MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street

Conference Room 308

Phoenix, Arizona 85007

Thursday, December 5, 2019 - 1:00 p.m.

Present:

Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr.

Vice Chair

Scott P. LeMarr

Commissioner (Telephonic)

James Ashley

Director

Gaetano Testini

Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief / Public Information Officer

Renee Pastor Janine Locke Self Insurance (Telephonic) Special Service Manager

Ruby Tate
Jessie Atencio

Claims Manager ADOSH Director

Lisa Padgett

Labor Investigations Supervisor

Victoria Kamm Jennifer Krainski Mary Cummings Labor Investigator Labor Investigator Labor Division

Kara Dimas

Commission Secretary

Chairman Schultz convened the meeting at 2:00 p.m. once a quorum was present. Also in attendance were Deb Baker (Valley Schools Workers' Compensation Group); Raul Diaz and Rodrigo Diaz (DG Farm Labor) and Shanlie Blair (Snell & Wilmer).

Approval of Minutes of November 21, 2019 Regular Meeting Minutes.

Vice Chair Hennelly moved to approve the Minutes of the November 21, 2019 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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. <u>Approval of Requests for Renewal of Self-Insurance Authority</u>.

1. Valley Schools Workers' Compensation Group

Chairman Schultz commended the Valley Schools Workers' Compensation Group for being financially strong and well reserved, with an excellent safety record and an experience modification that has been declining each year since 2015. Chairman Schultz congratulated Ms. Baker on her safety record.

Vice Chair Hennelly moved to approve Valley Schools Workers' Compensation Group and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Safety Committee Update and Topic Discussion.

Ms. Locke reviewed the Industrial Commission's threat assessment program and process for threat assessments and collection of information. This was recognized as a best practice in the VPP Audit.

Mr. Ashley explained the efficiency and timeliness in which incidents are responded to and action taken.

Chairman Schultz noted it was similar to the hospital protocols.

Discussion & Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Ms. Tate requested that Donald Denmon be appointed as Special Assistant to the Industrial Commission to be authorized as the Assistant Claims Manager for the Commission. She noted Mr. Denmon's background for the position.

Vice Chair Hennelly moved to appoint Donald Denmon as Special Assistant to the Industrial Commission of Arizona and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Youth Employment Penalty.

CL1819-0148 3-G Construction Co., Inc.

Ms. Padgett summarized the Labor Department's investigation, which included findings of various violations of A.R.S. § 23-231(a)(5), (a)(7) and (a)(13). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$600.00.

Vice Chair Hennelly praised the write up as very thorough and noted there were two other juveniles working, but by law they were allowed. Chairman Schultz felt this citation highlights why the regulation is in place.

Vice Chair Hennelly moved to approve issuance of a Civil Penalty in the amount of \$600.00 to 3-G Construction Co., Inc. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Discussion and/or Action of Appeal of Arizona Division of Occupational Safety and Health Initial Negative Determination regarding Discrimination Complaint under ARS 23-425.

1. 19-3633-12 Soliz v. Moheb, DMD, Inc. P.C.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH Initial Negative Determination regarding Discrimination Complaint.

Mr. Atencio summarized the investigation findings, which were based upon interviews with the Complainant, other employees, and the employer. ADOSH also conducted a safety inspection, and reviewed documents.

ADOSH argued the information submitted for appeal by the Complainant failed to provide new information to alter the original findings of insufficient evidence to establish a prima facie allegation as required.

Vice Chair Hennelly reviewed the timeline and confirmed that no new evidence has been submitted since September. Mr. Atencio explained the efforts ADOSH has undertaken to communicate with the Complainant.

Chairman Schultz found it compelling that the employer acted exactly as they should by immediately having inspections done to assure a safe work place, and that the Supervisor and other people who were working in the same area did not have any issues. There was no evidence of asbestos or mold, but the complainant refused multiple overtures to discuss the situation and the employer offered alterative working areas during the investigation.

Vice Chair Hennelly moved that ADOSH dealt adequately with all factual issues in the investigation, the investigation was conducted fairly in accordance with the applicable laws and concurred with the findings of ADOSH of no merit to the complaint for the appeal. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) to Discuss Appeal of Arizona Division of Occupational Safety and Health Initial Negative Determination regarding Discrimination Complaint under ARS 23-425.

1. 19-3633-12 Soliz v. Moheb, DMD, Inc. P.C.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

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.

Fatality/Accident Years in Business:

Empl. Covered by Inspection:

33

Cohills Building Specialties, Inc.

3825 E Anne St

Phoenix, AZ 85040

Site Location: 3825 E

3825 E Anne St

Phoenix, AZ 85040

Inspection No:

I7246 -1423452

Inspection Date:

8/15/2019

3

SERIOUS - Citation 1 - Item 1 -

a) North side rooftop: One employee had accessed the roof to reset the air conditioner unit and fell 16ft through an unprotected skylight. 29 CFR 1910.23(a)(4)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1 - Item 2 –

a) North end of warehouse: One employee had accessed the roof while standing on a wood pallet that was attached to a forklift and was not protected from falling approximately 14ft to the ground below by standard railings on all open sides or equivalent means of protection. 29 CFR 1910.23(c)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1 - Item 3 -

a) 3826 E Anne St Phoenix, AZ 85040: Two employees operated a Nissan Optimum forklift (Model-C13F475, Serial number-01050) and the propane tank was not securely mounted to prevent displacement. 29 CFR 1910.110(e)(4)(iii)

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 4 –

a) 3826 E Anne St Phoenix, AZ 85040: Two employees operating a Nissan Optimum forklift (Model-C13F475, Serial number-01050) had not received training prior to operation. 29 CFR 1910.178(l)(l)(i)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$4,600.00

TOTAL FORMULA AMT. - \$4,600.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

DG Farm Labor LLC

Fatality/Accident

19365 S Ave B

Years in Business:

Yuma, AZ 85364

E 1 G 11 Toward

Empl. Covered by Inspection:

Site Location:

Field B6 near Baseline Road

Tonopah, AZ 85354

Inspection No:

E7721 -1412616

Inspection Date:

7/1/2019

SERIOUS – Citation 1 - Item 1 –

 a) Farm field B6 and Baseline RD in Tonopah, AZ: An employee operated a John Deere tractor, model #6115D and serial #1P06115DLEM05270, without receiving training.
 29 CFR 1928.51(d)

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

NON-SERIOUS - Citation 2 - Item 1 -

a) Facility: The log and summary of recordable injuries and illnesses for the years 2016, 2017 and 2018 were not provided by the establishment.
 29 CFR 1904.40(a)

Div. Proposal - \$600.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,600.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Vice Chair Hennelly acknowledged that we do not know precisely what happened, except there is proof the worker drove through the ditch, hitting the pump trailer, abandoned the tractor, started walking then collapsed. Vice Chair Hennelly and Mr. Atencio discussed the tractor being turned off and in the field.

Chairman Schultz and Mr. Atencio discussed the higher greater assessment and the probability factors and training related to how this occurred.

Chairman Schultz asked the representative of DG Farm Labor if they wanted to comment or answer questions. Chairman Schultz and Rodrigo Diaz (Mr. Atencio interpreted) discussed how long the employee worked for the employer, and the training during the day. Mr. Diaz noted they now have a consultant, Abel Almanza who is providing general training for safety, they are doing more training following the accident to ensure safety and have specific training on the equipment they are using for all of their employees. They also discussed the OSHA 300 log and the record keeping requirement.

Mr. Atencio and Mr. Diaz discussed if he knew what happened. Mr. Diaz noted they are providing training and any recommendations from ADOSH that they are doing something about it.

Chairman Schultz noted it seems that driving in and out of the ditch in the middle of the night may be the result of falling asleep or being tired, since no drugs or alcohol was detected, which would cause you to weave and not react more quickly when you hit the ditch, wondering what kind of training could have prevented this. Mr. Atencio noted it is difficult for ADOSH to say how much training you need, and only point back to one standard, do they have the training they need and can it be verified in some way.

Mr. Diaz explained they now utilize the tractor for this activity solely in the daytime. The employees doing watering management at night are in trucks and not driving the tractors at night.

Vice Chair Hennelly moved to amend Citation 1, Item 1 by proposing a 20% reduction based on the abatement the company has done and modification to their practice. Citation 2, Item 1 remain as proposed, for a total penalty of \$3,000. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

ALR Construction, Inc.

Site Location:

1719 ½ 22nd Ave

Phoenix, AZ 85009

15240 N Cotton Ln Surprise, AZ 85388 Referral

Years in Business:

22

Covered by Inspection:

4

Inspection No:

K6582 -1408245

Inspection Date:

6/21/2019

SERIOUS – Citation 1 - Item 1 –

a) 15240 N Cotton Ln, Surprise, AZ 85388: Three employees were working in an excavation that was 15 feet deep, 18 feet wide and 60 feet long, installing a 30' long water retention basin without receiving training. 29 CFR 1926.21(b)(2)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

a) 15240 N Cotton Ln., Surprise, AZ 85388: Daily inspection of the excavation was not conducted by the competent person to ensure the safety and integrity of the excavation site that was 15 feet deep, 18 feet wide and 60 feet in length, prior to employees entering the excavation. 29 CFR 1926.651(k)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 –

a) 15240 N Cotton Ln, Surprise, AZ 85388: Two employees were working in an excavation that was approximately 15 feet deep, 18 feet wide and 60 feet in length, without an adequate protective system in place. 29 CFR 1926.652(a)(1)

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

<u>SERIOUS</u> – Citation 1 - Item 4 –

a) 15240 N Cotton Ln, Surprise, AZ 85388: An extension ladder set on the southwest side of the excavation did not extend at least three feet above the landing surface. 29 CFR 1926.1053(b)(1) Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs. Mr. Atencio noted Legal reviewed this matter for a possible willful violation but could not justify a willful violation.

Chairman Schultz and Mr. Atencio discussed that a competent person was not on site at all times.

Vice Chair Hennelly corrected the error of the address in the report. Vice Chair Hennelly emphasized this was serious and would urge and impress upon the employer the danger that this presents. Chairman Schultz agreed.

Chairman Schultz noted that there were multiple employers or general contractors and wanted to make sure the general contractors were there. Mr. Atencio noted they stopped work to talk to them when the City Inspector stopped by providing his recommendations but the company's work around, pictured in photograph No. 1, was still unprotected given the class of soil.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner LeMarr seconded the motion Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley highlighted Mr. Laky's submission for the ICA's VPP one year certification accomplishment which was selected for the quarterly Good Government Award presented by the Governor's Office, which will be presented on Tuesday.

Ms. Dimas presented a retirement resolution for Steven R. Welker, Labor Division Director. She noted Mr. Welker's twelve years of state service.

Ms. Dimas presented a retirement resolution for John Graft, Elevator Inspector in the ADOSH Division. She noted Mr. Graft's seven years of state service.

Ms. Dimas presented a retirement resolution for Malia Tina McCoy, Accounting Specialist I in the Accounting Division. She noted Ms. McCoy's thirteen years of state service.

Ms. Dimas presented a retirement resolution for Bruce Hanna, State Industrial Hygienist in the ADOSH Division. She noted Mr. Hanna's twenty years of state service.

Ms. Dimas also noted the Associated General Contractors (AGC) Christmas Open House on December 10, and the Commissioners were invited. Mr. Ashley noted the AGC will also be holding a January 14, 2020 Safety Meeting and would like to have Commissioner representation as well.

Ms. Dimas confirmed Commission meeting dates through January 2020.

Mr. Ashley noted that the Administration Division will be having its holiday lunch on Monday and invited the Commissioners.

Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 3:20 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary