

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Friday, October 14, 2022 – 1:00 p.m.

Present: Dale L. Schultz	Chairman
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	Commissioner
D. Alan Everett	Commissioner
James Ashley	Director
Gaetano Testini	Chief Legal Counsel (Telephonic)
Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
Sylvia Simpson	Chief Financial Officer
Phil Murphy	ADOSH Assistant Director
Anna Maria Stonerock	ADOSH Admin
Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Nick Murphy and Scott Martin (Phoenix Manufacturing, Inc.); Vincente Armas, Jesus Armas and Jose Flores (Reliable Drywall Services, LLC); Sharon Maggio (Miller Kory Rowe). Also in attendance on the telephone, confirmed by roll call was Alex Akhgari (Next of Kin).

Approval of Minutes of September 29, 2022 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the September 29, 2022 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CSP21/22-0084 Beautiful Beginnings Assisted Living Home LLC \$1,000
2. 2CNP22/23-0926 Exterior Renovation Services LLC \$1,000

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Medtronic, Inc.
2. Parker-Hannifin Corporation

Chairman Schultz commended Medtronic, Inc. on their excellent experience modification factor of .5.

Commissioner Everett moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties.

Phoenix Manufacturing, Inc.	Fatality	
3655 E Roeser Rd	Years in Business:	47
Phoenix, AZ 85040	Empl. Covered by Inspection:	116
Site Location: 3655 E Roeser Rd		
		Phoenix, AZ 85040
Inspection No:	FC-2022-I8877-0042	
Inspection Date:	June 9, 2022	

SERIOUS – Citation 1 - Item 1 –

- a) Production floor: Two employees removed sheet metal jams from a Murata Machinery LTD. Muratec turret punch press, model #M-2558-T and serial #12KX306810001, without an adequate Lockout/Tagout Program in place to prevent the unintended start up of the equipment. 29 CFR 1910.147(c)(1)
 Div. Proposal - \$4,000.00 Formula Amt. - \$4,000.00

SERIOUS – Citation 1 - Item 2 –

- a) Production floor: Two employees removed sheet metal jams from a Murata Machinery LTD. Muratec turret punch press, model #M-2558-T and serial #12KX306810001, without a Lockout/Tagout Procedure developed. 29 CFR 1910.147(c)(4)(i)
 Div. Proposal - \$5,000.00 Formula Amt. - \$4,000.00
 TOTAL PENALTY - \$9,000.00 TOTAL FORMULA AMT. - \$8,000.00

Mr. Murphy discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Chairman Schultz noted he was struggling to make the connection between the employee falling from the platform and the lack of a lockout/tagout program, unless the machine became reenergized because of the lack of a lockout/tagout procedure.

Mr. Murphy noted guarding was not required since it was less than 4 feet high and he did not observe that the reenergizing of the equipment caused the employee to fall or step off the equipment.

Commissioner LeMarr noted he considered the same issue and wondered if the lockout/tagout should be cited, if the machine automatically stops when it jams then it should have a protocol to restart it, it would seem to fulfill that requirement.

Mr. Murphy noted the employer had deficiencies in their lockout/tagout program overall as well as they did not have specific procedures for locking out the T3 equipment the employee was working on which is required.

Chairman Schultz checked if anyone would like to comment.

Mr. Martin, President of Phoenix Manufacturing, Inc. introduced Mr. Nick Murphy who was brought onboard after the accident since they did not have a full time EHS Manager. The accident was really a tragic event which has had a profound impact on the entire team. The team is working to ensure that they do everything possible to prevent anything like this from happening again. Mr. Murphy and the team are actively reassessing every process on each machine to prevent future accidents. He appreciated the opportunity to speak for the team.

Chairman Schultz and Mr. Martin discussed that the employee was working for a relatively short term with the company, but was hired for his skills and operated this particular machine the entire time he worked at the company. Mr. Martin noted it was common for the machine to jam and the instructions in the machine manual instructs the operator to get on the table to clear the jam. The company relied on the manual but after the accident the company wrote three specific procedures to address the jams and treat it like a maintenance issue and add it to the lockout/tagout program: employees have been trained on the new procedures.

Mr. Nick Murphy noted that in the manufacturer's manual it falls under minor servicing which does not necessarily require a full lockout/tagout for that process because the manufacturer has the safety features within the machine to do that.

Chairman Schultz checked if Mr. Akhgari would like to comment.

Mr. Akhgari noted he had difficulty hearing and asked for clarification that it is stated in the manual that it was proper procedure to get on the table to clear the machine without any safety fall protection or protective guardrail.

Chairman Schultz noted that it is indicated that it was and asked Mr. Akhgari if there was anything else.

Mr. Akhgari noted he was struggling at the moment and could not think of anything to ask.

Chairman Schultz asked Mr. Murphy to give his contact information to Mr. Akhgari if he has other questions and thanked Mr. Akhgari for joining.

Commissioner LeMarr moved to amend the citation and proposed a 20% Good Faith Discount for Item #2 by \$1,000.00 for a total of \$4,000.00 since he was not convinced that lockout/tagout had anything to do with this injury and unfortunate death and it appears the company is aggressively trying to modify an existing manufacturer's manual and make it better. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Reliable Drywall Services LLC
18322 N 37th Wy
Phoenix, AZ 85032

Site Location: 8048 E Germann Rd

Fatality
Years in Business: 2
Empl. Covered by Inspection: 2

Mesa, AZ 85212
Inspection No: FC-2022-R3853-0009
Inspection Date: April 14, 2022

SERIOUS – Citation 1 - Item 1 –

- a) 8048 E Germann Rd, Mesa AZ: 2 employees were working on a scaffold without being given the proper training. 29 CFR 1910.454(a)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 8048 E Germann Rd, Mesa AZ: 2 Employees were exposed to an HVAC floor hole opening measuring that was not marked or identified. 29 CFR 1926.502(i)(4)
Div. Proposal - \$5,000.00 Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 3 –

- a) 8048 E Germann Rd, Mesa AZ: 2 employees were not provided fall protection training before being exposed to a fall hazard. 29 CFR 1926.503(a)(1)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00
- TOTAL PENALTY - \$7,000.00 TOTAL FORMULA AMT. - \$4,000.00

Mr. Murphy discussed ADOSH’s inspection, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr asked if the same citation was issued for each of the multi-employers, the general contractor, the HVAC and the building design company were all going to be part of this.

Chairman Schultz confirmed that the Commission would see those other citations, but Mr. Murphy noted those penalties did not exceed \$2,500 so they would not be brought to the Commission.

Commissioner LeMarr and Vice Chair Hennelly asked if the yellow tape visible in the photographs was placed there after the incident.

Mr. Murphy did not know when the tape was placed and the compliance officer was not available to answer the question, but there was no mention of it being in place in the report at the time of inspection so it is safe to assume it was put there after the fact.

Chairman Schultz noted the write-up stated the holes were covered by metal with plywood on top of the metal. The picture looks like substantial plywood, making it surprising that a person could fall through the plywood and whatever material was beneath.

Mr. Murphy discussed the undetermined material from the subcontractor, the hole, and the plywood. He assumed this was not the same type of sheet in the picture that was over the hole, additionally there is a requirement to secure the covering into place.

Chairman Schultz checked if Reliable Drywall would like to comment.

Commissioner LeMarr moved to remand this file back to ADOSH for further review and to obtain the medical examiner's report. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion, Action, and Potential Resolution regarding Final Rulemaking to Title 20, Chapter 5, Article 4 Arizona Boilers and Hot Lined Water Heaters.

Mr. Testini noted the Legal Division is recommending to enter into final rulemaking. He requested authorization to move forward with the final rulemaking process with electronic signature.

Commissioner LeMarr moved to approve final rulemaking for Title 20, Chapter 5, Article 4 Arizona Boilers and Hot Lined Water Heaters with electronic signature. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics reviewing the five metrics for the Labor Division.

Mr. Ashley noted the ICA building was illuminated purple in recognition of Domestic Violence Awareness Month. Photos of the building were shared on social media to promote awareness of domestic violence and will continue for the month of October.

Mr. Ashley noted there were no ADOSH files or other timely matters for next week and therefore the meeting for October 20th will be cancelled.

Ms. Dimas confirmed Commission meeting dates through December 2022.

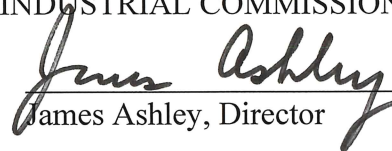
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary