

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

Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, October 7, 2021
9:30 a.m.
Held on Zoom

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

From: J. Jeffrey Mojcher, Chief Counsel

Date: September 24, 2021

RE: Closed Session of the Board to be held on October 7, 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.)

None

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.)

1485458 SD Design Construction Corp.

1372873 BFC Apparel, Inc.

1327187 Ontario Refrigeration Service, Inc.

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

None

Orders Denying Leave To File Late Appeal:

1476258 Juan Martinez

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 so as 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.

- | | |
|---------|---|
| 1272378 | Andrew Harrison Barnes
<i>Whether Mr. Barnes was/is an employer.</i> |
| 1279492 | Arriaga USA, LLC
Whether the cited employer's rights were adequately protected at the video hearing. |
| 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> |

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted September 24, 2021

- 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.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1306170 Siu's Products and Distributor, Inc.
Whether Employer complied with lockout/tagout requirements.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services
Whether the Employer committed the alleged violations.
- 1152851 Vincent Tuomey
Whether the Board order to issue a new decision was consistent with the Superior Court's ruling on a writ of mandate.
- 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. R N R Construction, Inc., 34-2017-80002632 (1092600)
4. Ashley Furniture Industries, 34-2017-800002750, (1016514)

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted September 24, 2021

5. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
6. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
7. Process Cooling International, 34-2019-80003220 (1232555)
8. Prestige Painting, 37-2019-00066143 (1367265)
9. Davis Development Company, 34-2020-80003373 (1226084)
10. MWL Solutions, 34-2020-80003549 (1436014)
11. Hampton Tedder Electric, 34-2020-80003562 (1233597)
12. BMW West, LLC, 34-2021-80003574 (1399613)
13. Southern California Edison, 34-2021-80003580 (1320327)
14. APTCO, LLC, BCV-21-100421 (1332715)
15. Ventura Coastal, (317808970)
16. L&S Framing, Inc., SCV-0046603 (1173183)
17. Granite Construction, 34-2021-80003634 (1235643)
18. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
19. Golden State FC, LLC dba Amazon Fulfillment,
STK-CV-UWM-2021-0004380 (1310525)
20. USA Waste of California, Inc. dba Blue Barrel Disposal Services,
21STCP01729 (1384029)
21. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
22. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
23. RND Contractors, Inc., CIV SB 2119442 (1436785)
24. Sunview Vineyards of California, Inc. RG21111733 (1153101)

Appellate Court:

1. Lion Farms, LLC, MCV075788 (1070258)
2. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
3. United Parcel Service, B308218, 18STCP03195 (1158285)

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.

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.)

1456209	AFC Trading & Wholesale, Inc.
1495502	AL Pak Labor Inc.
1499153	All Valley Solar, Inc.
1369386	Alliance Roofing Company, Inc.
1397958	America's Best, Inc.
1412205	Anderson Design, Inc.
1516009	Bed Bath & Beyond of California Limited Liability
1453397	Bed Bath and Beyond, Inc.
1314726	Blackjack Machinery, Inc.
1408098	Bright View Tree Care Services, Inc.
1473247	BTS Equipment Unlimited, Inc.
1316866	California State University Of Dominguez Hills
1511785	Chino Valley Unified School District - Anna A.
1491458	Cirilo Becerra FLC
1454292	Citistaff Solutions, Inc.
1458975	City Of Los Angeles Department Of Water and Power
1412708	Clayco, Inc.
1490075	Cliff Brown Automotive
1512812	Compass Services
1475782	Concrete Builders Group, Inc.
1508198	Creative Comfort Design Inc.
1460771	Crest Steel Corporation
1417986	D7 Roofing Services, Inc.
1491157	DGK Plumbing, Inc.
1504387	Employbridge LLC
1490343	Ford Signs Inc.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted September 24, 2021

1520763	Fred R. Rippy, Inc.
1472877	Full Steam Staffing, LLC
1482518	G.L. Mezzetta Inc.
1332200	Golden State FC, LLC
1472093	Guerra & Gutierrez Mortuary, Inc.
1504849	Hanford Grain Company LLC
1504132	Hanrich Corporation
1489299	Harvest Kings LLC
1407466	Interstate Hotels and Resorts
1454431	J A Gonsalves & Sons Construction Inc.
1462294	J.D.M.L., Inc.
1494077	Jacob Supplies, Inc.
1379075	JT2 Inc.
1474630	Kaiser Foundation Hospitals/Kaiser Permanente -
1476638	Kamlimullah Bayanzay, an Individual
1472309	Kern Oil & Refining Co.
1501456	KLS Doors, LLC
1505803	Lake View Tree Service & Landscaping Maintenance
1507580	Lifetime Brands, Inc.
1423464	Lineage Logistics LLC
1462284	McWane, Inc.
1285243	Memo's Scaffolding Norwalk, Inc.
1448211	Metro Logistics USA, Inc.
1516448	Miracleworks, Inc.
1466991	Norcal Solutions, Inc.
1496898	Olive Vista Behavioral Health Center
1490296	Pacific Heat Treating Company, Inc.
1516856	Pierson Company
1189444	Rafael A. Rosero
1493760	Recology Blossom Valley Organics South
1472682	Reiter Berry Farms, Inc.
1488095	Reliable Rubber Products, Inc.
1471851	Robinson Helicopter Company
1423487	Roebbelen Contracting, Inc.
1494059	Royalite Mfg., Inc.
1223608	Sabor Farms, LLC
1423733	Sabor Farms, LLC
1460981	Santa Maria Harvesting, LLC
1499361	Secure Sheet Metal Inc.
1520484	Sierra View Dairy, LLC

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted September 24, 2021

1480779	Simplified Labor Staffing Solutions, Inc.
1468368	Snell Foundation, Inc.
1497918	Solar Watt Solutions
1498830	Sunland Aerospace Fasteners
1420289	Swift Beef Company
1510736	Tesoro Refining & Marketing Company LLC
1498443	Trademark Plastering Inc.
1509967	United Pumping Service, Inc.
1502864	Valero Refining Company - California
1498779	VCI Construction, LLC
1491237	Westland Distributing Partners, LLC
1495518	Xierun Garden USA 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.