

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

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

for

Thursday, April 21, 2022

9:30 a.m.

Sacramento, California

West Covina, California

&

Held on Zoom

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

From: J. Jeffrey Mojcher, Chief Counsel

Date: April 8, 2022

RE: Closed Session of the Board to be held on April 21, 2022

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.)

1360169 Ca Forestry and Fire Protection dba Cal/Fire

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.)

1498721 KND Development 54, LLC dba Kinred Hospital Riverside

1425896 Wright Tree Service of the West, Inc.

Orders Dismissing Appeal:

- | | |
|---------|--|
| 1424602 | East Los Angeles Hand Car Wash |
| 1549282 | F C Landscape, Inc. |
| 1493172 | J.F. Prieto Engineering Construction, Inc. |
| 1320037 | MG Luna |

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeal to review.

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> |
| 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> |
| 1290766 | Millennium Reinforcing
<i>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.</i> |

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- 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.
- 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.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.
- 1416143 Webcor Builders, Inc.

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, CPF 17-515575, (317134021)
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)

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9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)
11. BMC 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. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
18. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
19. RND Contractors, Inc., CIV SB 2119442 (1436785)
20. Sunview Vineyards of California, Inc. RG21111733 (1153101)
21. Hill Crane Service Inc., 34-2021-80003744 (1135350)
22. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403
(1473644)
23. Sierra Forest Products, VCU290996 (1291481)

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.

1473212	3d Land & Cattle Company, LLC
1487094	A L L H Construction
1387185	AAA Roofing By Gene, Inc.
1385872	Alegria Remodel and Construction, Inc.
1488512	Amvets Department of California Service
1524605	Amware Pallet Services, LLC
1502823	Anco Iron and Construction, Inc.
1360963	Annette D Mendoza Tabora
1385036	ASM Investments, Inc.
1483218	Baronhr West, Inc.
1552265	BBB Bonding Corporation
1463474	C.A. Rasmussen, Inc.
1555718	California Custom Fruits and Flavors, Inc.
1355805	California Department of Forestry and Fire
1491155	California Royale, LLC
1517732	California Waste Solutions, Inc.
1452091	CCL Tube, Inc.
1549133	Centerline Drivers, LLC
1491824	Commodity Forwarders
1495407	D'arrigo Bros. Co. of California
1522767	D.A. Wood Construction, Inc.
1546050	Eldorado Care Center
1492680	Empres Healthcare Management, LLC
1534648	Energy Recovery, Inc.
1452851	GE Precision Healthcare LLC
1500176	Granite Construction Company
1505542	Heritage Plastering
1529219	Illume Agriculture, LLC
1399889	JH Thompson & Sons, Inc.
1486133	Kaiser Foundation Hospitals
1483996	Kamran Staffing, Inc.
1515495	Kraft Heinz Company
1550124	Lemoore Foods, Inc.
1314714	Leong-Kuba Sea Products, Inc.
1487671	Los Angeles County Parks And Recreation

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1469484	M3 HVAC
1412146	Mark Beamish Waterproofing, Inc.
1552127	Market Demand Corp.
1528095	Mohamed-Ali Alamsi, an Individual
1557139	New Dimension Sofa Mfg., Inc.
1545238	Nordstrom Fulfillment Center
1514043	Orange Coast Auto Group, LLC
1564518	Owner/Builders; Gagan Batta, Aman Batta
1544761	Paul Builders
1344245	Personnel Staffing Solutions Group, Inc.
1533748	Prime Ag Labor Source, Inc.
1536535	Protective Shield Security
1466945	PWC California Builders, Inc.
1552665	R.E. Maher, Inc.
1519305	Rancho Foods, Inc.
1566654	Ray Tech Professional Painting
1448745	Royal Laundry
1514033	Santa Clara Valley Transportation Authority
1559081	Schreiner's Fine Sausages, Inc.
1510700	Sharp Industries, Inc.
1502249	Skidrow Housing Trust
1537570	Smart & Final Stores LLC
1472716	Sutter Bay Hospitals Db a California Pacific Medical
1373915	Tanimura & Antle, Inc.
1480573	Tenet California, Inc.
1517035	United Airlines
1464690	Vita-Pakt Citrus Product Co.
1518172	Warren Construction & Roofing, Inc.
1533732	Waterproof Experts Inc.

Personnel:

(Issues regarding staff.)

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