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Case No. OSH 2007-22

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

HILTON HOTELS CORPORATION,

Respondent.

CASE NO. OSH 2007-22

ORDER NO. 675

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER

**PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

Following a *de novo* proceeding before the Hawaii Labor Relations Board (Board), and for the reasons discussed below, the Board finds in favor of Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Director or DLIR). The Board members thoroughly reviewed all the evidence and arguments presented, and issue these proposed¹ findings of fact, conclusions of law, and decision and order pursuant to Hawaii Revised Statutes (HRS) § 91-11, which provides in relevant part:

Examination of evidence by agency. Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affect to file exceptions and present argument to the officials who are to render the decision[.]

Any conclusion of law improperly designated as a finding of fact, shall be deemed or construed as a conclusion of law; any finding of fact improperly designated as a conclusion of law shall be deemed or construed as a finding of fact. To the extent the parties' post-hearing

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Hawaii Labor Relations Board

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memoranda contain what may be construed as proposed findings of fact, any such facts submitted by a party that are not incorporated as a Board finding herein or that are clearly contrary to the findings herein, are denied.

I. PROCEDURAL HISTORY

On October 26, 2007, the Board received from the Director a Notice of Contest regarding a Citation and Notification of Penalty (Citation) issued to Respondent HILTON HOTELS CORPORATION (Employer or HHC), issued on September 11, 2007, and resulting from Inspection Number 310393848 conducted on August 1, 2007 (Inspection), by the Director's Occupational Safety and Health Division (HIOSH). The Director cited a "serious" violation of 29 CFR 1910.22(a)(2) and assessed a penalty of \$2,625.00. HHC contested the Citation by letter dated October 1, 2007.

A pre-trial conference/settlement conference was held on November 20, 2007, to clarify the issues to be determined at trial, and those issues are as follows:

- (1) Whether HHC violated OSHA Standard 29 CFR 1910.22(a)(2) as set forth in the Citation resulting from the Inspection;
- (2) Whether the characterization of the subject notice of violation as "serious" is correct; and
- (3) Whether the penalty of \$2,625.00 assessed by HIOSH is correct.

On April 1, 2008, an evidentiary hearing was held where oral testimony and documentary evidence were received by the Board. Following the evidentiary hearing, HIOSH and HHC submitted post-hearing memoranda supporting their respective positions on July 15, 2008, and July 16 and 21st, 2008, respectively.

II. FINDINGS OF FACT

A. The HIOSH Inspection.

On August 1, 2007, HIOSH inspector Charles Clark (Mr. Clark) conducted a program-related inspection of HHC located at 425 Waikoloa Beach Drive, Kamuela, Hawaii. Mr. Clark was initially sent to the HHC worksite to perform a complaint inspection of Red Sail Sports (Red Sail), a vendor working at HHC's two swimming pools. Among other duties, Red Sail employees were hired to hand out towels to pool guests and supervise the pool slide operations.

The complaint against Red Sail alleged that Red Sail employees were exposed to slip and fall hazards in the pool area.

Mr. Clark conducted an opening conference with Imran Hamid (Mr. Hamid), the recreational manager for Red Sail. After the opening conference with Mr. Hamid, Mr. Clark started to inspect the pool areas in question. The two pools on the HHC property are the Kona pool and the Kohala pool, which are located on the south end and north end of the property, respectively. Mr. Clark initially inspected the bridge and steps leading to the slide of the Kona pool. He was looking for wet areas where the Red Sail employees worked and assessing the amount of foot traffic in the area. Mr. Clark learned from Mr. Hamid that although Red Sail employees work in the area, they have no control of the floor surface and cannot make any changes to the floor surface without HHC's permission.

Mr. Clark asked Mr. Hamid to allow him to interview the Red Sail employees, but Mr. Hamid denied this request and asked Clark to stop the inspection. Mr. Clark then met with Derek Tolentino (Mr. Tolentino) and Presley Hart (Mr. Hart), HHC's security personnel, who got Mr. Clark clearance to proceed with the inspection. Mr. Clark learned during the Inspection that the walking surfaces of the pool area, including the bridges and the stairs leading to the slides, were both covered with flagstone quartzite flooring.

Although it was not Mr. Clark's initial intention, he expanded his inspection to include HHC after learning that HHC controlled and maintained responsibility over the walking/working surface areas of the pool, including the steps to the pools and the bridges. Mr. Clark conducted an opening conference with Mr. Tolentino and Mr. Hart, and then Mr. Clark continued his inspection of the Kona and Kohala pools.

Mr. Tolentino and Mr. Hart assisted in arranging for Mr. Clark to interview Red Sail employees. Mr. Clark interviewed a Red Sail employee who had twice slipped and fallen while going up the stairs to the slide area. The employee informed Mr. Clark about other slip and fall situations, including another Red Sail worker who had slipped and fractured her foot in June 2007 at the Kona pool bridge. It appeared to Mr. Clark that Mr. Hart and Mr. Tolentino were aware of these prior incidents because they provided him with the names of the injured workers and the dates of their accidents. Mr. Clark was informed by the Red Sail employees that the stairs leading to the Kona pool slide were also very slippery and that there were previous incidents of Red Sail workers slipping and falling on the stairs.

During his inspection, Mr. Clark also observed a ten-year old female guest, who was wearing slippers, slip and fall on the wet stairs leading to the Kohala pool. Mr. Clark put his shod foot on the wet spot and found that it easily slipped on the surface. Mr. Hart also put his foot on the wet spot and commented that it was slippery. Mr. Clark was informed by Mr.

Tolentino and Mr. Hart that a private vendor was retained by HHC to clean the area when it became discolored or slippery. The walking surfaces of the pool area, the bridges and the stairs leading to the slides, were surfaced with flagstone quartzite flooring. Mr. Clark was not informed during the Inspection that the flagstone surface was periodically treated with a non-slip product.

During the Inspection, Mr. Clark took photographs (HHC Exhibits 2-1 and 2-14) showing the floor area of the Kona pool bridge where the Red Sail worker fell and fractured her foot. A sign warning of the wet floor condition was set up by HHC during the Inspection by Mr. Hamid. Mr. Clark also took photographs (HHC Exhibits 2-2, 2-3 and 2-5) showing the steps leading to the Kona slide. One photograph (Exhibit 2-5) shows the stairs to the Kona slide, and other photographs (Exhibits 2-9 and 2-10) show the stairs leading to the Kohala pool. Mr. Clark testified that these areas appear to be wet in these photographs, consistent with his observations during the Inspection.

Mr. Clark was told by Stephen Hicks (Hicks), the general manager for Red Sail, that Red Sail had 50 employees employed at the Hilton Waikoloa Village. Mr. Clark said that he based his penalty calculations in the Citation on his determination that 50 Red Sail employees were exposed to the hazardous conditions along the Kona and Kohala pools. Mr. Clark did not observe any employee of HHC exposed to the hazard of the slippery walking surfaces during the Inspection. Sandra Oyama-Yuen (Ms. Oyama-Yuen), HHC's director of claims and workers' compensation, testified that HHC's maintenance workers probably walk on the bridge by the pool to do inspections.

B. HHC's Treatment of Floor Areas around the Pool.

HHC has between 500,000 and 900,000 hotel guests every year since the hotel opened in 1993. Ms. Oyama-Yuen testified that she "noticed a trend of guests getting injured, you know, certain areas of the pool."

Thus, in 1998 HHC began to treat the flagstone surface around the pool with a non-slip product from Safe-Step. Walk-Safe, Industries (Walk-Safe) was hired by HHC to apply the Safe-Step product which has a three to five year warranty, depending on the frequency of usage of the area where the product is applied. The product is applied to various floor areas every two to three years, dictated in part by the incidence of accidents. The bridges and steps leading to the pool slides have been treated at least three to four times since 1998.

HHC also contracted with Hawaii Care and Cleaning (Hawaii Care) to maintain the public areas, including the flagstone areas. Hawaii Care's responsibilities included keeping the flagstone areas as dry as possible with squeegees and removing algae.

Walk-Safe, with the permission and under the direction of HHC, tested the stair steps leading to the Kona and Kohala pools as well as the Kohala bridge areas on October 12, 2007 (Walk-Safe's SCOF Test). HIOSH's Exhibit 3 is a photograph of these areas that were tested and re-treated by Walk-Safe. Walk-Safe employs the static coefficient of friction (SCOF) test in determining the resistance to slippage between the two surfaces. HIOSH does not use the SCOF rating as a standard or test to determine whether a surface constitutes a slip hazard. Walk-Safe's SCOF Test reveals that prior to the October 12, 2007, re-treatment, the stair steps leading to the Kona and Kohala pools as well as the Kohala bridge were of "questionable" resistance when wet. Thus, HHC's own testing prior to the re-treating of these areas shows "conditional slip" resistance for two sites and "questionable" resistance for three sites according to Walk-Safe's standards. The pertinent parts of the Walk-Safe SCOF Test results and Walk-Safe's standards key are as follows:

TEST RESULTS

<u>Location</u>	<u>Wet Untreated</u>
Kohala walkway	.54
Kohala ramp [bridge]	.47
Kohala slide stairs	.49
Kona slide stairs	.46
Kona ramp [bridge]	.52

CATEGORIES

.60 OR ABOVE	-----	Slip Resistant
.50 to .59	-----	Conditionally Slip Resistant
Less than .50	-----	Questionable

HIOSH issued the Citation to HHC on September 11, 2007, and HCC contested by Citation by letter dated October 1, 2007.

C. HHC's Abatement Actions Post-Inspection.

Subsequent to the Citation and the Walk-Safe SCOF Test, HHC re-applied the Safe-Step product to the pool areas in question. The re-application was performed by Walk-Safe. Also, HHC requested from its contract cleaning and maintenance companies in charge of these areas a full documentation of employee safety training related to these working areas.

An Abatement Certification (Abatement Certification) dated September 20, 2007, was signed by Dieter H. Seeger, General Manager of HHC, and delivered to HIOSH.

D. Penalties under the Citation.

The penalty was calculated according to HIOSH's standard policies and procedures to avoid any arbitrary determination of a penalty. Referring to the inspection worksheet (Exhibit 1 at 71.) and the testimony of Mr. Clark, the penalty for the alleged violation was determined by considering the severity of an injury if an accident occurred, the probability of an accident, and certain mitigating circumstances. The possible injury, a fracture, was given a severity of "medium," and it was determined that the probability of such an injury was "greater." The combination of a "medium" severity and a "greater" probability resulted in a gravity-based penalty of \$3,500.00.

The gravity-based penalty was adjusted in consideration of HHC's good faith (15% reduction), and history (10% reduction). In total, HHC was given a 25% reduction of the \$3,500 gravity-based penalty, resulting in a final penalty of \$2,625.00.

E. HHC'S Challenge of the Citation.

1. HHC contends that the pool sites investigated and cited by HIOSH are not serious hazards.
2. Ms. Oyama-Yuen testified that HHC does not have control over either the maintenance or the cleaning and care of those areas since those responsibilities have been contracted out to independent contractors.
3. HHC also argues that the Kona and Kohala pool areas in question are not "workroom" areas as defined in 29 CFR 1910.22(a)(2).
4. HHC argues that its employees have no reason to be on the pool bridges or slide stairs during the course of their work because they were restricted to the perimeter of the pool servicing their guests. None of its own workers suffered any slip and fall injuries in the pool areas during the five years prior to the Citation.
5. HHC also argues that it had no knowledge of the injuries sustained by Red Sail employees. It is claimed that HHC was first placed on

notice of a slip-and-fall on August 1, 2007, by Mr. Clark at the time of the Inspection.

III. CONCLUSIONS OF LAW

The Board has jurisdiction over this case pursuant to HRS §§ 396-3 and 396-11.

HHC is an employer within the meaning of HRS § 396-3, which provides in relevant part:

“Employer” means:

* * *

- (5) Every person having direction, management, control, or custody of any employment, place of employment, or any employee.

As determined in the Board’s Pretrial Order issued on November 21, 2007, the issues to be determined at trial were:

- A. Whether HHC violated OSHA Standard 29 C.F.R. § 1910.22(a)(2) as set forth in the Citation;
 - B. Whether the characterization of the subject notice of violation as “serious” is correct; and
 - C. Whether the penalty of \$2,625.00 assessed by the Director is correct.
- A. HHC Violated OSHA Standard 29 C.F.R. § 1910.22(a)(2) as Set Forth in the Citation.

To establish a violation of a standard, the Director must prove by a preponderance of the evidence that:

- (1) the cited standard applies;
- (2) there was a failure to comply with the cited standard;
- (3) an employee had access to the violative condition; and
- (4) the employer knew or should have known of the condition with the exercise of due diligence.

Director, DLIR v. Permasteelisa Cladding Techs., Ltd., 125 Hawaii 223, 227, 257 P.3d 236, 240 (App. 2011) (*quoting* Director v. Maryl Pacific Constructors, Inc., Case No. OSAB 2001-18, 2002 WL 31757252, at *6).

Pursuant to HRS § 91-10(5), the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion; the degree or quantum of proof shall be a preponderance of the evidence. The “preponderance of the evidence” standard directs the factfinder to decide whether the existence of the contested fact is more probable than its nonexistence; the party with the burden need only offer evidence sufficient to tip the scale slightly in the party’s favor, while the party without the burden can succeed merely keeping the scale evenly balanced (*see, Kekona v. Abastillas*, 113 Hawaii 174, 180, 150 P.3d 823, 829 (2006)(citation omitted)).

1. The cited standard applies.

Here, the cited standard is 29 CFR 1910.22(a)(2). 29 CFR § 1910.22 provides in relevant part:

This section applies to all permanent places of employment, except where domestic, mining, or agricultural work only is performed . . .

1910.22(a)
“Housekeeping.”

* * *

1910.22(a)(2)

The floor of every workroom shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practicable.

HHC argues that the areas of concern, specifically the bridges and stairway steps leading to the pool slides, are not “workrooms” as set forth in 29 CFR 1910.22(a)(2). Relevant to this discussion is a compliance memorandum issued by the Occupational Safety and Health (OSH Compliance Memo) pertaining to the application of the particular standard. The OSH Compliance Memo is attached as Exhibit “A” to the Post-Hearing Memorandum of the Director

of Labor filed on July 15, 2008, and wherein OSH opines that “wet floors due to weather conditions or the entry of vehicles containing melting snow would be subject to 29 CFR 1910.22(a)(2).” Thus, it is very clear that OSH interprets “workrooms” very broadly and does not restrict its application merely to a building with a floor, surrounding walls and a roof overhead.

In addition, laws *in pari materia*, or upon the same subject matter, shall be construed with reference to each other, and what is clear in one statute may be called in aid to explain what is doubtful in another. HRS § 1-16; Villon v. Marriott hotel Services, Inc., 130 Hawaii 130, 140, 306 P.3d 175, 185 (2013). Here, 29 CFR 1910.22 provides in full:

This section **applies to all permanent places of employment**, except where domestic, mining, or agricultural work only is performed. Measures for the control of toxic materials are considered to be outside the scope of this section.

(a) Housekeeping.

- (1) **All places of employment**, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition.
- (2) The floor of every workroom shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practicable.
- (3) To facilitate cleaning, every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards.

(b) Aisles and passageways.

- (1) Where mechanical handling equipment is used, sufficient safe clearances shall be allowed for aisles, at loading docks, through doorways and wherever turns or passage must be made. Aisles and passageways shall be kept clear and in good repairs, with no obstruction across or in aisles that could create a hazard.

- (2) Permanent aisles and passageways shall be appropriately marked.
- (c) Covers and guardrails. Covers and/or guardrails shall be provided to protect personnel from the hazards of open pits, tanks, vats, ditches, etc.
- (d) Floor loading protection.
 - (1) In every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. Such plates shall not be removed or defaced but, if lost, removed, or defaced, shall be replaced by the owner or his agent.
 - (2) It shall be unlawful to place, or cause, or permit to be placed, on any floor or roof of a building or other structure a load greater than that for which such floor or roof is approved by the building official.

(Emphases added). Thus, although the regulation does not define “workroom,ⁱⁱⁱ” it does not appear that § 1910.22(a)(2) was intended to apply only in narrow scope as proposed by HHC, but rather to “all places of employment” including outdoor work areas. To promote the remedial purpose of the Occupational Safety and Health Act, the “Act and regulations must be liberally construed so as to afford workers the broadest possible protection.” National Engineering & Contracting Co. v. OSHA, 928 F.2d 762, 767 (6th Cir. 1991) (*citing Whirlpool Corp. v. Marshall*, 445 U.S. 1, 13, 100 S. Ct. 883 (1980)).

Thus, the Board finds and concludes that the regulation applies to the floors around HHC’s Kona and Kohala pool and Kohala bridge areas.

2. There was a failure to comply with the cited standard.

In its dispute of the Inspection and the resulting Citation, HHC points out that HIOSH never performed a SCOF test of the areas in question and claims, therefore, HIOSH cannot meet its burden of proving the existence of a “serious” hazard. HHC relies on its programmed maintenance of the areas with Safe-Step and Hawaii Care to control slip-and-fall hazards due to

wet conditions. According to HHC, the Walk-Safe SCOF Test performed shows that the Kona bridge was conditionally slip resistant prior to the re-application of the Safe-step product in October 2007.

However, contrary to this claim, HHC's very own Walk-Safe SCOF Test indicates "questionable" slip resistance in 3 of the 5 areas tested. Also, HHC knew that the two bridges as well as the stairs leading to the slides of both pools are high traffic areas and were frequently wet, and that the Kona bridge had a tendency to have an algae buildup. Furthermore, the evidence collected and presented at the hearing by Mr. Clark regarding what he witnessed during the Inspection was substantial evidence of a serious hazard.

Related to this issue is HHC's claim that it does not have control over either the maintenance or the cleaning and care of the areas in question since those responsibilities have been contracted out to independent contractors. However, HHC fails to recognize and address the issue regarding its ability to control and oversee the performance of the work performed by its independent contractors, including Safe-Step and Safe-Walk, which includes the scheduling and re-application of slip resistance treatment to the areas in question. HHC cannot avoid responsibility by simply passing on "blame" to its vendors.

In Central of Georgia Railroad Co. v. OSHRC, 576 F.2d 620 (5th Cir. 1978), the Fifth Circuit Court of Appeals expressly held that "an employer may not contract out of its statutory responsibilities under OSHA" and that "[i]f an employer does contract with a third party to maintain safe conditions, it is to be presumed that the employer can enforce the contract" (id. at 624). The Court "stress[ed] that the Act, not the contract, is the source of [employer's] responsibilities" and that an "employer may carry out its statutory duties through its own private arrangement with third parties, but if it does so and if those duties are neglected, it is up to the employer to show why [it] cannot enforce the arrangements [it] has made. If [it] cannot make this showing, [it] must take the consequences, and [its] further remedy lies against the private party with whom [it] has contracted[.]" Id. at 625.

Similarly, here, HHC has not made an adequate showing that it was unable to enforce its contract with its vendor, and thus cannot avoid liability.

3. An employee had access to the violative condition.

HHC argues that its employees are restricted to the perimeter of the pool servicing their guests, and therefore, they have no reason to be on the pool bridges or slide stairs during the course of their work. HHC also argues that none of its own workers suffered any slip and fall injuries in the pool areas during the five years prior to the Citation.

However, HHC does not dispute that its employees have *access* to these areas and HHC admits that its maintenance workers probably walk on the bridge to the pools to do inspections. Thus, it has been established from the testimony presented by HHC's Ms. Oyama-Yuen that HHC's employees had access to the violative condition.

Furthermore, the Board agrees with HIOSH's interpretation of the law that the purpose of 29 CFR 1910.22(a)(2) is to prevent accidents rather than waiting for them to happen; and thus, the requirement of actual exposure and an actual accident is an unreasonable interpretation of the law. See, Brennan v. Gilles & Cotting, Inc., 3 OSHC 2002 (1976) and Brennan v. OSHRC (Underhill Construction Corp.), 513 F.2d 1032 (2nd Cir. 1975).

4. The employer knew or should have known of the condition with the exercise of due diligence.

HHC claims that it had no knowledge of the injuries sustained by Red Sail employees as alleged by Mr. Clark in the Citation and Inspection. It is claimed that HHC was first placed on notice of a slip-and-fall on August 1, 2007 by Mr. Clark at the time of the Inspection.

However, as testified by Mr. Clark, it appeared to him that Hart and Tolentino were aware of prior incidents involving the slip and fall of Red Sail employees because they provided him with the names of the injured workers and the dates of their accidents. Hart and Tolentino were not present at the April 1, 2008 evidentiary hearing, and therefore, no evidence was submitted to rebut the testimony presented by Mr. Clark. The only testimony on this issue was the testimony of Ms. Oyama-Yuen; however, her testimony was limited to her recollection of slip and fall incidents, and it appears that she never inquired with Hart and Tolentino about their knowledge of prior slip and fall incidents involving Red Sail employees.

Furthermore, Mr. Clark witnessed a slip and fall incident while conducting the Inspection and while Hart and Tolentino were present. In fact, Hart, after putting his foot on the wet spot where the slip and fall occurred, admitted to Clark that the wet spot was slippery.

Lastly, it is not believable that HHC did not have notice of the potentially hazardous condition for its and Red Sail's employees after many slip and fall incidents involving hotel guests were reported to HHC.

- B. The Characterization of the Subject
Notice of Violation as "Serious" is Correct.

Where a violation of a standard is characterized as serious, the Director has the additional burden as set forth in HRS § 396-3, which provides in relevant part:

“Serious violation” means a violation that carries with it a substantial probability that death or serious physical harm could result from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use, in a place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, have known of the presence of the violation.

“Substantial probability that death or serious physical harm could result” refers not to the probability that an accident of such nature will occur, but only to the probability that, an accident having occurred, death or serious injury *could* result. California Stevedore & Ballast Co. v. OSHRC, 517 F.2d, 986, 988 (9th Cir. 1975).

In this case the violation was deemed serious because of the broken right foot suffered by the employee of Red Sail in June 2007 after she slipped and fell in the Kona pool area. In Washington Cedar & Supply Co., Inc. v. Dept. of Labor and Industries, 83 P.3d 1012, 1018 (Wash. App. 2004), the court upheld a violation as “serious” where a fall could result in “broken bones, severe strains, sprains, and/or short-term hospitalization.”

Based upon the arguments made above in Section II.A.4., the Board finds that HHC knew or should have known of the serious hazard. The wet walking surfaces alongside the Kona and Kohala pools, specifically the bridges and the stairway steps to the pool slides, were in plain view and there was ample evidence that HHC was given actual or constructive notice of prior slip and fall incidents involving Red Sail employees and hotel guests.

C. The Penalty of \$2,625.00 Assessed by the Director is Correct.

As stated in Section II.D. above, the penalty was calculated according to HIOSH’s standard policies and procedures to avoid any arbitrary determination of a penalty.

HHC has not raised a challenge to HIOSH’s assessment of the penalty in the HHC Post-Hearing Memo; therefore, the Board assumes that HHC does not disagree with the \$2,625.00 penalty if affirmed by the Board. The Board finds the penalty of \$2,625.00 assessed by HIOSH to be correct, and is affirmed.

IV. DECISION AND ORDER.

For the reasons discussed above, the Board orders that the Citation resulting from HIOSH Inspection Number 310393848 conducted on August 1, 2007, including the characterization of the violation as “serious” and the penalty of \$2,625.00, is hereby AFFIRMED.

FILING OF EXCEPTIONS

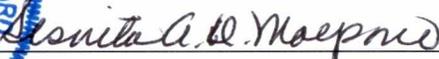
Any party adversely affected by the Proposed Findings of Fact, Conclusions of Law, and Decision and Order may file exception with the Board within ten days after service of this document. The exceptions shall specify which proposed findings or conclusions are being excepted to, with full citations to the factual and legal authorities therefor. A hearing for the presentation of legal arguments will be scheduled should any party file exceptions, and the parties will be notified thereof.

Dated: Honolulu, Hawaii August 7, 2015.

HAWAII LABOR RELATIONS BOARD




KERRY M. KOMATSUBARA, Chair


SESNITA A.D. MOEPONO, Member


ROCK B. LEY, Member

Copies:

Herbert B.K. Lau, Deputy Attorney General

Lynne T. Sienon

Sandra Oyama-Yuen

ⁱ While Board Chair Komatsubara and Board Members Moepono and Ley did not participate in the hearing in this matter, they have reviewed the entire record, including the pleadings, transcripts, and exhibits filed in this case.

ⁱⁱ The Post Hearing Statement filed by HHC on July 16, 2008, did not contain an attached Certificate of Service; the Post Hearing Statement filed by HHC on July 21, 2008, included an attached Certificate of Service.

OSH 2007-22 – Director, DLIR and Hilton Hotels Corp. – Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

iii *Webster's* defines the word "workroom" as "a room used esp. for manual work" *Webster's Third New International Dictionary* 2635 (1981). In turn, "room" is defined as (1) "unoccupied area" or "space"; (2) "a particular area or limited portion of space"; (3) "a place or station assigned to a person or thing"; (4) "a part of the inside of a building, shelter, or dwelling usu. set off by a partition"; (5) "the opportunity, occasion, or capacity for something"; or (6) "a chamber in which coal is mined." *Webster's Third New International Dictionary* 1972 (1981). Thus, a "workroom" could include a particular area, place, or station used for work.