

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, November 10, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Melinda Poppe	Deputy Director
	Jason M. Porter	Chief Legal Counsel
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Rogelio Martinez	Senior Business Analyst
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Mitch Baird	Compliance Officer
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Chris Thornton and Todd Jones with Desert Vista, Inc.; William Cowles; Bob Scoglio with OSHA; and Jason Weber with Snell & Wilmer.

Approval of Minutes of October 13, 2016, October 27, 2016 and November 3, 2016 Regular Meetings.

Vice Chair Hennelly moved to approve the Minutes of the October 13, 2016 regular session meeting and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Orchard voted in favor of the motion. Commissioner LeMarr abstained. The motion passed.

Commissioner LeMarr moved to approve the Minutes of the October 27, 2016 regular session meeting and Commissioner Orchard seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion. Vice Chair Hennelly abstained. The motion passed.

Commissioner LeMarr moved to approve the Minutes of the November 3, 2016 Regular Session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr 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 Proposed Civil Penalties Against Uninsured Employers.
 - 1. 2C16/17-0368 C. King Riches, LLC, DBA Casa Blanca Lounge

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 - 1. Albertson's Companies, LLC
 - 2. FedEx Corporation dba FedEx Express
 - 3. FedEx Freight, Inc.
 - 4. FedEx Ground Package System, Inc.
 - 5. Freeport McMoran, Inc.
 - 6. Ruan Transportation Management Systems, Inc.
 - 7. Young Electric Sign Company
 - 8. Intel, Inc.

Chairman Schultz commented on the experience modification ratings for FedEx Corporation dba FedEx Express, FedEx Freight, Inc., FedEx Ground Package System, Inc., and Intel, Inc.

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

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

Desert Vista, Inc. 3650 N 40 th Ave <u>Phoenix, AZ 85019</u>	Referral Years in Business: 21 Empl. Covered by inspection: 2
Site Location: 15623 W Coronado Rd Goodyear, AZ 85395	
Inspection No: H0333-1170384	
Inspection Date: 08/17/2016	

SERIOUS – Citation 1 - Item 1 –

a) 15623 W Coronado Rd, Goodyear, AZ, 85395: One employee was working from a fabricated frame scaffold that was 7ft 4in in height, 55in wide and 10ft in length that did not have the working level of the scaffold fully planked to preclude a fall to the ground below. (29 CFR 1926.451(b)(1)).

b) 15623 W Coronado Rd, Goodyear, AZ, 85395: One employee was working from a fabricated frame scaffold that was 7ft 4in in height, 55in wide and 10ft in length that had multiple frame supports bearing on inadequate foundations. (29 CFR 1926.451(c)(2)).

c) 15623 W Coronado Rd, Goodyear, AZ, 85395: One employee was working from a fabricated frame scaffold that was 7ft 4in in height, 55in wide and 10ft in length that had not been inspected prior to the work shift. (29 CFR 1926.451(f)(3)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1 - Item 2 – 15623 W Coronado Rd, Goodyear AZ, 85395: One employee was working from the roof while framing and installing Styrofoam corbels with unprotected sides and edges at approximately 11ft above a lower level and was not protected from falling by a guardrail system, safety net system, or personal fall arrest system. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs.

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

Chairman Schultz provided the opportunity for representatives of Desert Vista to address the Commission. Mr. Jones commented that he was there for general information and was available for questions.

Commissioner Orchard and Mr. Warren discussed the company's training program. Commissioner Orchard commented on the grouping in the citation.

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

G.D. and Sons Construction LLC
6527 W State Ave
Glendale, AZ 85301

Referral
Years in Business: 15
Empl. Covered by inspection: 20

Site Location: 1350 E Bethany Home Rd
Phoenix, AZ 85014

Inspection No: S8089-1169479

Inspection Date: 08/10/2016

SERIOUS – Citation 1 - Item 1 – Building five roof truss: One employee working from the roof trusses above the third floor, installing roof trusses was not protected from falling approximately 30 feet to the ground below by guardrail system, safety net system, or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 2 – Building five roof trusses: One employee working at a height of approximately 30 feet above the ground below was utilizing personal fall arrest systems and components which had been subjected to impact loading. (29 CFR 1926.502(d)(19)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – Building five Roof trusses: Two employees were engaged in the installation of wood truss materials approximately thirty feet above the ground below with and were not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$7,500.00

TOTAL FORMULA AMT. - \$7,500.00

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs.

Chairman Schultz and Mr. Warren discuss the severity of the injuries.

Commissioner LeMarr, Mr. Warren, and Mr. Baird discussed the use of fall protection, the circumstances leading to the incident, and the decision not to cite the General Contractor.

Commissioner Orchard and Mr. Baird discussed the photographs and the circumstances at the time of the investigation. Commissioner Orchard commented on the employer's efforts to use fall protection and the injured employee's conduct. Mr. Warren and Mr. Baird discussed the adequacy of the employer's training program and the employer's work practices.

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

Holsum Bakery of Tolleson, LLC
9600 W Buckeye Rd
Tolleson, AZ 85353

Referral
Years in Business: 20
Empl. Covered by inspection: 62

Site Location: 9600 W Buckeye Rd
Tolleson, AZ 85353

Inspection No: W0250-1169952
Inspection Date: 08/16/2016

SERIOUS – Citation 1 - Item 1 –

a) Production Area: A 4" printer make and model unknown that was attached to the Panamat machine did not have a safety guard installed on the end of the machine to prevent injury upon contact with the rollers. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren summarized the citation and proposed penalty as listed and reviewed the photographs.

Commissioner LeMarr and Mr. Warren discussed the guard installed by the employer.

Commissioner Orchard and Mr. Warren discuss the OSHA injury and illness logs.

Commissioner Orchard, Chairman Schultz, and Mr. Warren discussed the adjustment factors and penalty calculation.

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed the Commissioners' Per Diem Reimbursement Form.

Ms. Dimas confirmed Commission meeting dates in November and December 2016.

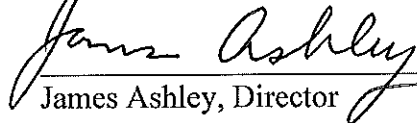
Public Comment.

Chairman Schultz invited Mr. Cowles to make a public comment. Mr. Cowles discussed his prior public comment, the response of the Commission, his eligibility for vocational rehabilitation benefits, and his concerns with the operations of the vocational rehabilitation program. Mr. Cowles and Chairman Schultz discussed the letter sent by Chairman Schultz regarding the provision of legal advice and his eligibility for vocational rehabilitation benefits. Mr. Cowles requested a copy of his Claims records and expressed his concerns with the information in his records. Mr. Cowles requested a legal opinion about the vocational rehabilitation program and discussed the opinion of his legal counsel. Mr. Cowles discussed his interactions with former-employee David Sosa. Chairman Schultz and Mr. Cowles discussed whether Mr. Cowles was represented by counsel. Chairman Schultz and Mr. Ashley discussed Mr. Cowles request for his Claims records.

Commissioner LeMarr moved to adjourn and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Orchard voted in favor of the motion and the meeting was adjourned at 1:41 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary