
**APPEALS BOARD
UTAH LABOR COMMISSION**

GRANITE CONSTRUCTION CO.,

Petitioner,

vs.

**UTAH OCCUPATIONAL SAFETY AND
HEALTH,**

Respondent.

**ORDER REVERSING
ALJ'S DECISION AND
SETTING ASIDE CITATION**

Case No. 5306613647

Granite Construction Co. (“Granite”) asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's decision upholding a citation issued by the Utah Occupational Safety and Health Division (“UOSH”) against Granite for violation of safety standards established pursuant to the Utah Occupational Safety and Health Act (“the Act”; Title 34A, Chapter 6, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-6-304 of the Utah Occupational Safety and Health Act.

BACKGROUND AND ISSUE PRESENTED

On May 3, 2004, John Peck, a Granite employee, lost his balance and attempted to jump from a “screed”¹ as it was being moved backward. Mr. Peck fell under the machinery and suffered fatal injuries. On November 1, 2004, UOSH cited Granite for failure “to take appropriate action to correct for an unsafe practice” Specifically, UOSH asserted that Granite should not have allowed its employees to ride on the screed when it was being moved in reverse. UOSH classified the violation as “serious” and assessed a penalty of \$6,300 against Granite.

Granite contested the citation. After an evidentiary hearing, Judge Marlowe upheld the citation but reduced the penalty to \$250, the minimum allowed for a “serious” violation, because UOSH had not presented evidence to support a larger penalty. Granite now asks the Appeals Board to set aside the citation on the grounds it is unsupported by the evidence.

FINDINGS OF FACT

¹ A “screed” is a piece of asphalt paving equipment that shapes, compacts and finishes asphalt into a roadway surface. A screed is not self-propelled, but depends upon some other machine for movement. (See *Operation and Maintenance Manual, Extend-A-Mat Screed*, Exhibit D.)

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Mr. Peck's fatal accident occurred in connection with Granite's repaving of a runway at the Salt Lake airport. The project required use of various types of equipment, including a "paver" and a "screed." A "paver" is a self-propelled machine that receives asphalt from a truck, heats the asphalt, and then conveys a uniform bead of the heated asphalt to the road bed. The screed, which is towed by the paver, then passes over the asphalt and forms it into a mat, thereby creating the actual runway surface. During this paving process, the paver and screed travel at a slow walking speed.

A paver is controlled by an operator who sits in a seat affixed to the top of the machine. This chair is provided with a seat belt. The paver operation manual prohibits anyone from riding on the paver who is not seated and using a seat belt. In contrast, screeds are controlled by operators who stand on a catwalk that runs along the rear of the machine. No seats are provided for screed operators because their duties require them to move back and forth along the catwalk. The screed operation manual requires anyone riding on the screed to maintain a "3-point stance" at all times. This 3-point stance requires use of either both feet and at least one hand, or both hands and at least one foot, to maintain stability on the catwalk. The screed operation manual also warns individuals riding on the screed not to attempt to dismount while the screed is in motion. Granite provided frequent training on these requirements to Mr. Peck and its other employees.

On May 3, 2004, the paver and attached screed, which Mr. Peck was operating, completed the process of laying down a strip of asphalt. The paving operation was then stopped so that the paver and screed could be repositioned to lay down the next strip. This required the paver and screed to back up to the starting point. Consequently, while traveling in reverse, the screed's catwalk became the leading edge in the direction of travel. In reverse, the screed and paver travelled at approximately 8 miles per hour. Mr. Peck appeared to lose his balance and to attempt to jump from the screed to the ground. He did not clear the machinery and was run over.

Prior to the foregoing accident, it was a customary practice at Granite and other paving companies for employees to stand on the screed catwalk while the screed was traveling in reverse. As at all times when the screed was in motion, those on the screed were required to maintain a 3-point stance.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-6-201 of the Utah Occupational Safety and Health Act authorizes the Labor Commission to adopt rules which establish occupational safety standards. Pursuant to that authority, the Commission has promulgated Rule R614-1-5.D.3, which provides as follows:

Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

UOSH concluded that Granite violated Rule R614-1-5.D.3 by failing to: 1) identify the

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practice of employees riding on the screed as it moved in reverse as an unsafe practice; and 2) taking action to stop that practice. Specifically, UOSH contends that Granite should have known the practice was unsafe because the paver operation manual warned against allowing anyone who was not seated and wearing a seat belt from riding on the paver. In UOSH's view, this requirement of a seat and seat belt was applicable not only to the paver, but also to the screed.

The Appeals Board is unconvinced by UOSH's logic. The record establishes that the paver and the screed were two separate pieces of machinery, with two separate operation manuals. While the paver operations manual did require that anyone riding on the paver be seated and wearing a seat belt, there was no such requirement in the screed operation manual. In fact, such a requirement could not have been included, since the screed had no seats or seat belts. Instead, the operations manual provided for the safety of those riding on the screed by requiring use of a 3-point stance and by prohibiting riders from attempting to mount or dismount while the screed was in motion. Under these circumstances, the Appeals Board concludes that the provisions of the paver operations manual do not apply to the screed and cannot be used to support UOSH's citation against Granite.

UOSH also argues that, apart from the instructions in the paver operations manual, Granite should have known that allowing employees to ride on the screed was unsafe. However, the testimony at hearing established that Granite, along with the rest of the paving industry, considered the practice safe because all riders were required to maintain a 3-point stance at all times. Furthermore, there were no known instances in which an accident had occurred as a result of the above-described practice. UOSH has not rebutted this testimony.

In summary, the Appeals Board concludes that UOSH has not discharged its burden of submitting sufficient proof to establish that Granite violated the safety standard established by Rule R614-1-5-D.3.

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ORDER

The Appeals Board reverses Judge Marlowe's decision and sets aside UOSH's citation against Granite. It is so ordered.

Dated this 28th day of April, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

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CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Granite Construction 5306613647 was mailed first class postage prepaid this ____day of April, 2007, to the following:

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