

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

Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, November 4, 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: October 22, 2021

RE: Closed Session of the Board to be held on November 4, 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.)

1332867 Guy F. Atkinson Construction, LLC

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.)

1509967 United Pumping Service, Inc.

Petitions For Reconsideration (Second Review):

1485458 SD Design Construction Corp.

Orders Dismissing Appeal:

1485223 Forrest Machining, Inc.

1451187 Stanley Healthcare Center Operating Company, LLC

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 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
Whether Mr. Barnes was/is an employer.

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)
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.

1246527 Cemex
Whether the settlement in this matter was procured by fraud.

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.

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- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients
Whether the Employer committed the alleged violations.
- 1327187 Ontario Refrigeration Service, Inc.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 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)
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)

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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. L&S Framing, Inc., SCV-0046603 (1173183)
16. Granite Construction, 34-2021-80003634 (1235643)
17. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
18. Golden State FC, LLC dba Amazon Fulfillment,
STK-CV-UWM-2021-0004380 (1310525)
19. USA Waste of California, Inc. dba Blue Barrel Disposal Services,
21STCP01729 (1384029)
20. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
21. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
22. RND Contractors, Inc., CIV SB 2119442 (1436785)
23. Sunview Vineyards of California, Inc. RG21111733 (1153101)
24. Hill Crane Service Inc., 34-2021-80003744 (1135350)

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.)

1391152	Abercrombie Pipeline Services, LLC
1489295	ACCO Engineered Systems
1481021	American Machine & Tool, Inc.
1547239	APL Logistics
1460449	Bay Club America Inc.
1446770	Ca Forestry And Fire Protection
1517348	Cardinal Health 200, LLC
1381082	Cassidy Landscape Maintenance, Inc.
1408940	Champion Home Builders, Inc.
1512391	Chun Yu Works (U.S.A.), Inc.
1447444	City Of Coronado Public Services & Engineering
1489304	Classic Distributing & Beverage Group, Inc.
1497916	Del Mar Food Products Corp.
1362121	Diamond PEO, LLC. & Diamond ZB Staffing Services,
1434284	Diamond Wipes International
1526872	Elite Comfort Solutions
1493178	Foley Electric, Inc.
1406761	General Coatings Corporation
1465669	Harvest Food Products Co., Inc.
1526787	Hathaway-Sycamores Children and Family Services
1483667	Howmet Global Fastening Systems, Inc.
1497114	JB Landscape Management, Inc.
1473517	Kaiser Foundation Hospitals
1470803	Krikorian Construction, Inc.
1508856	Ltd Construction Services, GP
1483034	Mike's Farm Labor, Inc.
1538365	Pabco Clay Products, LLC
1484580	Pearce Concrete And Masonry, Inc.
1491027	Peterson Tractor Co
1513213	Premier Wall Systems, Inc.
1482808	Primex Farms, LLC
1350187	R & B Farms, LLC

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1499117	Riverside Healthcare System, L.P.
1406778	Roger Tillis
1497899	Royal Interpack North America, Inc.
1497495	Ruggeri Marble And Granite, Inc.
1475744	Save Mart Supermarkets
1485410	SC Warehouses, Inc.
1429152	Sensitive Environment
1476811	Shirley Nosecchi, Dino Nosecchi & Robin Nosecchi
1493805	Simmons Real Estate, Inc.
1383807	Sims Group USA Corporation
1476256	Sterling Land Care, Inc.
1408117	Steve Winkler
1519742	Stout & Associates, Inc.
1474833	Sylvester Roofing Company, Inc.
1450936	The Better Cleaning Inc.
1491226	The Whiting-Turner Contracting Company
1434672	Tradesmen International
1482178	United Parcel Service Inc.
1482031	United Staffing Associates, LLC

Personnel:

(Issues regarding staff.)

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