

1 NEVADA OCCUPATIONAL SAFETY AND HEALTH
2 REVIEW BOARD
3
4
5

6 CHIEF ADMINISTRATIVE OFFICER
7 OF THE OCCUPATIONAL SAFETY AND
8 HEALTH ADMINISTRATION OF THE
9 DIVISION OF INDUSTRIAL RELATIONS
10 OF THE DEPARTMENT OF BUSINESS AND
11 INDUSTRY,

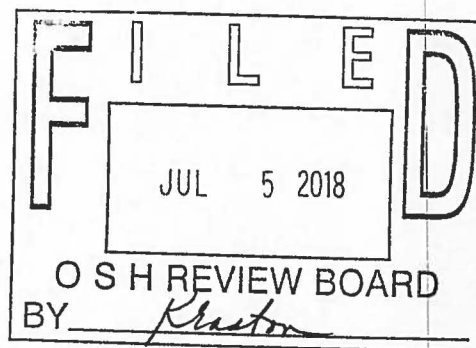
Docket No. LV 17-1907

Complainant,

vs.

12 PERFORMANCE BUILDERS, INC.,

13 Respondent,
14



DECISION

15 This matter having come before the **NEVADA OCCUPATIONAL SAFETY AND**
16 **HEALTH REVIEW BOARD** at a hearing commenced on the 15th day of February
17 2018, in furtherance of notice duly provided according to law, MS.
18 SALLI ORTIZ, ESQ., counsel appearing on behalf of the Complainant,
19 **Chief Administrative Officer of the Occupational Safety and Health**
20 **Administration, Division of Industrial Relations (OSHA)**; and MR. RICK
21 ROSKELLEY, ESQ., appearing on behalf of Respondent, **Performance**
22 **Builders, Inc.**, the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD**
23 finds as follows:

24 Jurisdiction in this matter has been conferred in accordance with
25 Chapter 618 of the Nevada Revised Statutes.

26 The complaint filed by the OSHA sets forth allegations of
27 violation of Nevada Revised Statutes as referenced in Exhibit "A",
28 attached thereto.

1 Citation 1, Item 1, charges a violation of 29 CFR 1926.452(c)(4),
2 which provides:

3 29 CFR 1926.452(c)(4). Where uplift can occur
4 which would displace scaffold end frames or
5 panels, the frames or panels shall be locked
6 together vertically by pins or equivalent means.

7 NVOSHA alleged:

8 At the Pinecrest Inspirada Academy, located at
9 2840 Via Contessa Road in Henderson, Nevada,
10 employees were lathing a new building on the
11 southeast side while working from a five-tiered
12 fabricated frame scaffold that was not locked
13 together vertically by pins or equivalent means.
14 On the day of the inspection, wind gusts were
15 approximately 31 mph contributing to potential
16 uplift. The employees were exposed to a fall
17 hazard of approximately 10 to 35 feet to the
18 gravel surface below, which could result in
19 broken bones and up to death.

20 The violation was classified as "Willful." The proposed penalty
21 for the alleged violation is in the amount of FORTY-FOUR THOUSAND
22 DOLLARS (\$44,000.00).

23 Complainant and respondent stipulated to the admission of
24 documentary evidence identified as complainant Exhibits 1 through 3;
25 and respondent exhibits identified as Tabs 1 through 5. It was also
26 stipulated that respondent employer made the direct decision not to
27 use locking pins as the scaffolding was being utilized because they
28 did not believe it was necessary.

Both counsel waived opening statements.

FACTS

At Citation 1, Item 1, a single violation was documented during
the inspection of the subject construction site identified in the
allegations to the complaint. The original Certified Safety and
Health Officer (CSHO) Mr. Mark Nester conducted the inspection and
reporting, however no longer employed by NVOSHES. Mr. Jamal Sayegh

1 was identified as the NVOSHES supervisor who reviewed the evidence,
2 citation process and the responsible complainant witness to support
3 the violations.

4 The narrative reports and photographic exhibits stipulated in
5 evidence describe an initial inspection on February 8, 2017 based upon
6 a "referral" complaint.

7 The subject work site was occupied by employers and employees
8 other than those of respondent and designated a **multi-employer work**
9 **site** as defined under recognized Federal and NVOSHA enforcement
10 policy.

11 During inspection, the CSHO observed that "**locking pins**" were
12 missing on sides of respondent scaffolding. The CSHO recommended
13 issuance of a citation based upon his determination that high wind
14 gusts were reported at approximately 31 mph, and ". . . work trucks
15 driving around the scaffold on the jobsite which could potentially
16 contribute to displacement or separation of the scaffold frame
17 components if the scaffold were struck by the equipment . . ."

18 The respondent contends the cited standard does not require all
19 scaffold be affixed with **locking pins**. The employer intentionally did
20 not use locking pins based upon belief they were not required by the
21 work site conditions. The complainant agrees there are no specific
22 requirements in the standard itself for "pinning" scaffolding due to
23 winds, or other specific conditions. Both respondent and complainant
24 agree that it is the responsibility of the employer and a qualified
25 **competent person** (as defined through occupational safety and health
26 law) in charge of the scaffolding erection/design to determine whether
27 unsafe conditions exist which warrant and/or require pinning. Both
28 parties also agreed that the OSHA required conditions for pinning are

1 based upon ". . . where uplift may occur . . ."

2 It is undisputed that the ANSI A10.8-2011 provides industry
3 consensus recommendations for utilizing locking pins. ANSI guidance
4 is based upon the criteria from the standard which provides "Where
5 uplift can occur which would displace scaffold end frames or panels,
6 the frames or panels shall be locked together vertically by pins or
7 equivalent means." [1926.452(c)(4)]

8 Both parties agree that conditions warranting pinning include,
9 but are not limited to: attaching other materials or equipment that
10 may create stress on the scaffolding structure, utilizing hoisting
11 equipment to lift materials up to the working platform, wrapping the
12 scaffolding in weather proof plastic or tarp materials which could
13 capture winds, construction equipment operating on the site near or
14 in areas which may permit contact with the scaffolding, use of a
15 forklift to lift materials up to the employees working on the
16 scaffolding from the work platform.

17 The inspector recommended citation for a **serious** violation of the
18 subject standard, based upon the lack of scaffold locking pins where
19 there was potential for uplift and exposure to fall hazards from the
20 height of the working platform resulting in serious injury or death.
21 After the initial citation was issued, it was recalled and a new
22 citation issued increasing the classification from "**Serious**" to
23 "**Willful**". The increased classification resulted in additional
24 penalties for a total proposed at \$44,000.00.

25 Complainant counsel referenced witness testimony and the
26 inspector CSHO reportings in evidence will be offered through Mr.
27 Jamal Sayegh, NVOSHES supervisor.

28 Respondent counsel referenced expected witness testimony and

1 documents in evidence from Ms. Laura Sorensen, company co-owner, Mr.
2 Jose Manual Rangel, company foreman, and Mr. Kent Barber, a scaffold
3 design engineer.

4 Respondent contends no pinning was required under the cited
5 standard nor supported by any evidence of major wind conditions,
6 vehicular traffic near the scaffolding, nor opinion of the company
7 **competent person**. He identified testimony for presentation from the
8 foreman in charge of the project work and scaffolding, Mr. Jose Manuel
9 Rangel; and interview statements from employee Ruben Sanchez, the
10 **competent person** qualified in scaffold safety. Respondent counsel
11 also identified expected testimony of expert engineer Mr. Kent Barber
12 to support respondent's position that pinning was not required under
13 the standard nor were there other factual conditions warranting or
14 requiring the utilizing of locking pins on the scaffolding.

15 ISSUE

16 The issue before the Board on appeal is whether the respondent
17 violated the cited standard, 29 CFR 1926.452(c)(4), by failing to
18 utilize **locking pins** on its scaffolding, despite the lack of any
19 specific conditions requiring use listed in the standard. The
20 particular condition requiring use of locking pins relied upon by the
21 CSHO were his findings of approximate 31 mph winds reported at a
22 nearby airport, and other work site factors contributing to potential
23 uplift and displacement of the scaffolding.

24 DISCUSSION

25 Counsel for the Chief Administrative Officer presented witness
26 testimony of Mr. Jamal Sayegh. He identified himself as the
27 supervisor for the subject citation based upon the inspection
28 conducted by former OSHA CSHO Mr. Mark Nester. He identified

1 complainant Exhibits 1 through 3, and referenced the exhibits during
2 his testimony. Mr. Sayegh identified and explained the photographs
3 including Exhibit 1, pages 56, 58, 59, 60, 61 and 62 as depicting the
4 lack of locking pins in place on the scaffolding at the time of
5 inspection. He further referenced Exhibit 1, page 26 as the violation
6 work sheet. In response to direct testimony Mr. Sayegh testified from
7 the CSHO reportings that Exhibit 1, pages 63 and 64 described the lack
8 of locking pins on the scaffold, and misalignment of the scaffold
9 frames. He identified and testified on the witness statements at
10 Exhibit 1 of employees Manuel Rangel (page 20), Alberto Carrillo (page
11 22) and Jose Garcia (page 24).

12 The narrative report stipulated in evidence at Exhibit 1, pages
13 14 through 16, described the observations and findings of CSHO Nester
14 as bases for the citation. The report focused on wind speed/gusts
15 which could cause potential uplift and displacement of scaffolding,
16 and contributing factors for displacement of the scaffolding due to
17 misalignment of the frame, connections, and securing components. The
18 narrative report stipulated in evidence provided as follows:

19 After conducting the opening conferences, I
20 observed several frames on the fabricated frame
21 scaffold to be missing connector pins which would
22 hold the scaffold frames together. The scaffold
23 was 5 tiers, with the top level at height of
24 approximately 35 feet, and wrapped around all 4
25 sides of the project. I observed that the frames
26 had holes which would be used to insert connector
27 pins, however the holes were empty as there were
28 no pins or any other equivalent means (see
photos).

25 Employees were observed working on the southeast
26 corner of the project, installing paper and metal
27 mesh (lath) which helps to hold the plaster onto
28 the building. Employees were observed on the top
level (5th tier) and another employee was observed
on the first level of the scaffold. The frames
where employees were observed working also did

1 not have connector pins holding the frames
2 together.

3 There was wind gusts present on the day of the
4 inspection, which could potentially lead to
uplift on the scaffold (31 mph wind gusts
according to Weather Underground).

5 One employee advised that he worked from the top
6 level of the scaffold (approximately 35 feet
7 high) for about two hours to install paper lathe.
The employee added that he doesn't remember the
scaffold ever having connector pins.

8 The Competent Person for the scaffold erection,
9 Mr. Jose Garcia, stated that the scaffold did not
10 have connector pins as he didn't think it needed
11 pins. Mr. Garcia did explain that the connector
12 pins help the scaffold from coming apart in high
winds. Mr. Garcia explained that he did a visual
inspection of the scaffold the morning of the
inspection.

13 The Vice President, Mr. Sorensen, advised that
14 the scaffold has stacking pins, in which the
15 frames are stacked together, however he also
16 noted that the scaffold did not have connector
pins. Mr. Sorensen stated that connector pins
are necessary for high winds where uplift can
occur. However, Mr. Sorensen stated he
considered high winds to be 90-100 mph winds.

17 I walked the entire scaffold and observed pins
18 missing on all sides of the scaffolding.
19 However, employee exposure was on the southeast
20 side of the project, where employees advised they
21 were working on the day of the inspection. When
22 walking the scaffold on the north side of the
23 project, I observed planks that were not
24 overlapping over support frames. I did not
observe employee exposure, nor did employees
advise that they were working in the area during
employee interviews. I addressed the condition
of the scaffold deck with the Vice President, Mr.
Sorensen. The rest of the scaffold appeared
satisfactory.

25 Additional investigation revealed a significant
26 amount of published information regarding
27 requirements for the use of locking pins on
28 supported (fabricated frame) scaffolding.
Generally, both industry practice and published
consensus standards require the use of locking
pins whenever the potential for uplift and
scaffold frame separation is present. The

1 specific manufacturers of the various scaffold
2 components were unable to be determined during
3 this inspection, as the employer did not maintain
4 a record of the manufacturers and no markings
5 were located on the components themselves. A
6 review of manufacturer instructions and safety
7 requirements was conducted to determine if a
8 general industry practice related to locking pins
9 could be established.

10 The American National Standards Institute (ANSI)
11 published ANSI A10.8-2011, an industry consensus
12 standard that contains safety practices for the
13 erection, use and dismantling of supported
14 scaffolding. Within that document, ANSI states
15 "Where uplift may occur, post members shall be
16 locked together vertically by pins or other
17 equivalent means" (ANSI 10.8-2011, paragraph
18 10.6).

19 OSHA recognizes the hazard of working from
20 scaffolding without locking pins on its public
21 webpage, www.OSHA.gov, and addresses the issue of
22 uplift in several ways. First, in a published
23 scaffold pamphlet, OSHA states "Paragraph (c)(4)
24 requires the locking together of end frames.
25 This requirement only applies where uplift forces
26 are strong enough to displace the end frames or
27 panels, such as when a hoist is being used that
28 could snag the scaffold during a hoist operation"
([https://www.osha.gov/dte/library/scaffolds/
summary.html](https://www.osha.gov/dte/library/scaffolds/summary.html)). Further, OSHA states "Frames and
panels must be locked together to prevent uplift,
where uplift can occur. Uplift is the separation
of a frame from the frame below it" ([https://www.
osha.gov/SLTC/etools/scaffolding/supported/frame.
html](https://www.osha.gov/SLTC/etools/scaffolding/supported/frame.html)). OSHA also states "Separation of frames
can occur in high winds (uplift), or when workers
climb endframes, overload the platform, or strike
the scaffold with tools, materials, etc."
([https://www.osha.gov/SLTC/etools/scaffolding/
supported/frame.html](https://www.osha.gov/SLTC/etools/scaffolding/supported/frame.html)).

1 Metaltech scaffolding publishes a publicly
2 available instruction document regarding the
3 erection fo the frame scaffolding it produces.
4 In that instruction document, Metaltech states
5 "If uplift could cause the components to
6 separate, locking pins must be used and the
7 components secured. Uplift might be caused by
8 the action of wind on a secured deck or by the
9 leverage action of a cantilever side bracket on
10 the scaffolding. All joints must be pinned on
11 rolling scaffoldings and free-standing towers."

1 Performance Builders, in its own Scaffold Safety
2 Program states: "Bracing frames and panels . . .
3 Where uplift can happen which would displace
4 scaffold end frames or panels, the frames shall
5 be locked together vertically by pins or
6 equivalent means." This quote, taken from
7 materials published as safety instructions by
8 Performance Builders, is taken verbatim from the
9 cited standard, 29 CFR 1926.452(c)(4).

6 Based on information I obtained during the course
7 of this inspection, and review of the employer's
8 own documents, the employer possesses heightened
9 awareness of the requirements of the cited
10 standard. Due to previous OSHA compliance
11 inspections and subsequent citations related to
12 the standard, the employer has been made aware of
13 the requirements of the standard by this agency.
14 Inspection 1179673 was opened on September 21,
15 2016. Citations issued as a result of that
16 inspection were received by the employer on
17 October 27, 2016. Inspection 1172862 was a
18 fatality investigation opened on August 22, 2016.
19 Citations issued as a result of that inspection
20 were required by the employer on December 12,
21 2016.

15 Mr. Sayegh testified on the required proof element of **employer**
16 **knowledge**. He referenced the reported co-owner (Mr. Sorensen) opinion
17 that **locking pins** were not necessary at this site on the day of
18 inspection. Counsel stipulated to the admitted owners decision not
19 to pin the scaffolding at the site. Mr. Sayegh referenced employee
20 interviews on the company safety policy providing that employees are
21 not permitted to work if there are winds exceeding 20 mph.

22 Mr. Sayegh referenced Exhibit 1, pages 26 to 29 noted as basis
23 for the citation. He explained the specific reference to winds of
24 approximately 31 mph as contributing to potential uplift. He
25 testified on direct and redirect referencing Exhibit 1, pages 72 and
26 73 on the ANSI guidance material and read from the CAO guidance
27 letter:

28 "Uplift can be introduced into manufactured

1 scaffolding system by many means which include,
2 but are not limited to, the following . . ." (Tr.
pg. 67)

3 He further read from the violation worksheet Exhibit 1, page 28,
4 as to the factors contributing to uplift in addition to the 31 mph
5 wind:

6 "The employer advised that there were scaffold
7 components from three to four different
8 manufacturers in use on the site at the time of
9 inspection. There were also work trucks arriving
10 around the scaffold and the job site which could
potentially contribute to displacement or
separation of the scaffolding frame components if
the scaffold were to be struck by the equipment."

11 Mr. Sayegh testified as to the employee exposure proof element;
12 and penalty assessment components involving severity, probability and
13 gravity in support of the classification of **willful**. He again
14 referenced CSHO Nester's report and explained that

15 ". . . the respondent employer possesses
16 **heightened awareness** under the requirements of
the cited standard through the previous OSHA
17 compliance inspections and subsequent citations
related to the standard . . ." Exhibit 1, page
18 15.

19 In continued redirect examination, Mr. Sayegh testified the **only**
20 "pinning" subject of citation involved **locking pins**.

21 Mr. Sayegh explained the citation was reclassified from **Serious**
22 to **Willful**, but could not be classified as **repeat** because a prior
23 violation had not been confirmed a **final order**. He explained the
24 previous citations were referenced to support **employer knowledge** and
25 the need for **heightened awareness** due to the prior experience with
26 scaffolding safety enforcement.

27 Mr. Sayegh testified that no wind testing instruments were
28 utilized by NVOSHA. Similarly he did not know exactly when wind gusts

1 occurred. He referenced the CSHO summary where Mr. Nester reported
2 the wind speed by use of his cell phone for information published at
3 a nearby area. Exhibit 1, page 29, Mr. Sayegh testified again as to
4 wind speed, noting the CSHO reported information from the National
5 Weather Service at the Henderson Executive Airport showed gusts of 38
6 mph on February 6, 2017 and 41 mph on February 7, 2017. He testified
7 the confirmed gusts also occurred on February 9, 2017, the date of the
8 inspection.

9 Mr. Sayegh testified on the difference between uplift and actual
10 displacement. He testified the intent of the standard for enforcement
11 purposes is to cite for lack of locking pins when uplift would occur
12 to effectuate displacement or a separation in the framing material
13 which could result in a partial or complete collapse and injury to
14 employees.

15 Counsel inquired with regard to the reclassification of the
16 citation from Serious to Willful. Mr. Sayegh explained that
17 supervisor Garrett initially approved the citation for a Serious
18 violation, however ". . . it appears . . . our administrator sent an
19 e-mail . . . directing the citation be amended to a Willful
20 classification." When asked for the basis of same, Mr. Sayegh
21 responded he did not know. (Tr. page 43)

22 Mr. Sayegh testified respondent employees can work on scaffold
23 during high wind, just so all the protections are in place.

24 Mr. Sayegh testified wind gusts of 31 mph were determined to be
25 a "contributing factor but not the only consideration." He confirmed
26 the Federal OSHA Interpretation Letter referenced at Exhibit 2, page
27 72 and agreed the 2011 issuance was the same as the original bases
28 that pinning is required only when there is a potential for uplift.

1 Counsel questioned Mr. Sayegh on the initial determination for
2 issuance of citation. Mr. Sayegh responded "correct" as to the basis
3 for initially finding a violation was only the potential of uplift
4 because of wind gusts. Mr. Sayegh agreed there was no CSHO findings
5 of wind screens being attached to the scaffolding, hoists or
6 cantilevers nor any forklift in the proximity. He further confirmed
7 at the transcript page 41 that the citation does not identify any
8 other potential for uplift than wind gusts of approximately 31 mph.

9 On continued questioning, Mr. Sayegh testified he had no evidence
10 employees were on the scaffolding when the wind gusts were measured.

11 Mr. Sayegh testified at Exhibit 1, page 70 that the final OSHA
12 rule for guidance remains as previous to

13 "require locking together of end frames and is
14 essentially the same as existing §
15 1926.451(d)(6). This requirement only applies
16 where **uplift forces are strong enough to displace
the end frames** or panels, such as when a joist is
being used that could snag the scaffold during
hoist operation." (**emphasis added**)

17 Counsel identified information at Exhibit 2, page 159, from the
18 OSHA website, which provides:

19 "Employees are not permitted to work on or from
20 scaffolds during storms or high wind, unless a
21 **competent person** has determined that it is safe,
and those employees are protected by [29 CFR
1926.451(f)(12)]."

22 At the conclusion of complainant's case, respondent presented
23 witness testimony from company foreman Mr. Jose Manuel Rangel, co-
24 owner Ms. Laura Sorensen, and engineer Mr. Kent Barber.

25 Mr. Rangel testified through the assistance of an interpreter.
26 He explained he is a foreman and a 20 year employee in the
27 construction industry with experience in the recognition of
28 scaffolding hazards. He testified that if winds are more than 20 mph

1 the company has provided him with authorization to stop work. He
2 further testified that on the day of the inspection there were no
3 winds of 20 mph and it was safe to work. He further responded to
4 questioning on his authority that he can stop work if any equipment
5 is operating too close to the scaffolding. Mr. Rangel testified that
6 if material is needed, it is passed by hand up to employees working
7 on the scaffolding in a five gallon bucket, no hoist was utilized.
8 He further testified they never use a forklift to raise material up
9 to the scaffolding.

10 On cross-examination Mr. Rangel testified in response to
11 questioning on how he determines the wind speed to be 20 mph. He
12 responded that by experience he is able to determine the wind speed
13 and his reference to the weather channel. He further testified that
14 ". . . when there's wind we do not work . . ." (Tr. pages 79-80) Mr.
15 Rangel testified that locking pins are needed in scaffolding to make
16 it "more safe," he is aware that no locking pins were utilized on the
17 subject scaffold.

18 Ms. Laura Sorensen testified that it is not company practice to
19 use locking pins unless certain conditions exist and determined by the
20 competent person in charge of the scaffolding. She described the
21 safety training program at the time of hire for testing, training and
22 supervision for review to assure qualifications. In response to the
23 question "Do you have **competent persons**," Ms. Sorensen testified
24 ". . . Yes, we do. Anybody that's going to work on the scaffolding
25 for the company is trained as a "**competent person**." (Tr. page 84,
26 lines 15-18) She testified the foreman has absolute authority to stop
27 work if wind conditions make it unsafe to perform employee operations.
28 She testified that it makes much more sense to simply dump the stucco

1 material and stop work entirely if it's windy rather than come down
2 during gusts and resume work later. Ms. Sorensen testified that
3 whenever there's a need to use hoists the employee obtain locking
4 pins. (Tr. pgs.96-97) She further testified they never use forklifts
5 for material; only sometimes hoists. Employees are not allowed to
6 work in winds at or about 20 mph. Ms. Sorensen testified that weather
7 conditions can differ a half mile from the work site, including winds;
8 and that she informed the OSHA inspector at the time of the informal
9 conference that company crews are not allowed to work when winds reach
10 a speed of 20 mph. She also responded that she requested an expert
11 opinion on uplift conditions and that the engineer is here today to
12 testify.

13 On redirect, Ms. Sorensen testified pins sometimes can be
14 misidentified, however at the time of inspection all pins required for
15 scaffolding were utilized except locking pins because the company and
16 responsible employees saw no potential for uplift. She further
17 testified that OSHA never raised causes for potential uplift or
18 identified anything other than wind. Ms. Sorensen testified that the
19 company now pins all scaffolding even though she does not believe it
20 to be required but simply to satisfy OSHA, given the previous
21 citations.

22 Mr. Kent Barber identified himself as a professional engineer
23 with 20 years of civil engineering and construction experience. He
24 was retained for analysis and opinion for the subject citation. Mr.
25 Barber testified at respondent's Tab 4, there was no evidence of wind
26 speed provided which "could have caused uplift." There were no
27 findings that 20 mph could cause uplift or displacement. He testified
28 that planking was not required to be secured and can often exacerbate

1 conditions for uplift. He analyzed the Pinecrest Inspirada Academy
2 subject work site conditions after the citation. He reviewed and
3 analyzed terms of 29 CFR 1926.452(c)(4) and noted the citation
4 specifically made reference to the potential for uplift to occur from
5 only wind gusts. He analyzed and made a correlation between the wind
6 speed and potential for uplift to prepare for his testimony and
7 rendered a report and opinion in this case. He reached a conclusion
8 that wind speeds required to separate frames that are not tied down,
9 planks not tied down, would be ". . . approximately 100 mph. . ."
10 (Tr. page 125) He further testified as to wind gusts necessary if
11 planks were secured to the scaffold to need to reach approximately 64
12 mph to cause any uplift or displacement.

13 On cross-examination, Mr. Barber testified that he utilized the
14 OSHA website but did not examine the specific scaffold involved the
15 subject action.

16 At the conclusion of evidence and testimony, counsel presented
17 closing arguments.

18 Complainant asserted the exhibits in evidence established the
19 requirement for a "heightened awareness" by the employer which support
20 the willful classification. Counsel argued the employer experience
21 of prior inspections and citations involving scaffold security safety
22 issues demonstrated the requirement for a special increased awareness
23 to meet the criteria for the willful findings. That past experience
24 is evidence of employer knowledge for **illegality of the cited conduct;**
25 **and/or the state of mind to find a conscious disregard and/or plain**
26 **indifference for the safety and health of employees.** She argued that
27 respondent has been in the same position three times which confirms
28 the need for heightened awareness for scaffold work safety.

1 Counsel asserted that foreman Rangel testified he was trained on
2 scaffolding yet during testimony he thought the pins were for the
3 purposes of "stability." She asserted the engineer testimony should
4 not be relied upon by the Board because Mr. Barber did not have all
5 of the facts involving the subject scaffolding, the work site, or
6 conditions, therefore should be considered for due weight. Counsel
7 asserted ". . . the biggest distinction between classification of
8 serious and a classification of willful falls on the employer
9 knowledge and the level that has to be shown." (Tr. page 131) "Based
10 on the testimony you heard from the experience Performance Builders
11 has on **multi-employer** work sites, they know the scaffold safety
12 possibilities . . . because it's happened before." (Tr. page 137)
13 She argued that you have employee exposure based upon the employee
14 interviews which reflect ". . . they said they had been working up to
15 five days . . . Some of them had worked up to five hours on that
16 scaffolding per day. So the exposure is there." (Tr. page 137)

17 Respondent counsel argued the respondent fully complied with the
18 standard and Federal OSHA Interpretation Letter guidance. Pinning is
19 not required unless certain circumstances exist. For example, very
20 heavy winds, forklifts operating near the scaffolding, or other
21 recognized conditions to warrant pinning of scaffolding. Counsel
22 argued that only wind at 31 mph was cited as a cause for pinning in
23 the citation; but no evidence of any 31 mph wind velocity, or that
24 potential displacement could occur. Counsel asserted ". . .It is
25 clear the scaffolding at Pinecrest was erected by a **competent person**.
26 It is also clear and undenied that the scaffolding was joined together
27 by stacking pins per the requirements of 29 CFR 1926.452(c)(3). . .
28 It has also been established that the scaffolding was properly tied

1 and braced to the building pursuant to 29 CFR 1926.154(c). There were
2 no tarps attached . . . no screens . . . attached to the scaffolding.
3 It's already been established there were no hoists near the
4 scaffolding and there's no evidence . . . any forklifts in operation
5 near the scaffolding." Counsel further argued ". . .the citation that
6 was issued under 29 CFR 1926.452(c)(4) was for the lack of locking
7 pins and the exposure that was cited clearly in both the original
8 citation and amended citation was based upon wind alone. Wind gusts
9 up to 31 miles per hour was all that was cited in both regular - - the
10 original citation and amended citation." (Tr. pages 138-139) Counsel
11 argued the employer company policy, and unrefuted testimony from Ms.
12 Sorensen and foreman Rangel, and admitted by complainant witness
13 Sayegh, was that OSHA does not require locking pins in all
14 circumstances. ". . . It is required only under two conditions . . .
15 where there is uplift, and then only if the uplift is sufficient to
16 displace the end frames, one frame to the other . . . Those are the
17 only circumstances in which they are required." (Tr. page 140)
18 Counsel argued that while it's been asserted in the hearing today,
19 there is no evidence or requirement by OSHA that locking pins are to
20 be used in all situations. Witnesses Sorensen and Rangel both
21 testified they do not use locking pins when it is unnecessary. "Ms.
22 Sorensen testified they do use locking pins when they have hoists or
23 outriggers or cantilevers or other such devices in close proximity or
24 attached to scaffolding . . . then they pin the area where those items
25 are going to be used because that's where uplift could occur." (Tr.
26 pages 140-141) Counsel argued "So the issue is not any of these what-
27 if situations . . . The issue is . . . Under the conditions found on
28 the day of the inspection by the inspector, was there a possibility

1 of uplift occurring." Counsel argued ". . . the only evidence cited
2 in the citation twice, in the initial citation and then again when it
3 was amended, was wind gusts of up to 31 miles per hour." (Tr. Page
4 141) He asserted you heard today the testimony of our expert who did
5 the calculations to address the wind issue. Counsel argued ". . .
6 it's OSHA's burden to prove . . . they must prove by a preponderance
7 of evidence . . . on the day of the inspection . . . uplift forces of
8 wind were sufficient to cause separation, as required by the
9 regulations, to trigger requirement for locking pins." (Tr. page 143,
10 lines 15-23)

11 Counsel argued that for a Willful citation ". . . under the case
12 law . . . there has to be substantial evidence that the employer
13 **intentionally disregarded** or was **plainly indifferent** to and knowingly
14 permitted a serious hazard to exist. . . Has there been evidence of
15 this?" Counsel asserted there were no measurements of wind speed or
16 any evidence that same existed at any speed at the time of the
17 inspection; nor requirement in the standards for pinning the
18 scaffolding even if there was a wind speed of 31 mph, nor any employee
19 working beyond the company policy requirement for working once the
20 wind was determined to be at 20 mph. (Tr. pages 144-145)

21 Counsel concluded there has been no evidence by OSHA of a
22 violative condition at the work site that would have required pinning;
23 nor anything in the citation to cause uplift other than a reference
24 to wind.

25 APPLICABLE LAW

26 The Board is required to review the evidence and recognized legal
27 elements to prove violations under established occupational safety and
28 health law.

1 In all proceedings commenced by the filing of a
2 notice of contest, the **burden of proof** rests with
3 the Administrator. (See NAC 618.788(1). (**emphasis**
4 **added**))

5 NAC 618.788 (NRS 618.295) In all proceedings
6 commenced by the filing of a notice of contest,
7 the burden of proof rests with the Chief.

8 All facts forming the basis of a complaint must
9 be proved by a preponderance of the evidence.
10 See *Armor Elevator Co.*, 1 OSHC 1409, 1973-1974
11 OSHD ¶16,958 (1973).

12 NRS 233B(2) "Preponderance of evidence" means
13 evidence that enables a trier of fact to
14 determine that the existence of the contested
15 fact is more probable than the nonexistence of
16 the contested fact.

17 To prove a violation of a standard, the Secretary
18 must establish (1) the applicability of the
19 standard, (2) **the existence of noncomplying**
20 **conditions**, (3) **employee exposure or access**, and
21 (4) that the **employer knew or with the exercise**
22 **of reasonable diligence could have known of the**
23 **violative condition**. See *Belger Cartage Service,*
24 *Inc.*, 79 OSAHRC 16/B4, 7 BNA OSHC 1233, 1235,
25 1979 CCH OSHD ¶23,400, p.28,373 (No. 76-1948,
26 1979); *Harvey Workover, Inc.*, 79 OSAHRC 72/D5, 7
27 BNA OSHC 1687, 1688-90, 1979 CCH OSHD 23,830, pp.
28 28,908-10 (No. 76-1408, 1979); *American Wrecking*
Corp. v. Secretary of Labor, 351 F.3d 1254, 1261
(D.C. Cir. 2003). (**emphasis added**)

19 A respondent may rebut allegations by showing:

- 20 1. The standard was inapplicable to the
21 situation at issue;
- 22 2. The situation was in compliance; or lack of
23 access to a hazard. See, *Anning-Johnson Co.*,
24 4 OSHC 1193, 1975-1976 OSHD ¶ 20,690 (1976).
25 (**emphasis added**)

26 A "**willful**" violation is established upon a preponderance of
27 evidence based upon NRS 618.635 which provides in pertinent part:

28 Any employer who **willfully** or repeatedly violates
any requirements of this chapter, any standard,
rule, regulation or order promulgated or
prescribed pursuant to this chapter, may be
assessed an administrative fine of not more than
\$70,000 for each violation, but not less than

1 \$5,000 for each willful violation. (emphasis
2 added)

3 A "willful" violation is one "committed with
4 **intentional, knowing or voluntary disregard** for
5 the requirements of the Act, or the plain
6 indifference to employee safety." A willful
7 violation is distinguished from a nonwillful
8 violation by "an employer's **heightened awareness**
9 of the **illegality** of the **conduct** or **conditions**
10 and by a **state of mind, i.e. conscious disregard**
11 **or plain indifference** for the safety and health
12 of employees." A showing of evil or malicious
13 intent is not necessary to establish willfulness.
14 On the other hand, willfulness will not be found
15 where the employer's noncompliance is the result
16 of mere negligence or carelessness. The
17 Occupational Safety and Health Administration
18 (OSHA) **bears the burden of establishing**
19 **willfulness** and thus must show an employer was
20 **aware of the illegality** of its acts or omissions
21 and **consciously disregarded** the requirements of
22 the Act or was **plainly indifferent** to employee
23 safety and health. *E.g., National Eng'g &*
24 *Contracting Co. v. Herman*, 181 F.3d 715, 18 OSH
Cases 2114 (6th Cir. 1999); *Caterpillar Inc. V.*
Herman, 122 F.3d 437, 17 OSH Cases 2121 (7th Cir.
1997); *Valdak Corp. v. OSHRC*, 73 F.3d 1466, 17
OSH Cases 1492 (8th Cir 1996); *Interstate Erectors*
Inc. V. OSHRC, 74 F.3d 223, 17 OSH Cases 1522
10th Cir. 1996); *Conie Const v. Reich*, 73 F.3d
382, 17 OSH Cases 1409 (D.C. Cir. 1995); *Reich v.*
Trinity Indus., 16 F.3d 1149, 16 OSH Cases 1670
(11th cir. 1994); *Universal Auto Radiator Mfg. Co.*
v. Marshall, 631 F.2d 20, 8 OSH Cases 2026 (3d
Cir. 1980); *Pepperidge Farm Inc.*, 17 OSH Cases
1993, 1998-2000 (Rev. Comm'n 1997); *General*
Motors Corp., 14 OSH Cases 2064 (Rev. Comm'n
1991); *McKie Ford, Inc. v. Secretary of Labor*,
191 F.3d 853, 18 OSH Cases 1906 (8th Cir. 1999);
McLaughlin v. Union Oil, 869 F.2d 1039, 1047, 13
OSH Cases 2033 (7th Cir. 1989) (an employer's
negligent failure to discover a crack in pressure
vessel was not willful); *Brock v. Morello Bros.*
Constr., 809 F.2d 161, 13 OSH Cases 1033 (1st Cir.
1987), *aff'g* 12 OSH Cases 1779 (Rev. Comm'n
1986). (emphasis added)

25 A "competent person" is defined as "one who is
26 capable of identifying existing and predictable
27 hazards in the surroundings or working conditions
28 which are unsanitary, hazardous, or dangerous to
employees, and who has authorization to take
prompt corrective measures to eliminate them" [29
CFR 1926.32(f)].

1 The **burden of proof** to confirm a violation rests with OSHA under
2 Nevada law (NAC 618.788(1)); but after establishing same, **the burden**
3 **shifts to the respondent to prove any recognized defenses.** See *Jensen*
4 *Construction Co.*, 7 OSHC 1477, 1979 OSHD ¶ 23,664 (1979). Accord,
5 *Marson Corp.*, 10 OSHC 2128, 1980 OSHC 1045 ¶ 24,174 (1980).

6 As a general rule, every employer on a **multi-**
7 **employer work site** has the responsibility to
8 protect its own employees from unsafe conditions,
9 regardless of who created or **controlled** the
10 hazard. To escape OSHA liability, an employer
11 that neither created **nor controlled the hazardous**
12 **condition** must show that it either took
13 alternative measure to protect its employees or
14 did not know and could not reasonably have known
15 that the condition was hazardous. Recognizing
16 that requiring a non-creating, non-controlling
17 employer to take "realistic alternative measures"
18 to protect its employees is a rather broad
19 command, OSHRC has addressed the requirement on
20 a number of occasions. OSHRC has stated that
21 "our [*Anning-Johnson/Grossman Steel*] decisions
22 make respondent's ability to use realistic
23 measures to comply fully with the standard a
24 **material issue of fact.** *A Practical Guide to*
25 *OSHA § 8.01[3]* (2002). (**emphasis added**)

17 At Citation 1, Item 1, referencing 29 CFR 1926.452(c)(4), the
18 Board finds the proof elements required to support a violation were
19 met by the preponderant evidence.

20 The work site was comprised of more than one employer and
21 satisfied the legally recognized criteria for classification as a
22 **multi-employer work site.** See *A Practical Guide to OSHA § 8.01[3]*
23 (2002), supra. At a multi-employer work site, employer safety
24 awareness is **heightened** for not only its own employees but also the
25 employees of other contractors on the site. At the subject multi-
26 employer work site, employee exposure to the potential hazardous
27 conditions due to work trucks operating in the area was observed and
28 noted by the CSHO as Exhibit 1, page 28. The exhibit in evidence

1 referenced:

2 "There were also work trucks driving around the
3 scaffold on the job site which could potentially
4 contribute to displacement or separation of the
5 scaffold frame components if the scaffold was
6 struck by the equipment."

7 At subject multi-employer work site, respondent employees were
8 exposed to fall hazards from equipment operated by other employer(s)
9 potentially striking the respondent scaffolding to cause **uplift and**
10 **displacement**. The respondent employees were exposed to potential fall
11 hazards given the lack of control by the respondent employer over
12 employees of other employers operating equipment on the site. While
13 the CSHO focus for the citation as referenced in the charges was on
14 wind conditions to create uplift and displacement of the scaffolding,
15 the evidence of other contributing factors, particularly work trucks
16 operating around the scaffolding on this multi-employer work site,
17 provided the employer with sufficient knowledge to exercise additional
18 safety measures, including the pinning of scaffolding. The pinning
19 protection measure was **feasible** both practically and economically.
20 There was no evidence to the contrary.

21 While the typical recognized conditions which all parties agreed
22 could mandate a required "pinning" were not existent, e.g. high
23 velocity winds, use of hoists, forklift delivery of materials to the
24 scaffold, tarping, and/or cantilevers in use, there was sufficient
25 preponderant evidence in the record of truck traffic on the site as
26 a contributing factor. Notably, at Exhibit 1, page 62 the photograph
27 depicted a ladder tied to the scaffolding which allows reasonable
28 inference that if and when utilized it could create greater stress on
29 the scaffolding without locking pins to cause uplift and displacement.
30 (Tr. page 15)

1 The respondent here knew, directly, or with the exercise of
2 reasonable diligence required to know, and/or constructively from
3 supervisor imputation, that at the subject multi-employer work site,
4 other employers/employee operations were occurring. The employer was
5 subject of previous inspections and citations for the lack of pinning
6 scaffolding when uplift could allegedly occur and result in
7 displacement. A **reasonably prudent employer** is expected to implement
8 additional efforts, including use of pins in scaffolding, when various
9 hazardous conditions are existent, particularly on a **multi-employer**
10 **work site** where there are reduced control capabilities to assure
11 employee safety protection. Compliance with the general mandate of
12 the standard requires reasonable efforts where sufficient conditions
13 warrant. Direct evidence and reasonable inference drawn from the
14 record reflect this employer at this multi-employer work site should
15 have implemented additional safety measures and taken the feasible
16 steps to pin the scaffolding for assured protection of the employees.

17 The classification of a violation as **willful** is of significant
18 importance to employers in the state of Nevada; and certainly this
19 Board acting as an independent appellate hearing tribunal. It is
20 appropriate to reference applicable treatises and case law guidance
21 to support finding a willful violation against any employer.

22 The Commission considers the **number of prior**
23 **violations** in relation to the total volume of
24 work to determine the employer's **state of mind**.
25 *A.E. Staley*, 19 OSH Cases 1199, 1212-13 (Rev.
26 Comm'n 2000), aff'd, 295 F.3d 1341, 19 OSH Cases
27 1937 (D.C. Cir. 2002) (**emphasis added**)

28 An employer who knows of the requirements of the
Act and deliberately disregards them has
committed a willful violation. The Commission
continues to consider prior citations issued to
an employer as evidence that the employer knew of
the requirements of the standard. An employer's

1 knowledge fo an applicable legal requirement also
2 can be demonstrated through an employer's
3 communication with OSHA personnel, or a
4 supervisor's admission of familiarity with the
5 standards. **Intentional noncompliance with a
6 standard will usually be characterized as willful
7 even if that noncompliance is based on the
8 employer's belief that compliance was unnecessary
9 for employee safety** or that the methods
10 implemented by the employer were superior to
11 those called for by OSHA's standard. *Revoli
12 Constr. Co.*, 19 OSH Cases at 1685 (employer had
13 heightened awareness of requirements based on
14 four prior citations in four years); *Capeway
15 Roofing Sys., Inc.*, 20 OSH Cases 1331, 1341 (Rev.
16 Comm'n 2003), *aff'd*, 391 F.3d 56, 20 OSH Cases
17 2065 (1st Cir. 2004) (long history of fall
18 protection violations established heightened
19 awareness of requirements). *Interstate Erectors,
20 Inc.*, 74 F.3d 223, 229, 17 OSH Cases 1522 (10th
21 Cir. 1996); *Pentecost Contracting Corp.*, 17 OSH
22 Cases 1953, 1955 (Rev. Comm'n 1997); *Conie
23 Constr. Inc.*, 73 F.3d 382, 384 17 OSH Cases 1409
24 (D.C. Cir. 1995). *But See, Johnson Controls,
25 Inc.*, 16 OSH Cases 1048, 1051 (Rev. Comm'n 1993)
26 (familiarity with standard alone may not prove
27 employer's actual awareness of illegality).
28 *Conie*, 73 F.3d 382; *Donovan v. Capital City
Excavating Co.*, 712 F.2d 1008, 1010, 11 OSH Cases
1581 (6th Cir. 1983) (Foreman's belief that trench
was safe); *F.X. Messina Constr. Corp. v. OSHRC*,
505 F.2d 701, 2 OSH Cases 1325 (1st Cir 1974)
(same); *Fluor Daniel v. OSHRC*, 295 F.3d 1232,
1241, 19 OSH Cases 1945, 1951 (11th Cir. 2002).
(**emphasis added**)

19 Intentional disregard for the requirements of a
20 standard and plain indifference to employee
21 safety are **independent elements of willfulness**.
22 Thus, even if an employer did not actually know
23 of the specific requirements of a standard or the
24 Act, willfulness can be found if the employer's
25 conduct or attitude exhibits plain indifference
26 to employee safety. In *A.E. Staley v. Secretary
27 of Labor*, 295 F.3d 1341, 19 OSH Cases 1937 (D.C.
28 Cir. 2002) the District of Columbia Circuit
clarified the difference between the two
independent elements of willfulness: intentional
disregard of the requirements of the regulation
and plain indifference to employee safety. . . .
Because willfulness requires a state of mind
characterized by intentional disregard for the
requirements of the Act or plain indifference to
employee safety, a violation is not willful if
the employer had a good faith belief that as a

1 factual matter it was in compliance with
2 requirements of the standard. An employer may
3 also be able to negate willfulness by showing
4 that it had a good faith belief about the proper
5 interpretation of a standard. **The test of good
6 faith is an objective one, and the employer's
7 belief must be reasonable under the
8 circumstances.** An employer's belief that
9 compliance is **infeasible** or that the **standard
10 does not apply**, thus must be **objectively
11 reasonable** to sustain a defense of willfulness.
12 *Beta Constr. Co.*, 16 OSH Cases 1435, n.7 (Rev.
13 Comm'n 1993); *Valdak Corp. v. OSHRC*, 73 F.3d
14 1466, 17 OSH Cases 1492 (8th Cir. 1996); *National
15 Eng'g & Contracting Co.*, 18 OSH Cases 1075, 1080-
16 81 (Rev. Comm'n 1997), *aff'd*, 181 F.3d 715, 721-
17 22 (6th Cir. 1999); *CBI Servs., Inc.*, 19 OSH Cases
18 1591, 1607 (Rev. Comm'n 2001); *Trinity Indus.
19 Inc.*, 20 OSH Cases 1051, 1067 (Rev. Comm'n),
20 *aff'd*, 107 F. App'x 387 (5th Cir. 2004)
21 (unpublished decision). *Donovon v. Mica Constr.
22 Co.*, 699 F.2d 341, 11 OSH Cases 1161 (8th Cir.
23 1983) (Rev. Comm'n 1993); *Morrison-Knudsen Co./
24 Yonkers Contracting Co., Joint Venture*, 16 OSH
25 Cases 1105, 1124 (Rev. Comm'n 1993); *Compare
26 Interstate Erectors, Inc. v. OSHRC*, 74 F.3d 223,
27 17 OSH Cases 1522 (10th Cir. 1996) (employer's
28 reliance on its own interpretation not
reasonable), and *Carabetta Enters.*, 15 OSH Cases
1429, 1432-33 (Rev. Comm'n 1991) (same), with
General Motors Corp., 14 OSH Cases 2064, 2068
(Rev. Comm'n 1991) (reasonable disagreement with
OSHA over interpretation of records access
provision); *A.E. Staley Mfg. Co. v. Secretary of
Labor*, 295 F.3d 1341, 1348, 19 OSH Cases 1937
(D.D. Cir. 2002) (no good faith effort to comply
where the company's safety committee met only
half the time and lacked the authority to correct
hazards); *J.A.M. Builders, Inc. v. Herman*, 223
F.3d 1350, 1355-56, 19 OSH Cases 1241, 1244 (11th
Cir. 2000) (violation willful where employer
recognized the hazard to its workers from
energized electrical lines, but did "essentially
nothing" to eliminate the risk to employees);
Froedtert Mem'l Lutheran Hosp., Inc. 20 OSH Cases
1500, 1510-11 (Rev. Comm'n 2004) (employees good
faith belief that the temporary workers were not
its employees was sufficiently plausible to
obviate willfulness); *Spirit Homes, Inc.*, 20 OSH
Cases 1629 (Rev. Comm'n 2004) (employer's
reasonable good faith efforts to eliminate the
hazard negated willfulness); *Rawson Contractors
Inc.*, 20 OSH Cases 1078, 1082 (Rev. Comm'n 2003)
(no good effort where employer fails to enforce
safety rules); *Northern Landing Line Constr. Co.*,

1 19 OSH Cases 1465, 1476 (Rev. Comm'n 2001) (no
2 good faith effort to comply where employer failed
3 to train employees and had an inadequate safety
4 program); *Morrison-Knudsen*, 16 OSH Cses at 1124;
5 *A.J. McNulty & Co. v. Secretary of Labor*, 283
6 *F.3d* 328, 338, 19 OSH Cases 1769, 1776 (D.C. Cir.
7 2002) (no good faith evaluation of facts
8 regarding infeasibility defense); *Capeway Roofing*
9 *Sys., Inc.*, 20 OSH Cases 1331, 1341-42 (Rev.
10 Comm'n 2003) (employer's belief that the standard
11 did not apply was not objectively reasonable
12 where contradicted by clear OSHA guidelines).
13 **(emphasis added)**

14 The Board in hearing the witness testimony and considering the
15 documentation in evidence, as well as the previous citation
16 occurrences, determines the subject employer had a sufficient
17 "**heightened awareness**" to warrant the willful classification. The
18 previous citation knowledge, and violative conduct occurring **on a**
19 **multi-employer work** site renders the factual evidence sufficient for
20 the Board confirm the willful violation.

21 The proof elements under the statutory burden, i.e.:
22 **applicability** of the standard, potential **hazard exposure** to employees
23 who had been working on the scaffolding, **employer knowledge**, and the
24 **existence of noncomplying conditions** were satisfied by the
25 preponderant evidence.

26 Employers of employees on **multi-employee work sites** must exercise
27 additional **reasonable** precautionary measures due to the heightened
28 awareness expected from any prudent employer for employee safety.
29 Given the lack of specific parameters in the codified standard itself,
30 the particular factual conditions at each work site subject of a
31 citation are critical to reach a fair determination of whether
32 violative conditions exist to require scaffold pinning.

33 The Board concludes that Citation 1, Item 2 based upon the
34 preponderant evidence as a matter of fact and law, the cited violation

1 occurred, and properly classified as Willful. The proposed penalty
2 in the amount of \$44,000.00 is approved.

3 It is the decision of the **NEVADA OCCUPATIONAL SAFETY AND HEALTH**
4 **REVIEW BOARD** that a violation of Nevada Revised Statutes did occur as
5 to Citation 1, Item 2, 29 CFR 1926.452(d)(4), the violation properly
6 classified as Willful, and the proposed penalty in the amount of
7 Forty-Four Thousand Dollars (\$44,000.00) confirmed.

8 The Board directs counsel for the **Complainant**, Chief
9 Administrative Officer of the Occupational Safety and Health
10 Administration, to submit proposed Findings of Fact and Conclusions
11 of Law to the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** and
12 serve copies on opposing counsel within twenty (20) days from date of
13 decision. After five (5) days time for filing any objection, the
14 final Findings of Fact and Conclusions of Law shall be submitted to
15 the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** by prevailing
16 counsel. Service of the Findings of Fact and Conclusions of Law
17 signed by the Chairman of the **NEVADA OCCUPATIONAL SAFETY AND HEALTH**
18 **REVIEW BOARD** shall constitute the Final Order of the **BOARD**.

19 DATED: This 5th day of July 2018.

20 NEVADA OCCUPATIONAL SAFETY AND HEALTH
21 REVIEW BOARD

22 By: 
23 STEVE INGERSOLL

