

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

In the Matter of the Appeal of:

**M.C.M. CONSTRUCTION, INC.
34425 LA RAYE DR.
YUCAIPA, CA 92399**

Employer

Inspection Number
1666933

**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 (Petition) filed in the above-entitled matter by M.C.M. Construction, Inc. (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) started an inspection of a place of employment in Yorba Linda, California maintained by Employer commencing on May 1, 2023, and concluding on July 7, 2023. On July 11, 2023, the Division issued a Notice in Lieu of Citation (not at issue here) and a Citation which alleged a serious violation of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer timely appealed.

The matter was assigned to an administrative law judge (ALJ) of the Board for appeal proceedings. During those proceedings Employer filed a “Motion for Judgment on the Pleadings” which argued the Citation failed to “state with particularity the nature of the violation” as required by Labor Code section 6317 subdivision (a). The Division opposed the motion, and the ALJ issued an order denying the motion. The Division then filed its own motion to amend the Citation, which Employer opposed and the ALJ issued an order granting the amendment. We shall refer to those two orders as the Orders.

Employer petitions for reconsideration of the Orders.

The Division filed an answer to the Petition on April 24, 2026.

ISSUE

Should the Board take Employer’s Petition under submission?

¹ References are to California Code of Regulations, title 8 unless specified otherwise.

**REASONS 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.

Employer's Petition asserts that the ALJ exceeded his authority in ruling on the motion to dismiss and the motion to amend the Citation, the evidence does not justify the findings of fact, and the findings of fact do not support the Orders.

The Citation alleged a violation of section 3328, subdivision (b), which states: "Machinery and equipment in service shall be inspected and maintained as recommended by the manufacturer where such recommendations are available."

When the Citation was initially issued it stated, "Prior to and during the course of the inspection, including but not limited to May 01, 2023, the employer failed to ensure that machinery and equipment in service was inspected and maintained as recommended by the manufacturer where such recommendations are available, as per this regulation."

As noted above, Employer's counsel filed a "Motion for Judgment on the Pleadings" in June 2025, which the ALJ deemed a motion to dismiss. Employer's motion argued that the Citation language quoted above failed to satisfy the requirement of Labor Code section 6317, subdivision (a), that citations "state with particularity the nature of the violation" and thus did not provide Employer adequate knowledge to satisfy due process. The Division opposed the motion, arguing that the Division's inspector met with Employer several times during the inspection and informed the Employer of the details of the alleged noncompliance. Further, the Division and Employer agreed on the specific steps which were taken to abate the violation. As a result, Employer was fully informed of the basis and nature of the violation.

The ALJ denied the motion to dismiss, holding that there were sufficient facts alleged, including the date or a range of dates during which the noncompliance occurred. Further, the circumstances of the inspection of Employer's worksite, especially the discussions between Employer and the Division inspector and their agreement on the means to abate the alleged violation show that Employer was adequately informed on the nature of the violation.

The Division then moved to amend the citation to include a more detailed description of the violation, which the ALJ granted. The amended citation alleged: “Prior to and during the course of inspection, including but not limited to April 26, 2023, the employer failed to ensure that a Miller Trailblazer 302 welding machine in service was maintained as recommended by the manufacturer pursuant to available recommendations, including but not exclusively stopping the engine before disconnecting cables or servicing the battery, and checking the battery and replacing if necessary if the engine did not start.”

Employer opposed the motion to amend, arguing that it contradicted the Division’s assertion in the Division’s opposition to Employer’s motion to dismiss that the citation as originally issued was sufficiently clear to satisfy the particular requirement of Labor Code section 6317, subdivision (a).

The ALJ granted the motion to amend the Citation and as noted above, Employer petitions for reconsideration of both the denial of its motion to dismiss and the ALJ’s allowing the Citation to be amended. We shall deny Employer’s Petition because it is interlocutory.

The Orders are interlocutory orders, that is, orders issued by a tribunal before a final determination of the parties’ rights is rendered. (*Fedex Ground*, Cal/OSHA App. 13-1220, Decision After Reconsideration (Sept. 17, 2014).) The violation alleged in the citation has not been adjudicated to a final determination, and even if the Division’s motion to amend had been denied, the validity and the allegations in the original citation would remain at issue until a final decision is reached on the merits. Decisions on the merits are preferred over resolution on a technicality by public policy. (*Tad Van Nguyen*, Cal/OSHA App. 1628750, Denial of Petition for Reconsideration (Sep. 5, 2025).) Thus, the Orders are not final in that the merits of the underlying allegations remain undecided. Nor do the Orders fall within the few exceptions to the general rule that interlocutory orders are not reviewed. (*Fedex Ground*, *supra*, Cal/OSHA App. 13-1220.)

DECISION

For the reasons stated above, Employer’s Petition is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin P. Kropke, Board Member

FILED ON: 05/19/2026

