

**BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD**

In the Matter of the Appeal of:

**UNDERGROUND CONSTRUCTION  
COMPANY, INC.  
dba UNDERGROUND ELECTRIC  
CONSTRUCTION COMPANY, LLC  
5145 INDUSTRIAL WAY  
BENICIA, CA 94510**

**Employer**

Inspection Number  
**1536798**

**DENIAL OF PETITION FOR  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above-entitled matter by Underground Construction Company, Inc. (Employer)

**JURISDICTION**

On December 8, 2021, the Division of Occupational Safety and Health (Division or DOSH) cited Employer with a citation alleging two General violations of safety orders set forth in title 8 of the California Code of Regulations.<sup>1</sup>

- Citation 1, Item 1, alleged a General violation of section 1509, subdivision (c) [Failure to post Code of Safe Practices];
- Citation 1, Item 2, alleged a General violation of section 3395, subdivision (i)(1)-(4) [Heat Illness Prevention Plan]

On June 30, 2025, the Division filed a Motion to Amend the classification of Citation 1, Item 2 from General to Serious. On October 3, 2025, Employer filed its opposition to the Division's Motion to Amend. Administrative Law Judge Mario Grimm (ALJ) issued an order granting the Division's Motion to Amend on March 3, 2026 (Order). On April 7, 2026, Employer filed a timely petition for reconsideration (Petition) of the Order.

**ISSUE**

Should the Board grant the Employer's interlocutory petition for reconsideration?

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<sup>1</sup> Unless otherwise specified references are to California Code of Regulations, title 8.

## REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. We have taken no new evidence.

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

The Employer's petition asserts the Board acted without or in excess of its powers, the findings of fact are not supported by the evidence, and the findings do not support the Order.

Board precedent holds that reconsideration will not be granted concerning interlocutory rulings, reasoning that they are not "final" orders within the meaning of the Labor Code section 6614. (*Gardner Trucking, Inc.*, Cal/OSHA App. 12-0782, Denial of Petition for Reconsideration (Dec. 9, 2013).) The Board has long held that granting interlocutory review is extraordinary in nature and must be exercised sparingly. (*Shimmick Construction Company, Inc.*, Cal/OSHA App. 1080515, Decision After Reconsideration (March 30, 2017).) Interlocutory review is generally disfavored and rarely granted. (*Ibid.*)

The Board does recognize some exceptions to the general prohibition on interlocutory review. (*Gardner Trucking, Inc.*, supra, Cal/OSHA App. 12-0782.) In deciding whether to grant an interlocutory order, the Board may consider "general principles" "followed by the courts" that allow for interlocutory review. (See *Muse Trucking Company*, Cal/OSHA App. 03-4535, Denial of Petition for Reconsideration (Dec. 24, 2004).)

However, here, we do not view the Employer's Petition as adequately raising any justification that would necessitate a departure from the Board's general rule that reconsideration will not be granted regarding interlocutory rulings.

We hold that the Order which the Employer petitions us to reconsider is interlocutory, and we decline to reconsider the petition on that basis.

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OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair

/s/ Judith S. Freyman, Board Member

/s/ Marvin Kropke, Board Member

FILED ON: 05/21/2026

