

State of California
California Occupational Safety and Health Appeals Board
Closed Session Agenda

Government Code § 11126 (a), (c)(3), (e) and (f)

for

Wednesday, August 7, 2024

9:30 a.m.

Sacramento, California

Alternate locations:

West Covina, California

&

Held on Zoom

To: Members of the California Occupational Safety & Health Appeal Board

From: J. Jeffrey Mojcher, Chief Counsel

Date: July 26, 2024

RE: Closed Session of the Board to be held on August 7, 2024

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session.

Decisions of Administrative Law Judges:

(Written Decision issued by an Administrative Law Judge. The Decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the Decision. The Board Members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)

1595696 Producers Dairy Foods, Inc.

1483438 Sutter Bay Hospitals dba Mills-Peninsula Medical

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1417264 Mendez Electric, Inc.

1523238 Orange County Fire Authority

1590457 R&P Concrete Pump Service, Inc.

Orders Dismissing Appeal:

1610265 B N H, Inc.

1496831 Jose Luis Perez Hernandez, an Individual

Orders Denying Leave to File Late Appeal:

1704570 Amazing Grace Elder Care LLC

Matters Pending Reconsideration:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters, or amends the Order or Decision being reconsidered.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under the authority provided in Labor Code sections 6620 through 6623.18.

- 1431672 A. Teichert & Son, LLC
Whether the cited employer was in violation of lockout/tagout requirements.
- 1473644 Amazon.com Services, LLC
Whether the employer's training program was in compliance with the applicable safety order.
- 1568252 Arana Residential and Commercial Painting, Inc.
Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.
- 1399613 BMC West, LLC
Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.
- 1466722 Bragg Investment Company, Inc.
Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.
- 1420923 Drill Tech Drilling & Shoring, Inc.
*Whether the Employer failed to enforce its IIPP as required.
Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.*
- 1499137 Employbridge Holding Company
Whether Employer violated IIPP requirements as alleged.

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- 1609228 Geo Group, Inc. dba Golden State Annex (3RD PTY PFR)
Whether the motion for third party status was properly denied.
- 1233597 Hampton Tedder Electric (DOSH)
Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.
- 1488312 Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1371294 KPRS Construction Services, Inc.
*Whether the employer violated section 1632 as alleged?
Whether the ALJ's ruling that the Division did not meet its burden of proof regarding the employer's IIPP was correct.*
- 1486257 Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 1415736 Los Angeles County Probation Dept.
Whether the ALJ erred in reclassifying one citation from serious to general.
- 1355061 Republic Electric West, Inc.
Whether fall protection requirements apply to the work. Whether the IEAD was established. Whether penalties were duplicative. Whether the Employer exercised reasonable diligence. Whether it was an error to reduce the classification of the violations and reduce the penalties.
- 1465119 Sun Belt Rentals
Whether certain information accepted into evidence was inadmissible hearsay, and whether the evidence supports a finding that Employer violated sections 3203 and 3328, as alleged.
- 1475491 Sutter Bay Medical Foundation
Whether the employer failed to comply with COVID protections as alleged.
- 1486176 Tutor Perini Corporation and O&G Industries, Inc.
Whether Employer committed a serious accident-related violation of section 3328, subdivision (a).

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- 1594663 Uber Technologies, Inc.
How Proposition 22 interacts with the Board's statutes and operative regulations.
- 1498595 Western Oilfields Supply Company
Did the ALJ err by affirming a citation alleging that Employer did not guard a machine at its point of operation? And did the ALJ err by allowing an amendment to the citation so the Division could assert an alternate theory?

Matters Pending Litigation:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

Superior Court:

1. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
2. Davis Development Company, 34-2020-80003373 (1226084)
3. Hill Crane Service Inc., 34-2021-80003744 (1135350)
4. USA Waste of California, Inc., 34-2022-80003841 (1384029)
5. General Dynamics NASSCO, 37-2023-00024521 (1300984)
6. S.C. Anderson, Inc., 24WM000039 (1405107)
7. Angelus Block Co., Inc., CIVSB2417796 (1113026)
8. Hamilton Iron Works, Inc., 24WM000100 (1497263)

Appellate Court:

There are no cases currently filed with the Appellate Court.

Other Items:

1. Discuss title 8, California Code of Regulations section 348, the Board's present regulation which adds five days to the time in which something must be done to account for mailing time.
2. Categorizing the Board's DARs and Denials on the DIR website.
3. Superior Court cases that also involve or relate to appeals pending before the

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Lyft, Inc., 30-2023-01368387-CU-MC-CXC (1594664)

Uber Technologies, Inc., 30-2023-01330884-CU-JR-CXC (1594663)

Orders Of Administrative Law Judges:

(Written orders issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1375889	A Spec Racing
1640190	Advance Services, Inc.
1694281	Advantage Elevator, Inc.
1576609	Ameri-Staff, Inc.
1721059	Arena Staffing
1686023	Arias/Graziano Enterprises
1622707	Artcad Builders, Inc.
1344814	Ashby Lumber Company
1607136	Branham Auto Service, Inc.
1727994	CA General Services
1597607	California Department of Forestry and Fire
1640976	Center for Volunteer Non-Profit Leadership
1638739	Certified Tile and Stone, Inc.
1507401	City of Sunnyvale
1700501	Coastal Welding Innovations
1605497	Cox a Division of KLS Doors, LLC
1716267	Critchfield Mechanical, Inc.
1656629	Crown Lift Trucks
1630876	Declark Construction, Inc.
1740866	Driverge Vehicle Innovations, LLC
1715160	E. G. Ayers Distributing, Inc.
1723959	Earth Tek Engineering Corporation
1492539	Edward R. Silveira, Janeta M. Silveira, and Robert
1498142	Employbridge Holding Company
1540616	Esparza Enterprises, Inc.
1724899	F & H Cold Storage, LLC
1691132	Farm Labor Association For Growers, Inc.
1649818	Fleetpride, Inc.
1473511	Foster Poultry Farms
1737998	Giles Excavating & Paving, Inc.
1718863	Global Steel Fabricators, Inc.
1706430	Green Building Technologies Inc.

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1716782	I.G.S. Molding LLC
1714595	Jett Harvest, Inc.
1727411	Jimene's Food Inc.
1511445	Kaiser Foundation Hospitals
1477006	Kindred Hospital
1476721	Kindred Hospital - La Mirada
1509844	Kindred Hospital South Bay
1689620	Lakeshore Learning Materials LLC
1732248	Leo Acquistapace Ranch
1627580	Matchmaster Dyeing and Finishing
1652102	Metal Manufacturing Company, Inc.
1645597	Metro Services Group
1673115	Mission Linen Supply, Inc.
1716120	North Bay Post Acute LLC
1696405	O'Reilly Auto Parts
1654203	Oceano Farming LLC
1694393	Omega Machine & Tool Inc.
1682336	Paragary Restaurant Group, Inc.
1746162	Parsec, Inc.
1585698	Pcn3, Inc.
1693785	Polly's Inc.
1700525	Prime Now LLC
1749715	Proframe Construction Inc.
1519855	Purina Animal Nutrition, LLC
1625637	Quality Grain Co., Inc.
1706633	Rio Farms, LLC
1724646	Ross G Waite Construction
1598891	Schultz Industrial Services, Inc.
1653634	Seaport Meat Co
1690373	Sirio North America, Inc.
1634724	Soch Stockton, LLC
1628503	Sol-Ti, Inc.
1697968	Solv Energy, LLC
1587602	Southwest Airlines Co.
1754492	Spectra Company
1536475	Stanford Health Care
1548762	Stay Green, Inc.
1614697	Storie and Severson Construction, Inc.
1677679	Summit Roofing LLC
1473940	Sunbelt Rentals, Inc.
1653520	SV Delivery LLC

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1698008	Synear Foods USA, LLC
1596324	Taylor Farms Southern California, Inc.
1606050	The Goodyear Tire & Rubber Company
1677844	The Great Sepulveda Car Wash, LLC
1704982	Thorpe Design, Inc.
1612779	Tiger Tanks, Inc.
1612693	Tilton Pacific Construction, Inc.
1555948	Tom Daigle
1684245	Tucker Produce Company LLC
1716388	Tulare Hospitality Investors, LLC
1544793	U.S. Borax, Inc.
1591766	United Parcel Service, Inc.
1685943	USA Construction Management Inc.
1717148	Vanderbilt Homes
1706801	Velasco Construction Inc.
1667873	Visalia Unified School District
1689267	Vista Verde Labor, Inc.
1421645	Wal-Mart Associates, Inc.
1633269	Warner Bros. Television

Personnel:

(Issues regarding staff.)

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.