

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

Amend Section 350.1, Authority of Administrative Law Judges, to read:

(a) In any proceeding assigned for hearing and decision under the provisions of Labor Code Sections 6604 and 6605, an Administrative Law Judge shall have full power, jurisdiction and authority to hold a hearing and ascertain facts for the information of the Appeals Board, to hold a prehearing conference, to hold a settlement conference, to hold a status conference, to issue a subpoena and subpoena duces tecum for the attendance of a person and the production of testimony, books, documents, or other things, to compel the attendance of a person residing anywhere in the state, to certify official acts, to regulate the course of a hearing, to grant a withdrawal, disposition or amendment, to order a continuance, to approve a stipulation voluntarily entered into by the parties, to administer oaths and affirmations, to rule on objections, privileges, defenses, and the receipt of relevant and material evidence, to call and examine a party or witness and introduce into the hearing record documentary or other evidence, to request a party at any time to state the respective position or supporting theory concerning any fact or issue in the proceeding, to extend the submittal date of any proceeding, to hear and determine all issues of fact and law presented and to issue such interlocutory and final orders, findings, and decisions as may be necessary for the full adjudication of the matter, or take other action during the pendency of a proceeding to regulate the course of a prehearing, hearing, status conference, or settlement conference, that is deemed appropriate by the Administrative Law Judge to further the purposes of the California Occupational Safety and Health Act. Final orders, findings, and decisions issued by an Administrative Law Judge shall be the orders, findings, and decisions of the Appeals Board unless reconsideration is granted.

Amend Section 371, Prehearing Motions, to read:

* * *

(b) Any motion or request, any opposition thereto, and any reply shall be signed by the party filing or by the party's representative, and a copy shall be served on all parties. Service shall be in a manner as prescribed in Section 355(e)(d) and proof of such service meeting the requirements of Section 355(e) (f) shall be filed with the Appeals Board.

* * *

Amend Section 371.1, Motions Concerning Hearing Dates, to read:

(a) Continuances are disfavored.

(b) A motion for a continuance shall be made in writing and ~~shall be made promptly~~ once the reason necessitating a the continuance is ascertained. The motion shall be directed to the Appeals Board. Service shall be in a manner as prescribed in Section 355(e)(d) and proof of such service meeting the requirements of Section 355 (e) (f) shall be filed with the Appeals Board. In the case of an emergency where the time for the hearing does not permit service as set

forth above, service may be made upon a party by fax, email, or personal service. Motions to the Board, however, may not be made by email. The motion shall contain:

- (1) The date(s) presently assigned for hearing and the date(s) to which continuance is sought;
- (2) A declaration signed under penalty of perjury containing facts in support of the motion; and
- (3) An indication of whether the other parties to the appeal were contacted, and if so, their position on the motion. Absent exigent circumstances, the Appeals Board will not rule on the motion without notification of the other party's position or until the time to oppose the motion as provided in (c) has run, whichever comes first.

(c) Any opposition to a motion for continuance shall be filed with the Appeals Board at any time prior to a ruling on the motion immediately but no later than ten (10) days from service of the motion. Service shall be in a manner as prescribed in Section 355 (e)(d) and proof of such service meeting the requirements of Section 355 (e) (f) shall be filed with the Appeals Board.

(d) The motion shall be ruled on promptly and not delayed once the Board has received all information needed to rule on the motion. The motion shall be granted in the following circumstances:

- ~~(1) An emergency arises, including, but not limited to, death or illness of a party, witness, or representative; or~~
- ~~(2) Any other reason constituting good cause, if the motion is made no later than 15 days after service of the hearing notice.~~

(e) Each request for a continuance shall be considered on its own merits. The motion shall be granted on an affirmative showing of good cause. The following circumstances shall be considered when determining whether good cause exists for the granting of the continuance:

(1) The unavailability of an essential witness, party, counsel or representative because an emergency arises, including, but not limited to, death or incapacitating illness.

(2) The addition of a new party who has not had notice of the hearing date and an adequate opportunity to prepare for the hearing.

(3) The age of the case and whether there were any previous continuances.

(4) The ability of the parties to agree on at least three (3) alternative hearing dates in the immediate future and the Appeals Board's ability to calendar the case on one of the dates.

(5) The prejudice that parties or witnesses will suffer as a result of the continuance being granted or denied.

(6) Whether the party's counsel is calendared in another hearing which conflicts with the Appeals Board's scheduled hearing, including administrative, civil or criminal matters, the specific attempts made by counsel to continue the other matter, and the results of such attempts.

(7) Whether an alternative short of continuing the entire hearing, such as leaving the record open to allow testimony of an unavailable witness or witnesses at a later time, would accommodate the needs of the moving party while allowing the matter to proceed in the meantime.

(8) Whether the employer has abated the alleged unsafe condition or conditions.

(9) The status of any related criminal investigations or proceedings.

(10) Whether the conflict necessitating the continuance was either foreseeable or created by the party(ies) or the party(ies) representative(s).

(11) Any other fact or circumstance relevant to the fair determination of the motion.

(f) The following circumstances shall not constitute good cause:

(1) Failure to obtain representation, unless a substitution is required through no fault of the party.

(2) Failure of another party to comply with a request for discovery, unless the Appeals Board orders a continuance of the hearing after a motion to compel discovery has been filed pursuant to Section 372.6. A continuance of the hearing may be ordered only if:

(A) a motion to compel discovery was filed at a time which would not have foreseeably delayed the hearing, or good cause for such later filing is shown, and

(B) the matters sought to be discovered are of sufficient importance to warrant a continuance of the hearing.

Note: At-hearing sanctions for discovery abuses are specified in Section 372.7 of these regulations.

(g) Once a motion for continuance has been ruled on by the Appeals Board, a motion for continuance based on the same grounds shall not be entertained at the hearing. If the motion was denied without prejudice a party may renew the motion and submit additional information supporting the request including, but not limited to, changed circumstances or new information not formerly available.

Note: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7 and 149.5, 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, or Willful Repeat, and either abatement is on appeal, or abatement has not occurred, the Appeals Board will expedite the proceeding on its own motion.

(c) The parties to the expedited process will receive a letter explaining 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 will be set within 30 days of the docketing of the appeal. The status conference will validate the need for the expedited process, review the expedited process, and report on discovery activities.

(2) A telephonic prehearing conference will be set within 60 days of the status conference. The prehearing conference will proceed under Section 374 and serve to define and narrow the issues by requiring the parties to stipulate to facts, issues, and the admissibility of evidence. Witnesses and exhibits will be identified.

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

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

Adopt Section 374.2, Status Conference, to read:

(a) At any time before hearing, upon motion of a party or upon its own motion, the Appeals Board may notice and order a status conference to discuss the issues to be presented, the witnesses to be called, the status of discovery requests, pending and contemplated motions, and any other matters that may aid in expediting the hearing or otherwise disposing of the case. The status conference may be conducted by means of a telephone conference call.

(b) The failure of a party or its representative to appear and participate in the status conference may be grounds for the imposition of such sanctions, inferences or other orders, then or during the hearing, as the Appeals Board may deem appropriate. These sanctions may include striking or excluding evidence offered by the non-complying party on that dispute, or precluding that party from contesting the position or information on that issue provided by the complying party.

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

Amend Section 376, Time and Place of Hearing, to read:

(c) In cases being reviewed by the Bureau of Investigations or any prosecuting authority, unless the employer submits a written request that its appeal go forward in the normal course, the Appeals Board shall delay the hearing until the conclusion of a review of the case by the Bureau of Investigations or any prosecuting authority or for a period not exceeding 2 three years,

whichever occurs earlier. The period may be extended beyond 2 three years at a party's request if necessary to allow the Bureau of Investigations or any prosecuting authority to conclude its review of the case.

(d) The Appeals Board shall set the place of the hearing at a location as near as practicable to the place of employment where the violation is alleged to have occurred. When making this determination, the Appeals Board's evaluation will include the location of Appeals Board hearing venues, the availability of Administrative Law Judges, the location of the parties and the witnesses.

(e) When setting hearings, the Appeals Board will consider the following:

(1) The type and complexity of the case.

(2) Whether multiple hearings can be set on the same day without necessitating a continuance.

(3) The parties' projection of the length of time needed for the hearing.

(4) The Administrative Law Judge's projection of the length of time needed for the hearing.

(5) Any other fact deemed relevant by the Administrative Law Judge or Presiding Administrative Law Judge.

Note: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 149.5, and 6308(c), Labor Code