being properly inspected or certified as required.

On review, the employer submits that on March 16, 2023, a welder from the engineering firm repaired structural cracks, a final inspection was conducted by the firm and then an inspection tag was placed on the pump. The employer says the welder from the firm told the employer's maintenance manager that the pump was ready to return to service.

However, having considered the available evidence, I am not persuaded by this. The pump might have had an inspection label on it, but I accept that the employer knew or should have known that this simply meant it had been inspected; it did not constitute a completed certification of the pump such that it could be put back into use.

Even if the employer was told by a welder that the pump was ready to return to service (which I do not necessarily accept, based on the evidence), the employer was notified by at least June 2023 that the inspection was incomplete. Also, as an experienced employer in the industry that has had pumps repaired in the past, I am satisfied that it knew or ought to have known that this was required to put the pump back into use.

My understanding of the employer's submissions is that it was not until the August 2023 incident (i.e., after the boom fell to the ground) that the employer was told by the engineering firm that the "certification document" from the March 14, 2023 inspection was available from the firm. On August 25, 2023, the firm provided a report dated that same day, indicating that the pump was not safe to return to service.

The employer submits that, prior to August 25, 2023, the engineering firm failed to provide any reports to the employer regarding the fact that the pump in question was unsafe to return to service.

I am not persuaded by this evidence. As the officer points out in her comments:

...It is not [the engineering firm's] responsibility to track down owners to complete the inspection process... EGBC's Annual Equipment Inspection and Certification in British Columbia guidelines state that owners/clients, such as the employer, are responsible for the safety of their machines; the engineer is below the client in the hierarchy of reasonability, as it is the owner/client's responsibility to engage with them to obtain certification.

Accordingly, I find that the employer was in contravention of section 4.3(2) of the *Regulation*. I deny the employer's request and confirm the order under review.

Expenses

The employer asks that I direct the Board to reimburse it for costs it incurred hiring a subject matter expert, an engineer, to inspect, test and determine the cause and underlying factors of the failure that led to the incident. The employer advises that it paid \$14,184.98 to do so.

Item A4.5 of the *Review Division – Practices and Procedures*, “Costs and expenses” indicates that the Review Division may reimburse a party or a witness for the cost of providing evidence incurred during the course of a review in two situations: the evidence is of a kind the Review Division would have sought if the party had not produced it and evidence it is considered reasonable for a party to have assumed would be required.

As noted, the employer retained the subject matter expert during the Board’s investigation of the incident, and not in the course of this review. As such, it is not the type of expense contemplated by Item A4.5. In any event, the evidence is not of the kind I would have sought if the employer had not obtained it, nor, given the subject-matter of this review, is it reasonable for the employer to have assumed it would be required.

Therefore, I deny the employer’s request for reimbursement of this expense.

Conclusion

As a result of this review, I confirm the Board’s July 16, 2024 order.

Seeley Munro (She, Her, Hers)
Review Officer
Review Division