

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 11, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Robin S. Orchard	Commissioner
	Steven J. Krenzel	Commissioner
	Jason M. Porter	Acting Director
	Jonathan Hauer	Acting Chief Legal Counsel
	Renee Pastor	Self Insurance
	Jacqueline Kurth	Medical Resource Office
	William Warren	ADOSH Director
	Billie Gingrass	Compliance Officer
	Ellen Granillo	ADOSH Staff
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Thomas Coccia with Automated HealthCare Solutions; Steve Cortright, David Cortright, and Michael Cortright with Western Bonded Products, Inc. dba Flex Foam; Tyler Damman and Malcolm Persen with Resolute Performance Contracting; Erica Davenport; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of December 21, 2017 Regular Meeting Minutes and December 14, 2017 Executive Session Minutes.

Commissioner Orchard moved to approve the Minutes of the December 21, 2017 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner Krenzel moved to approve the Minutes of the December 14, 2017 executive session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. Commissioner Orchard abstained. 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 Requests for Renewal of Self-Insurance Authority.
 1. The Procter & Gamble Company

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

Discussion and Action of Resolution Appointing Custodian of Records.

Mr. Porter discussed Frank Lopez's employment with the Commission and recommended that he be appointed Custodian of Records and Special Assistant.

Commissioner Orchard moved to appoint Mr. Lopez as Custodian of Records and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

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

Vice Chair Hennelly moved to appoint Mr. Lopez as Special Assistant to the Industrial Commission of Arizona and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding correcting language for Special Services Code AZ099-005 adopted for use in the Arizona Physicians' and Pharmaceutical Fee Schedule effective October 1, 2017.

Ms. Kurth discussed the current language found in Special Services Code AZ099-005 in the Arizona Physicians' and Pharmaceutical Fee Schedule and related stakeholder confusion regarding its application. Ms. Kurth recommended that the language be changed to the following:

AZ099-005 Completion of workers' compensation insurance forms (*i.e.*, return-to-work status, work restrictions, supportive care recommendations), not to exceed one billing in a thirty (30) day period.

Ms. Kurth also recommended that the staff be permitted to correct and update the Fee Schedule accordingly and provide notice to stakeholders of the correction.

Chairman Schultz and Ms. Kurth discussed the nature of the stakeholder confusion and the intent of Special Services Code AZ099-005.

Commissioner Orchard and Ms. Kurth discussed the intent of the proposed modification.

Commissioner Krenzel moved to approve the proposed change to Special Services Code AZ099-005 and associated actions as recommended by staff. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel 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.

serial B675V078865 operators manual and believed the unapproved attachments did not affected the capacity of the PIT. (29 CFR 1910.178(l)(2)(iii)).

b) Building 3 east side: Two employees utilized a Yale forklift model GLP050VXNVSE090, serial B675V078865 and did not receive training on the specific operating instruction, warnings and precautions for the type of truck the operator was authorized to operate. (29 CFR 1910.178(l)(3)(i)(A)).

c) Building 3 east side: The employer did not provide effective employee training of the clamp attachment used on a Yale forklift model GLP050VXNVSE090, serial B675V078865 to recognize the weight, capacity and safe operating limitations. (29 CFR 1910.178(l)(3)(i)(G)).

Div. Proposal - \$5,000.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – a) Building 3 east side: One employee operated a Yale forklift model GLP050VXNVSE090, serial B675V078865 utilizing a clamp attachment and load, travelled with the load elevated approximately 12 feet 6 inches above the grade surface at a slope of approximately 1.5 to 2.5 degrees. (29 CFR 1910.178(n)(7)(iii)).

Div. Proposal - \$5,000.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$15,000.00

TOTAL FORMULA AMT. - \$4,250.00

Mr. Warren discussed the fatality investigation, summarized the citation and proposed penalties, and reviewed the history and photographs.

Chairman Schultz discussed the grouping of the citations. Chairman Schultz, Mr. Warren, and Ms. Gingrass discussed the forklift's seatbelt, maintenance, and labeling; the partial inspection focusing solely on the subject incident; the height of the subject load; and whether there were any visibility issues.

Commissioner Orchard and Ms. Gingrass discussed when the incident occurred and a safety audit that was conducted three days after the accident.

David Cortright discussed the incident, changes to the company's forklift certification program, elimination of the second shift, and the company's abatement efforts.

Commissioner Orchard and Mr. Cortright discussed the employer's decision to eliminate the second shift.

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

Kay Construction, Inc.
1006 W. Frier Dr.
Phoenix, AZ 85021

Referral
Years in Business: 26
Empl. Covered by inspection: 8

Site Location: 3430 W. Aire Libre Ave.
Phoenix, AZ 85053
Inspection No: P2115-1251279
Inspection Date: 08/01/2017

REPEAT-SERIOUS – Citation 1 - Item 1 – 3430 W. Aire Libre Ave, Phoenix, AZ: Two employees engaged in framing activities on a one-story house, were not protected from falling over 17 feet 1 ½

inches to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

The Kay Construction, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(13) which was contained in ADOSH inspection number 1184725, citation number 1, item number 1 and was affirmed as a final order on 12/16/2016, with respect to a workplace located at 16879 E. Palatial Dr., Fountain Hills, AZ 85268.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 2 - Item 1 – 3430 W Aire Libre Ave: Two employees used an A-frame stepladder, (model and serial number unknown), as means of access and egress to the roof by stepping on the top step of the stepladder. (29 CFR 1926.1053(b)(13)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citations and proposed penalties and reviewed the photographs.

Commissioner Orchard and Mr. Warren discussed the referral source for the inspection and the Repeat-Serious penalty calculation.

Chairman Schultz, Commissioner Orchard, and Mr. Warren discussed the subject ladder's use, how the ladder's use was determined, and proper use of ladders.

Commissioner Orchard and Mr. Warren discussed the employer's citation history and whether a prior fall-protection citation was within the "repeat" timeframe.

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

Chairman Schultz, Commissioner Orchard, and Mr. Warren discussed Citation 2, Item 1 regarding the A-frame ladder.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

There was no discussion concerning this agenda item.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Warren discussed Ms. Granillo's employment with the Commission and her decision to take a position with the Maricopa County Attorney's Office. Mr. Warren and Chairman Schultz wished Ms. Granillo well and thanked her for her service.

Ms. Dimas confirmed Commission meeting dates through February 2018 and a Commission trip to Lake Havasu City planned for March 28-29, 2018.

Mr. Porter discussed a resolution reflecting action taken at the December 21, 2017 meeting pursuant to Arizona Administrative Code R20-5-1301(C).


Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:47 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Jason M. Porter, Acting Director

ATTEST:



Kara Dimas, Commission Secretary