

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

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

for

Thursday, March 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: March 4, 2021

RE: Closed Session of the Board to be held on March 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.)

There are no Decisions

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.)

There are no Petitions for Reconsideration

Orders Dismissing Appeal:

1478375 Professional Asbestos Removal Corporation

Orders Denying Leave To File Late Appeal:

1498721 KND Development 54, 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 authority of Labor Code sections 6620 through 6623.

- 1141604 Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
Whether adult film performers are employees or independent contractors.

- 1141604 Boy Racer Inc. DBA Burning Angel
(Dosh's Petition)
Whether adult film performers are employees or independent contractors.

- 1494822 Ciasom, LLC dba Advoque Safeguard
Whether Employer operated an industrial truck within appropriate limits.

- 1332867 Guy F. Atkinson Construction, LLC
Whether the Division proved the alleged violation.

- 1410726 Hathaway Dinwiddie Construction Co.
Whether the Division proved the alleged violation.

- 1290766 Millennium 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.

- 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.

- 1291481 Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted March 4, 2021

- 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)
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. BMC West, LLC, 34-2021-80003574 (1399613)

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted March 4, 2021

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)
23. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403
(1473644)

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.
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.)

1444325	13 Point Brewing Company, LLC
1469095	A&E Arborist Tree Care, Inc.
1494808	A. Teichert & Son, Inc.
1437431	Acco Engineering Systems, Inc.
1510268	Albertson's Holdings, LLC
1516609	Allcali Products, Inc.
1473366	Asbestos Services, Inc.
1424536	Ays Hospitality, Inc.
1382615	Bay Valve Service & Engineering LLC
1484561	Brosamer & Wall, Inc.
1513646	Buddy Bar Casting Corporation
1541131	Cable Tech Corp
1511421	Carlton Senior Living, LLC
1332189	Charter Communications, Inc.
1328780	Clark & Sons Contracting Corp.
1403296	Columbia Electric, Inc.
1514133	Credit Union of Southern California
1545006	Crown Painting, Inc.
1443556	Ecobay Services
1321150	Employerbridge, LLC
1504630	Future Ford, Inc.
1504633	Future Nissan, Inc.
1450284	Hobby Lobby Store #784
1482948	Home Depot U.S.A., Inc.
1524582	Inter-Con Security Services
1498560	J.T. Thorpe
1349890	L & S Framing, Inc.
1378127	Lusardi Construction Co.
1472307	LW Construction Inc.
1497023	Mauritson Farms, Inc.
1515268	Midpen Housing Corporation
1487717	Millbrae Care Center, LLC
1510093	Naftoon, Inc.
1555284	Nor Cal Fast Foods, Inc.
1389107	Palm Springs Unified School District

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted March 4, 2021

1332490	Rentokil North America, Inc.
1525730	Reyes Coca-Cola Bottling, LLC
1499642	Rite-Way Meat Packers, Inc.
1466986	Roche Molecular Systems, Inc.
1496882	Santa Clara County Elmwood Correctional
1496216	Santa Clara County Sheriff's Office
1491468	Sea Coast Subway Corp
1480561	Signature Coast Holdings LLC
1253596	Silicon Valley Crane, Inc.
1425652	Steel City Scaffold
1490791	Synergi LLC
1455954	Terranova Ranch, Inc.
1528486	Tesla Energy Operations, Inc.
1237921	Tony Reed Construction, Inc.
1516822	Trinity Timber, Inc.
1227454	Wall Constructors Inc.
1469714	Walmart, Inc.
1429571	Walmart, Inc. Store #2119
1499884	Waste Management Recycling and Disposal Services
1507000	Waterworks Technology, Inc.
1492139	Watsonville Community Hospital
1365238	West Coast Arborists, Inc.
1560278	West Valley Construction Company, Inc.
1405719	Western National Builders
1514495	Western Wine Services, Inc.
1474039	Willoughby Brothers, LLC
1318785	Yukon Plastering, Inc.

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.