

COURT OF APPEALS OF WASHINGTON, DIVISION THREE

Cache Valley Electric Company v. Washington State Department of Labor and Industries

Cache Valley Electric · No. 40842-6-III · Decided April 21, 2026

SUMMARY

The Washington Court of Appeals, Division Three, granted reconsideration, withdrew its March 12, 2026 opinion, and issued a revised published opinion. The court held that expired rubber protective equipment is “used” under WAC 296-45-255(7) when an employer makes it available at a worksite, and reinstated the related penalty. The court also upheld the Board of Industrial Insurance Appeals’ penalty assessment for a chainsaw operated within the minimum approach distance of an energized power line.

CASE DETAILS

COURT	Court of Appeals of Washington, Division Three
WRITING FOR THE COURT	Lawrence-Berrey, J.; Cooney, J.; Murphy, J.
JURISDICTION	Washington Court of Appeals, Division Three
DECIDED	April 21, 2026
DOCKET	40842-6-III
DISPOSITION	other
PROCEDURAL POSTURE	The Department of Labor and Industries appealed the superior court's decision affirming the Board of Industrial Insurance Appeals' vacation of one safety citation and reducing the penalty for another. Cache Valley cross-appealed the penalty determination.
STANDARD OF REVIEW	The court reviews the Board's interpretation of statutes and regulations de novo and reviews the Board's penalty determination for abuse of discretion. An abuse of discretion occurs when the decision is arbitrary or rests on untenable grounds or reasons.
PRECEDENTIAL VALUE	published
PARTIES	Washington State Department of Labor and Industries v. Cache Valley Electric Company

TOPICS

occupational safety and health

judicial review of agency action

statutory interpretation

agency adjudication

standard of review

PRACTICE AREAS

administrative law

employment law

occupational safety and health

QUESTIONS PRESENTED

1. Whether rubber protective equipment is "used" under WAC 296-45-255(7) when an employer makes expired equipment available at a worksite, even if the equipment is not placed on a power line.
2. Whether the Board abused its discretion in assigning the highest probability rate and affirming the penalty for operating a chainsaw within the minimum approach distance of an exposed high-voltage power line.

HOLDINGS

1. Rubber protective equipment is "used" within the meaning of WAC 296-45-255(7) when an employer makes the equipment available at the worksite. Because Cache Valley made expired protective blankets available to its workers, it violated the regulation, and the Department's citation and penalty for Item 2 were reinstated.
2. The Board did not abuse its discretion by assigning a probability rate of 3 and affirming the penalty for the chainsaw violation. The Board could emphasize the chainsaw's close proximity to the exposed high-voltage power line rather than the disputed duration of the encroachment.

KEY QUOTATIONS

"We hold that rubber protective equipment is "used," within the meaning of WAC 296-45-255(7), when an employer makes the equipment available at the worksite." (at 9)

"The grounds for the Board's probability assessment were not arbitrary, nor did they rest on untenable grounds or reasons." (at 13)

"Reversed in part and affirmed in part." (at 13)

FACTUAL BACKGROUND

A Department compliance and safety officer observed Cache Valley employees working on overhead energized power lines, with a gas-powered chainsaw coming within 12 inches of an exposed power line despite a 27-inch minimum approach distance. The workers were aware of the hazard and were not using sufficient protective equipment. The officer also found five rubber protective blankets stored on the boom truck, but the blankets had last been tested 11 months earlier even though testing was required every six months. The Department issued two serious-violation citations and assessed penalties of \$7,000 and \$6,000, respectively.

PROCEDURAL HISTORY

The Department cited Cache Valley for two serious workplace-safety violations and assessed penalties of \$7,000 for operating a chainsaw within the minimum approach distance of an energized power line and \$6,000 for having expired rubber protective blankets at the worksite. An industrial appeals judge upheld both citations and penalties. The Board unanimously affirmed the chainsaw citation and penalty but, by a divided vote, vacated the protective-equipment citation. The superior court reduced the chainsaw-related penalty to \$3,000 and affirmed vacation of the second citation. The Court of Appeals reversed the vacation of the second citation and affirmed the Board's assessment of the first penalty.

DISPOSITION

other

CASES CITED

- *Erection Co., Inc. v. Dep't of Lab. & Indus.*, 160 Wn. App. 194, 201, 248 P.3d 1085 (2011)
- *Bayley Constr. v. Dep't of Lab. & Indus.*, 10 Wn. App. 2d 768, 781, 450 P.3d 647 (2019)
- *BD Roofing, Inc. v. Dep't of Lab. & Indus.*, 139 Wn. App. 98, 107, 161 P.3d 387 (2007)
- *P.E.L. v. Premera Blue Cross*, 2 Wn.3d 460, 494, 540 P.3d 105 (2023)
- *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002)
- *Ostrom Mushroom Farm Co. v. Dep't of Lab. & Indus.*, 13 Wn. App. 2d 262, 276, 463 P.3d 149 (2020)

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