

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

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

for

Thursday, February 17, 2022

9:30 a.m.

Held on Zoom

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

From: J. Jeffrey Mojcher, Chief Counsel

Date: February 4, 2021

RE: Closed Session of the Board to be held on February 17, 2021

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. 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.

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.)

1233763 ACCO Engineered Systems

1437252 JT2 Inc.

1454339 Wicks Roofing, Inc.

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.)

1291481 Sierra Forest Products

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

- | | |
|---------|------------------------------|
| 1448740 | BGM Installation, Inc. |
| 1393455 | Contract Builders Corp. |
| 1481917 | Doris Haysalina Bravo Farnez |

Orders Denying Leave To File Late Appeal:

None

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 authority of Labor Code sections 6620 through 6623.

- | | |
|---------|---|
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
<i>Whether adult film performers are employees or independent contractors.</i> |
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Dosh's Petition)
<i>Whether adult film performers are employees or independent contractors.</i> |
| 1246527 | Cemex
<i>Whether the settlement in this matter was procured by fraud.</i> |
| 1494822 | Ciasom, LLC dba Advoque Safeguard
<i>Whether Employer operated an industrial truck within appropriate limits.</i> |
| 1332867 | Guy F. Atkinson Construction, LLC
<i>Whether the Division proved the alleged violation.</i> |
| 1410726 | Hathaway Dinwiddie Construction Co.
<i>Whether the Division proved the alleged violation.</i> |

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- 1290766 Millenium Reinforcing
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients
Whether the Employer committed the alleged violations.
- 1327187 Ontario Refrigeration Service, Inc.
Whether the Division proved the "serious" classification.
- 1224802 Ranch of the Golden Hawk
Whether the household domestic service exception applies to the tree trimming involved in this matter.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1192534 Shimmick Construction Company Inc.
Whether the employer committed the violation alleged.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1509967 United Pumping Service, Inc.
Whether the citations were issued timely.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.

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. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
3. Ashley Furniture Industries, 34-2017-800002750, (1016514)

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4. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
5. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
6. Process Cooling International, 34-2019-80003220 (1232555)
7. Prestige Painting, 37-2019-00066143 (1367265)
8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)
11. BMW West, LLC, 34-2021-80003574 (1399613)
12. Southern California Edison, 34-2021-80003580 (1320327)
13. L&S Framing, Inc., SCV-0046603 (1173183)
14. Granite Construction, 34-2021-80003634 (1235643)
15. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
16. Golden State FC, LLC dba Amazon Fulfillment,
STK-CV-UWM-2021-0004380 (1310525)
17. USA Waste of California, Inc. dba Blue Barrel Disposal Services,
21STCP01729 (1384029)
18. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
19. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
20. RND Contractors, Inc., CIV SB 2119442 (1436785)
21. Sunview Vineyards of California, Inc. RG21111733 (1153101)
22. Hill Crane Service Inc., 34-2021-80003744 (1135350)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.

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2. Categorizing the Board's DARs and Denials on the DIR website.
3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.
4. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Orders Of Administrative Law Judges:

(Written order 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.)

1503283 Ace Asphalt, LLC
1540576 Best Snacks & More, Inc.
1390647 BMC West, LLC
1370416 Bodega Latina Corporation
1449731 Bryan Starn Construction
1482373 Catalyst Family Inc.
1492185 Century Commercial Service
1362103 Charter Communications, LLC
1311050 Circle M Contractors, Inc.
1499625 Desiree Dewbre
1458999 Dinwiddie-Hines Construction, Inc.
1475470 DPR Construction, Inc.
1427089 Eco Mac Electric, Inc.
1495242 Fulgent Genetics, Inc.
1508086 GFF, Inc.
1512712 Gillette Citrus Inc.
1277542 GXO Logistics Supply Chain, Inc. Erroneously Cited
1475494 Hi Point Construction
1322666 Inter-Con Security Systems, Inc.
1480304 J & B Materials
1424934 Jump
1422921 Lineage Logistics
1414048 Los Angeles Unified School District - Valerio Street
1551636 Lowery Pena Construction
1452863 Manheim Remarketing, Inc.
1481476 Marin Resource Recovery Center
1549038 Michael Borrelli Design, Inc.
1285450 Petersen-Dean, Inc.

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1334685 Poolman 2000, LLC
1555145 Rachma Contracting, Inc.
1324731 Sinthal, Inc.
1516095 Solaris Paper, Inc.
1505907 Srs Coatings, LLC
1444686 Suffolk Construction Company, Inc.
1422160 Superior Tree Service, Inc.
1486314 Teunissen Ranch, Inc.
1507441 Thrifty Payless, Inc.
1372743 Tri-Valley Vegetable Harvesting, Inc.
1473036 United Parcel Service, Inc.
1465672 Universal Protection Service, LP
1242240 Valle Chico Inc.
1428508 Vertex Coatings, Inc.
1517682 Veterans Towing, LLC
1425251 Walmart, Inc.
1332532 Warren's Water Truck Service
1505617 Watermark Livermore, LLC
1516385 Weather-Tech Roofing Inc.

Personnel:

(Issues regarding staff.)

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