COMMONWEALTH OF KENTUCKY
OCCUPATION SAFETY AND HEALTH REVIEW COMMISSION
ADMINISTRATIVE ACTION 18-KOSH-0043

KOSHRC # 5485-18

COMMISSIONER OF WORKPLACE STANDARDS, COMMONWEALTH OF KENTUCKY — COMPLAINANT

v.

CTA ACOUSTICS, INC. — RESPONDENT

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DECISION AND ORDER OF THE KENTUCKY OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

I. Request for Reconsideration and Decision

On December 5, 2022, CTA Acoustics (hereafter "CTA") submitted a Petition for Discretionary Review to this commission. The Commission granted the request. After reviewing the parties' arguments, nearly 1,000 pages of the hearing transcript, and extensive associated exhibits, the commission renders this decision.

We find the evidence adequate to prove CTA committed a serious violation of the standard cited in Citation 1, Item 001 and reclassify said citation from repeat to serious. We reduce the associated penalty from $35,000.00 to $7,000.00 to reflect our reclassification. We uphold Citation 2, Item 1, instance a, as a serious violation and its associated penalty of

$7,000.00. We dismiss Citation 2, Item 2, instance a, and its associated penalty of $7,000.00 as duplicative of Citation 2, item 5. We affirm Citation 2, item 5, and the associated penalty of $7,000.00. We affirm citation 2, Item 3, instance a, as a serious violation and uphold the proposed penalty of $7,000.00. We affirm Citation 3, Item 1 as an other than serious violation and uphold the proposed penalty of $1,000.00. We affirm Citation 3, Item 2 as an other than serious violation and uphold the proposed penalty of $1,000.00. We affirm Citation 3, Item 4 and Citation 3, Item 6 as other than serious violations and the proposed penalties of zero dollars. The explanation for our decision follows.

II. Analysis of Procedural Claims

CTA Acoustics (CTA) argues the hearing officers "Hon. Michael Head and Hon. George Seay – violated the plain language of KRS 13B.110(1), 803 KAR 50:010 Section 36, and CTA's due process rights by failing to timely issue a recommended order in this case." (CTA's Petition for Discretionary Review, p 19) CTA bases this challenge on the sixty (60) day deadline found in KRS 13B.110(1). That deadline would be an important consideration if our hearings were subject to the provisions of 13B. However, in KRS 13B.020(3)(e)(2)(a) the legislature specifically exempted KOSHRC hearings from 13B,

> The following administrative hearings are exempt from application of this chapter in compliance with 1994 Kr. Acts Ch. 382, sec. 19: Occupational safety and health hearings conducted under authority of KRS Chapter 338.

As a result, hearings before the Commission are governed by our own rules of administrative procedure found in 803 KAR 50:010. Any claim of a wrong on basis of a violation of 13B is misplaced; 13B is inapplicable to our proceedings.

Further, we find no merit to CTA's claim its due process rights were violated because of the amount of time our hearing officers took to reach a recommended order.

> The fundamental requirement of procedural due process is simply that all affected parties be given "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge,* 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976) (internal citation and quotation omitted). Procedural due process in the administrative or legislative setting has widely been understood to encompass "a hearing, the taking and weighing of evidence if such is offered, a finding of fact based upon a consideration of the evidence, the making of an order supported by substantial evidence, and, where the party's constitutional rights are involved, a judicial review of the administrative action."

Hilltop Basic Res., Inc. v. Cnty. of Boone, 180 S.W.3d 464, 469 (Ky. 2005)

CTA was provided with a six-day hearing to present its case against ELC's citations. Our hearing officer created a recommended order upon review of over 1,000 pages of hearing testimony and hundreds of additional pages of admitted exhibits. The arguments were considered and based on the substantial evidence contained in the record, a recommended order containing findings was created, and conclusions were prepared.[1] CTA has requested and is receiving this present administrative appeal of that recommended order. We do not find these facts indicative of a due process violation.

III. Analysis of Citation Claims

Citation 1, Item 001: Repeat Serious: 29 CFR 1019.147(c)(6)(i): Employer did not conduct periodic inspection of the energy control procedure at least annually.

CTA Acoustics alleges our hearing officer failed "to make any findings on the ultimate question of whether CTA complied with [the elements] of a periodic inspection." It also

[1] Further, if CTA were concerned about the amount of time our hearing officers were taking to reach a decision, it could have requested a status conference.

asserts the hearing officers "ignored credible and uncontroverted evidence that CTA conducted periodic inspections in compliance with the cited standard." CTA Petition for Discretionary Review. CTA believes our hearing officer's decision to uphold the citation on grounds that two CTA employees violated CTA's lockout/tagout program was improper. CTA argues the hearing officer should have based the decision on CTA's compliance with inspection and review obligations articulated in the standard. Id.

The required elements of a periodic inspection are provided by the full standard:

(6) Periodic inspection.

(i) The employer shall conduct a periodic inspection of the energy control procedure at least annually to ensure that the procedure and the requirements of this standard are being followed.

(A) The periodic inspection shall be performed by an authorized employee other than the ones(s) utilizing the energy control procedure being inspected.

(B) The periodic inspection shall be conducted to correct any deviations or inadequacies identified.

(C) Where lockout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized employee, of that employee's responsibilities under the energy control procedure being inspected.

(D) Where tagout is used for energy control, the periodic inspection shall include a review, between the inspector and each authorized and affected employee, of that employee's responsibilities under the energy control procedure being inspected, and the elements set forth in paragraph (c)(7)(ii) of this section.

(ii) The employer shall certify that the periodic inspections have been performed. The certification shall identify the machine or equipment on which the energy control procedure was being utilized, the date of the inspection, the employees included in the inspection, and the person performing the inspection.

29 C.F.R. § 1910.147(c)(6)(i)

CTA is a manufacturing operation which uses energized machinery in its molding production process. Its employees operate and maintain this equipment and are exposed to the possibility of injury should lockout procedures prove inadequate or be ignored. The standard applies to the circumstances at the CTA facility. For the present citation, the record establishes at least two employees had access to a violative condition when they entered the energized chamber designated as cell 214 without using lockout procedures.

The standard at issue requires employers to develop energy control procedures and annually inspect its employee's utilization of those procedures. CTA provided several versions of its energy control procedures at hearing, including the policy in effect in September of 2017. However, the record before this Commission shows CTA did not fulfill its periodic inspection obligations. CTA's inspection efforts were inadequate at best. CTA presented testimony from its human resource manager, Renta Osborne, who explained she conducted approximately 12 inspections per year. Transcript Day 6 page 184. Osborne was asked how many employees at CTA were practicing lockout/tagout in September of 2017. She estimated "roughly 500 employees." Transcript Day 6 page 180. That means she did not annually inspect the remaining 488 employees, or 97.6% of the CTA workforce using Lockout/Tagout. No other CTA witness gave an estimate of how many inspections they allegedly performed annually.

CTA insists it inspects a representative sample and that is adequate. It did not provide a number or percentage for the sample size. We find CTA's use of representative sampling incongruous with the plain language of the standard. The standard states an employer must conduct periodic inspection "of the energy control procedure at least **annually**" and the

"inspection shall include a review, between the inspector and **each authorized employee.**" We find a representative sample is not equivalent to each authorized employee.

When we look to the record for further evidence of how many inspections were performed, we are repeatedly directed to Jody Walker, safety manager at the time of the accident. When Compliance officer Burton interviewed Walker, she was asked if periodic inspections were being conducted for employees and if the [certification] document was being completed. Walker responded, no. Transcript Day 3, page 184. We give safety manager Walker's statement weight as to the safety practices at CTA at the time. Lynn Shepherd, CTA's environmental health and safety manager and Walker's boss, stated that periodic inspections were the responsibility of Jody Walker. Transcript Day 6, pages 254-255 As Walker was in charge of periodic inspections, we believe she was best positioned to know whether periodic inspections and required certifications were completed for employees at CTA. We conclude they were not conducted in compliance with the standard's requirements.

CTA argues its failure to produce periodic inspection certifications cannot be used to sustain a violation of the cited standard. CTA's argument has been advanced by a similarly situated employer and was rejected by the full Occupational Safety and Health Review Commission,

> Riverdale argues its failure to produce periodic inspection certifications...cannot be used as evidence it failed to comply with § 1910.147(c)(6)(i) because the cited subsection does not require certification. Riverdale misconstrues the significance of its failure to produce certifications of periodic inspections. The Secretary alleges Riverdale failed to conduct periodic inspections of authorized employees in the use of LOTO procedures. In support of this allegation, the Secretary introduced evidence that on April 26, 2019, Riverdale's maintenance supervisor and a maintenance mechanic

> applied LOTO to a spindle on the coating line. Riverdale failed to provide periodic inspection certifications for either of the two employees in response to a request from the Secretary for such documentation for "each piece of equipment comprising the Coating Line" between April 26, 2016, and April 26, 2019." At the hearing, the maintenance supervisor testified he had worked at Riverdale for a total of nine years and had never been subject toa period inspection. With this the Secretary has made a prima facie case establishing Riverdale failed to comply with 1910.147(c)(6)(i).

Riverdale Mills Corp., Respondent., 2022 O.S.H. Dec. (CCH) ¶ 33893 (CMPAU July 18, 2022)

In the present case, CTA could not provide certification records for any of its employees; not the two who claimed they were never inspected for compliance, nor those who testified on CTA's behalf that they had been inspected at some point while working at CTA. We find the failure to keep and provide certified records of periodic inspections required by 1910.147 (c)(6)(i) a relevant factor to consider when questioning whether such inspections occurred.

CTA also argues it obtained compliance with the annual inspection requirement through annual lockout/tagout trainings conducted on simulation boards in its training centers. CTA conflates training with inspection. Our position is supported by Federal OSHA,

> OSHA does not agree that by itself "annual refresher training" for all authorized employees, even if it includes a review of lockout/tagout responsibilities of each authorized employee's responsibility under the energy control procedure(s) whether or not he or she is actually implementing the energy control procedure, satisfies the periodic inspection review requirements of paragraph 1910.147(c)(6)(i)(C) and (D).

OSHA Standard Interpretation at 1995 WL 17212257, at *2

Simulation boards may be more convenient for the employer and for group training, but they lack fidelity to the actual conditions at the various workstations and are fundamentally incongruent with the goal of assessing actual implementation of the energy

control procedure by an employee engaged in actual production. The boards at CTA are not energized, they contain conglomerations of lockout components featured on machines throughout the plant which are not present at each workstation. The boards do not allow the inspector looking for compliance to watch the employee implement procedures at the actual workstation where the hazard exists during production. We hold that training is not a substitute for inspection under this standard.

We conclude CTA did not conduct annual inspections of each authorized employee as required by the standard cited as Citation 1, Item 001: Repeat Serious: 29 CFR 1019.147(c)(6)(i). We find that CTA violated the standard.

Repeat violation

CTA seeks review of the repeat classification on grounds that the prior citation was not substantially similar.

A violation is properly characterized as repeat if at the time of the alleged repeated violation, there was a Commission final order against the same employer for a substantially similar violation. Potlatch Corp., 7 O.S.H. Cas. (BNA) ¶ 1061 (O.S.H.R.C. Jan. 22, 1979) Commission precedent holds that ELC establishes "a prima facie case of [substantial] similarity by showing that the prior and present violations are for failure to comply with the same standard." *Id.* We find ELC met its prima facie burden. It provided a copy of the prior citation for a violation of the same standard. It provided proof the citation was issued against the same employer, CTA. It submitted proof the prior citation was a final order.

We next consider whether CTA rebutted this prima facie showing. The federal review commission has stated, "A prima facie showing of similarity would be rebutted by evidence

of the disparate conditions and hazards associated with these violations of the same standard." Potlatch Corp., 7 O.S.H. Cas. (BNA) ¶ 1061 (O.S.H.R.C. Jan. 22, 1979) According to the federal review commission, "in cases where both violations are for failure to comply with the same general standard, it may be relatively undemanding for the employer to rebut the Secretary's prima facie showing of similarity."[2] Potlatch Corp., 7 O.S.H. Cas. (BNA) ¶ 1061 (O.S.H.R.C. Jan. 22, 1979) In assessing whether two citations are substantially similar, the federal review commission has agreed with a federal court ruling that

> "Substantially similar" must be defined sufficiently narrowly that the citation for the first violation placed the employer on notice of the need to take steps to prevent the second violation."

Caterpillar, Inc. v. Herman, 154 F.3d 400, 403 (7th Cir. 1998)

In other words, does the evidence indicate a failure to learn from experience. CTA provided convincing evidence that the circumstances of the earlier and current citations are different enough that a repeat designation for the present citation is inappropriate despite ELC's prima facie showing. The 2013 citation (exhibit 26, page 6) recounts a finger injury when an employee forced open a latch and an abrasion injury when a second employee's shirt was caught by a turning drum that pulled him in. Both 2013 events occurred at Airlay #1 on the mat line. CTA provided testimony at hearing that it remediated the latch exposure by installing a steel plate over the opening. CTA also provided testimony that its investigation of the second injury showed a mechanical failure had occurred. It repaired the faulty valve and installed a light-based warning system to alert employees when the drum was not disengaged. The present citation is based on failure to use lockout procedures at a

[2] The Commission gives the example of safety belt use under the construction standards. A citation under the same general standard would not be repeat if the first citation were for failure to require use of a safety belt for fall protection and the second were for failure to require use of a safety belt when using earthmoving vehicles.

waterjet and molding cell. Testimony from witnesses for both sides agreed the operations are distinguishable. The present citation did not involve use of a latch or mechanical drums. The remedies accepted by ELC for the 2013 citation were highly specific to the Airlay#1 system. Given these facts, we are persuaded by CTA, the 2013 citation for violations at the Airlay #1 system did not provide it notice of the need to take steps which could have prevented the present violation of the standard at the waterjet/molding cell.[3] CTA learned from the prior citation and modified the violative conditions cited therein. We do not find that those remedies, or the nature of the prior violation, are substantially similar to the facts supporting the present citation. We reclassify the citation from Repeat Serious to Serious and reduce the penalty from $35,000.00 to $7000.00.[4]

Citation 02, Item 001(a): Serious: 29 CFR1910.38(f)(1) Employer did not review emergency action plan when developed or when employee initially assigned to a job. Failed to provide emergency action plan training to Supervisor Jerry Brown when he began his job.

The standard reads:

> Review of emergency action plan. An employer must review the emergency action plan with each employee covered by the plan [w]hen the plan is developed or the employee is assigned initially to a job.

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[3] ELC argued "Regardless of the fact that the machines may have posed the prospect of different types of injury, the fact they were required to be locked out remains and means the same lockout standard requires period inspections." Complainant's Reply to Respondent's Post-Hearing Brief, page 32. But the federal Commission has held that similarity of abatement is not the criterion for a repeat designation; the test is whether the two violations resulted in substantially similar hazards. *Stone Container Corp.*, 14 BNA OSHC 1757, 1762, 1987-90 CCH OSHD ¶ 29,064, p. 38,819 (No. 88-310, 1990).

[4] The outcome may have been different had the ELC provided more detailed evidence at hearing to support the similarity of the citations, but it relied heavily upon the prima facie showing. It provided adequate foundation to admit the prior citation, confirm the same employer was involved, confirm the citations were for the same standard, and confirm the 2013 citation was a final order before issuance of the current citation. It did not present evidence further explaining its conclusion that the citations were similar despite its awareness of CTA's claims of dissimilarity. Without further evidence of similarity, we find CTA's detailed explanation of dissimilarity more persuasive than the bare prima facie showing.

29 C.F.R. § 1910.38 (f)(1)

CTA asks the Commission to find it satisfied the requirement of this standard when it provided a copy of the emergency action plan to Mr. Brown as part of its employee handbook on September 6, 2016, his first day working at CTA. CTA Petition for Discretionary Review page 11. However, the standard requires more than mere delivery of the emergency action plan at the time of employment. Employers must "review the emergency action plan with each employee covered" (emphasis added).[5] Our hearing officer determined CTA violated this standard because it did not review the plan with Brown until November 7, 2016. Recommended order page 11. CTA does not dispute the review happened on this later date. Instead, it argues the two months gap fits within a reasonable interpretation of "initially." We disagree. Standards are created for strict compliance.

We find that CTA's inclusion of the plan in an employee handbook is not a substitute for the type of direct review of the emergency plan with the employee that is required by the language of the standard. The record shows CTA allowed Mr. Brown to work as a supervisor on its production floor without the benefit of required emergency action plan training for nearly two months. Initially means initially, the gap between Brown's hiring and CTA's review of the emergency plan does not comply with the standard. We affirm the citation and penalty.

Review of CTA Acoustic's claim that Citation 2, Item 2(a) and Citation 2, Item 5(a) are duplicative

Citation 2, Item 2(a) alleges violation of 29 CFR 1910.147 (c)(4)(i) requires

[5] We find this evidence to be proof that the plan was included in a handbook, not that the plan was reviewed with the employee at his hire date.

> Procedures shall be developed, documented, and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

Citation 2, Item 5(a) alleges violation of 29 CFR 1910.147(d)(4)(i) which requires

> Lockout or tagout devices shall be affixed to each energy isolating device by authorized employees.

CTA requests dismissal of one or both citations on grounds they are duplicative. The Federal Review Commission has several methods for assessing claims of duplicative citations. It has determined violations are duplicative where the abatement of one violation necessarily results in the abatement of the other. *See Flint Eng'g & Constr. Co.*, 15 BNA OSHC 2052, 2056-57 (No. 90-2873, 1992). The Commission has also found that violations are duplicative where they require the same abatement conduct, *see J.A. Jones Constr. Co.*, 15 BNA OSHC 2201, 2207 (No. 87-2059, 1993); where they involve substantially the same violative conduct, *see Cleveland Consol., Inc.*, 13 BNA OSHC 1114, 1118 (No. 84-696, 1987); or where they involve the same abatement. *E. Smalis Painting Co.*, 22 BNA OSHC 1553, 1561 (No. 94-1979, 2009) (citing *Capform, Inc.*, 13 BNA OSHC 2219, 2224 (No. 84-0556, 1989), *aff'd*, 901 F.2d 1112 (5th Cir. 1990)). Violations are not duplicative where they involve standards directed at fundamentally different conduct, *J.A. Jones Constr.*, 15 BNA OSHC at 2207, or where the conditions giving rise to the violation are separate and distinct. *H.H. Hall Constr. Co.*, 10 BNA OSHC 1042, 1046 (No. 76-4765, 1981). With these criteria, we review the grounds for issuing the two citations as articulated by the compliance officer.

When asked how CTA violated 29 CFR 1910.147(c)4)(i), compliance officer Burton stated, "There was no lockout performed on that piece of equipment." Day 2 Transcript, page

170. When asked how CTA violated 29 CFR 1910.147(d)(4)(i), compliance officer Burton stated, "If this equipment had been locked out properly and de-energized, it wouldn't have moved." Day 2 Transcript page 223. In both instances, CO Burton based her citation on CTA employee's failure to lockout the waterjet/molding cell. Based on this testimony, we conclude the grounds CO Burton recited for the citations are substantially the same violative conduct and would require the same abatement; lockout of the waterjet/molding cell equipment. We further find the abatement of one violation would have abated the other. We find Citation 2, Item 2(a) and Citation 2, item 5(a) are duplicative. We uphold Citation 2, item 5(a) and its penalty as issued. We dismiss Citation 2, Item 2(a) and its penalty.

Review CTA's employee misconduct defense

CTA asks the Commission to find our hearing officer improperly affirmed citation 2, item 2(a) and citation 1, item 5(a) without reaching a finding on CTA's affirmative employee misconduct defense. CTA recounts that an employer must show that despite a thorough and adequate safety program that is communicated and enforced as written, the conduct of its employees in violating the policy was idiosyncratic and unforeseeable. CTA Post Hearing Brief page 51 citing Bowlin Group, LLC V Secretary of Labor, Comm. 437 SW.3d 737, 747 (KY Ct. Appl 2014). A party claiming unpreventable employee misconduct must meet a four-part test:

1) it has established work rules designed to prevent the cited violation;
2) it has adequately communicated these rules to it employees;
3) it has taken steps to discover violations of the rules; and
4) it has effectively enforced the rules when violations have been discovered.[6]

[6] Id.

In its post hearing brief, ELC acknowledges that CTA had a lockout/tagout program with "some semblance of rules addressing the hazardous conditions which are the subject of the lockout violations." ELC Post Hearing Brief page 54. CTA asserts it had rules which addressed the hazards addressed in Citation 2, item 2(a) and Citation 2, item 5(a). As the parties agree, we find the first element of the defense established.

We next consider whether CTA adequately communicated its work rules to its employees. The testimony and exhibits submitted at hearing show Tina Pennington, the employee/supervisor who was pinned inside the machine on September 20, 2017, had been trained by CTA on a lockout program on December 9, 2016. Exhibit 1. CTA subsequently revised its lockout program on February 20, 2017. Exhibit 11, Pennington's exposure to the hazard that caused her injury occurred on September 13, 2017. Exhibit 23 The incident happened just short of seven months after CTA revised its lockout procedures. Nothing in the record shows CTA retrained Pennington on the revised program. We conclude CTA failed to demonstrate it adequately communicated its rules to Ms. Pennington.

CTA asserts that it effectively enforced the rules when violations were discovered. We find that it did not. Ms. Pennington testified that she entered the machine 30 times or more and had never locked it out. TE 124, TE 122 She further testified Jerry Brown, production supervisor, observed her enter the machine without locking it out ten to fifteen times. TE 125-126 She was never disciplined for the violation of the lockout procedures. We find Mr. Brown's lack of response resulted in dangerous risk to Ms. Pennington who was under his supervision. In prior cases, the failure of supervisors to take disciplinary action has been accepted as evidence of lax enforcement by the employer. See Brock v. L.E. Myers Co., High Voltage Div., 818 F.2d 1270, 1277 (6th Cir. 1987) Further, Ms. Pennington's

testimony that she never locked out the machine moves her violation beyond behavior that is "idiosyncratic and unforeseeable." It was her practice.

Further eroding CTA's claim of employee misconduct is the admission of Jody Walker that lockout/tagout was not enforced at CTA.[7] Hearing Transcript Day 2 pg 191. This admission is important. We find CTA's employee misconduct defense fails. The record is clear that it did not provide adequately communicate its current program to Pennington; that it did not take steps to discover violations; and that it did not effectively enforce the rules.

Citation 02, Item 003(a): Serious: 29 CFR 1910.147(c)(7)(i): Employer did not provide adequate training to ensure that employees had the knowledge and skills for safe application, usage, and removal of energy control devices by failing to ensure Jerry Brown had those skills.

Training and communication 1910.147(c)(7)(i)

> The employer shall provide training to ensure that the purpose and function of the energy control program are understood by employees and that the knowledge and skills required for the safe application, usage, and removal of the energy controls are acquired by employees.

CTA did not present adequate evidence to refute Mr. Brown's claim he was not trained to lockout the waterjet equipment. It called human resource manager, Renata Osbourne, who testified that Brown had attended a Safety Management Systems Policies training based on a sign-in sheet. Day 6 Transcript page 63 and Exhibit 8. However, she did not know what specific safety topics were covered in the meeting. Day 6 Transcript page 64. She also testified that every new hire goes through lockout/tagout training but never testified she knew Mr. Brown went through that training. Day 6 Transcript pages 21- 23 Nor do any of

[7] Ms. Walker oversaw safety at the facility during the time the injury occurred.

the training records admitted as exhibits list Mr. Brown as an attendee. The only witness called with actual knowledge of whether Mr. Brown received necessary training was Mr. Brown. Further, none of the training records or witness discussing them could verify he ever received any type of lockout training for the waterjet. We conclude CTA did not provide the required training to Mr. Brown. The citation and penalty stand as issued.

Citation 03, Item 001: Other: 29 CFR 1904.7(b)(3): Employer failed to enter number of calendar days away from work on 2017 OSHA Log.

The cited standard is written as an inquiry with response and reads:

> How do I record a work-related injury or illness that results in days away from work? When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days away from work in the number of days column. If the employee is out for an extended period of time, you must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

CTA first argues it should not be required to estimate the days away from work. We find the words "you must enter an estimate of the days that the employee will be away" require that CTA enter an estimate of the days the employee, Mr. Blair, would be away from work at CTA. CTA next asserts that even if the standard requires it to make an estimate, that provision does not apply to this situation because Mr. Blair's month-long absence is not an "extended period of time." We disagree and find Mr. Blair's month-long absence is an extended period of time. We find CTA failed to record the absence as required by the standard. We uphold the citation and penalty as issued.

Citation 3, item 4 & Citation 4, item 6

We find our hearing officer's conclusions regard Citation 3, Item 4 and Citation 3, Item 6 are proper given the record before us. We uphold those citations and the recommended zero penalties.

IV. Summary of Decision

After the foregoing reconsideration of the record, we find CTA committed a serious violation of the standard cited in Citation 1, Item 001. We reduce the penalty from $35,000.00 to $7,000.00 to reflect our reclassification from repeat to serious. We uphold Citation 2, Item 1, instance a, as a serious violation and its associated penalty of $7,000.00. We dismiss Citation 2, Item 2, instance a, and its associated penalty of $7,000.00 as duplicative of Citation 2, item 5. We affirm Citation 2, item 5, and the associated penalty of $7,000.00. We affirm citation 2, Item 3, instance a, as a serious violation and uphold the proposed penalty of $7,000.00. We affirm Citation 3, Item 1 as an other than serious violation and uphold the proposed penalty of $1,000.00. We affirm Citation 3, Item 2 as an other than serious violation and uphold the proposed penalty of $1,000.00. We affirm Citation 3, Item 4 and Citation 3, Item 6 as other than serious violations and the proposed penalties of zero dollars.

It is so ordered.

June 6, 2023

Larry Clark
Chair

Frank Jeff McMillian
Commissioner

Kyle Henderson
Commissioner

Certificate of Service

I certify that a copy of the foregoing order and decision has been served this 6th day of June, 2023, on the following as indicated:

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