

Title 8, California Code of Regulations, Division 1, Chapter 3.3, Articles 1, 3 and 4

Amend Section 354, Party Status, to read:

(a) The Division is a party to all proceedings before the Appeals Board, whether or not the Division has appeared or participated in a proceeding.

(b) An affected employee or authorized representative of an affected employee shall be made a party to a proceeding upon motion made ~~may move to participate as a party to a proceeding by filing a motion~~ in accordance with Section 371. ~~If the interests of justice require, both an affected employee and an authorized employee representative, as defined in section 347, may be granted party status in the same proceeding. When more than one affected employee or more than one authorized employee representative qualify for party status in a proceeding, each may be granted party status in accordance with Section 350.1.~~

(c) The rights of an affected employee shall not be lost by reason of that person's death. In the event of the death of an affected employee, a motion to participate as a party may be brought, in accordance with Section 371, by the affected employee's survivor. An affected employee's survivor is, in order of priority, the surviving spouse or surviving domestic partner, surviving issue, a surviving dependent, or a surviving parent.

(e) (d) Affected employees or authorized representatives of affected employees shall not participate as parties to employers' cost recovery proceedings pursuant to Section 149.5 of the Labor Code.

(d) (c) When an Employee Appeal is filed alleging the unreasonableness of the period allowed by the Division to abate an alleged violation, the employer charged with the responsibility of abating the violation is a party to the proceeding.

(e) (f) An obligor may move to participate as a party to a proceeding by filing a motion in accordance with Section 371.

(f) (g) When an obligor appeal is filed from actions taken by the Division, the employer charged may move to participate as a party at any time prior to the beginning of a hearing.

(g) (h) An obligor shall not participate as a party to employers' cost recovery proceedings pursuant to Section 149.5 of the Labor Code.

(h) (i) A person whose motion for party status has been granted by the Appeals Board becomes a party to the proceeding and is entitled to service of all documents and notices. Each party shall serve within 10 working days of the order granting party status, copies of all documents previously filed with the Appeals Board and not served on the new party. Service shall be in a manner as prescribed in Section 355(c) and proof of such service meeting the requirements of Section 355(e) shall be filed with the Appeals Board.

NOTE: Authority cited: Sections 148.7 and 6603(a), Labor Code. Reference: Sections 148.7, 6319(b), 6600 and 6603(a), Labor Code.

Amend Section 371.2. Amendments ~~Prior to Hearing~~, to read:

~~a) Once the parties are notified that an appeal is docketed by the Appeals Board, any proposed amendment of the citation or appeal shall be made in accordance with the procedures set forth in Section 371. Where the parties are notified by mail, the notification date is deemed to be five days after the date on the notification letter. An amendment by the Division that alleges a new violation may be permitted by the Appeals Board, but not after six months have elapsed since occurrence of the alleged violation.~~

~~(b) Each party shall be given notice as provided in Section 371 of the intended amendment and an opportunity to prepare a response to an amendment which presents a new charge or defense. Any new charges or defenses shall be deemed controverted.~~

(a) Amendment of a citation or appeal is permitted in the following circumstances so long as any party opposing the amendment has an opportunity to demonstrate any prejudice that the requested amendment will create. In determining whether prejudice is shown by a party opposing an amendment, consideration shall be given to the specific evidence that the opponent of the amendment would be unable to present because of the timing of the request, if the amendment were granted.

(1) A request for an amendment that does not cause prejudice to any party may be made by a party or the Appeals Board at any time.

(2) A request for an amendment that causes prejudice to the opposing party shall be granted if one of the following circumstances apply:

(A) In the case of a request filed and served at least 20 days before the hearing:

(i) The amended citation or appeal arises out of the same general set of facts as the original citation or appeal such that the amended citation or appeal relates back to the original citation or appeal; and

(ii) The request for the amendment is in writing and directed to the Appeals Board; and

(iii) The request is filed and served pursuant to section 355; and

(iv) The party opposing the amendment is provided ten days from the date of service of the request to file and serve written opposition pursuant to section 355.

(B) In the case of a request brought less than 20 days before the hearing or during a hearing:

(i) The amended citation or appeal arises out of the same general set of facts as the original citation or appeal such that the amended citation or appeal relates back to the original citation or appeal; and

(ii) The party seeking the amendment shows good cause for the failure to bring such request at least 20 days before the hearing; and

(iii) Any prejudice created by granting such amendment can be remedied by a continuance or other order of the administrative law judge.

(b) Amendment of a citation or an appeal is not permitted when:

(1) The amendment concerns a general set of facts sufficiently different from the facts contained in the citation or appeal that the proposed amendment does not relate back to the original citation or appeal; and

(2) The violation alleged in the original citation occurred more than six months prior to the date of the request to amend the citation.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Section 11507, Government Code; Sections 6317 and 6603(a), Labor Code.

Amend Section 373, Expedited Proceeding, to read:

(a) Upon motion of a party or upon its own motion, the Appeals Board may order an expedited proceeding. All parties shall be notified and shall be expected to do all things necessary to complete the proceeding in the minimum time consistent with fairness. Time limits for filing a motion to compel discovery and for responsive filings under section 372.6 may be shortened as necessary to accommodate the expedited date for disposition of the case.

(b) Where the Appeals Board is aware or is notified that an alleged violation appealed is classified by the Division of Occupational Safety & Health as a Serious, Repeat Serious, Willful Serious, Willful, Willful Repeat or Failure to Abate, and either abatement is on appeal, or abatement has not occurred, the Appeals Board shall expedite the proceeding.

(c) The Appeals Board shall serve parties written explanation of the expedited process, a notification of docketing, a copy of the docketed appeal forms and citations, a standing order compelling discovery, a stipulation form, and a status conference notice.

(1) A telephonic status conference shall be held within 30 days of the docketing of the appeal. At that time, the ALJ will confirm that the expedited process is appropriate, review the requirements of the expedited process with the parties, review pending and impending discovery, and make such orders regarding any matter as needed to meet the timetable of this section.

(2) A telephonic prehearing conference shall be held within 60 days of the status conference. The prehearing conference will proceed under Section 374. The parties will be required to stipulate to undisputed facts, identify issues, and raise issues regarding the admissibility of evidence. The parties shall identify all witnesses and exhibits they intend to call or introduce at the hearing.

(3) A hearing shall be held within 60 days of the prehearing conference and will be scheduled for one day and adjusted, if necessary.

(4) The Appeals Board or a party may bring a motion to shorten the timeframes set forth in subsections (c)(1) – (3) on a showing of good cause.

Note: Authority cited: Section 148.7 and 149.5, Labor Code. Reference: Sections 148.7 and 149.5, Labor Code.

Amend Section 376.1, Conduct of Hearing, to read:

(a) Testimony shall be taken only on oath, affirmation, or penalty of perjury.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examinations; to impeach any witness regardless of which party first called the witness to testify; and to rebut any opposing evidence. If a party does not testify on his or her behalf, the party may be called and examined as if under cross-examination.

(c) The Appeals Board may call and examine a party or witness and may, on its own motion, admit any relevant and material evidence.

(d) The taking of evidence in a hearing shall be controlled by the Appeals Board in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the Appeals Board shall define the issues and explain the order in which evidence will be received.

(e) Once a hearing has commenced and until a decision is issued, all motions or questions regarding the proceeding shall be referred to the assigned administrative law judge. If written, the motion shall be served in a manner as prescribed in Section 355(ed) and proof of service meeting the requirements of Section 355(ef) shall be filed with the Appeals Board. An opposing party may respond in the manner and within such time as the administrative law judge may direct.

(f) Continuance requests shall be entertained at the hearing only in cases of: (1) unforeseen emergencies, including, but not limited to, death or illness of a party, witness, or representative, or (2) non-appearance of a subpoenaed witness whose testimony is material to the outcome of the proceeding—or (3) good cause.

Note: Authority cited: Sections 148.7 and 6603(a), Labor Code. Reference: Section 11513, Government Code; and Sections 148.7, 149.5 and 6603(a), Labor Code.

Amend Section 386, Post-Submission Amendments to read:

(a) The Appeals Board may amend the issues on appeal or the Division action after a proceeding is submitted for decision, ~~in order to:~~

~~(1) Correct a clerical error;~~

~~(2) Address an issue litigated by the parties;~~

~~(3) Amend the section number cited in the citation if the same set of facts applies to both the cited and proposed sections; or~~

~~(4) Amend any part of the Division action to conform it to a statutory requirement.~~

(b) Each party shall be given notice of the intended amendment and the opportunity to show that the party will be prejudiced thereby unless the case is continued to permit the introduction of additional evidence in the party's behalf. If such prejudice is shown, the proceeding shall be continued to permit the introduction of additional evidence.

Note: Authority cited: Section 148.7, Labor Code. Reference: Section 6603(a), Labor Code; Section 11516, Government Code.