

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

Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, January 6, 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: December 24, 2021

RE: Closed Session of the Board to be held on January 6, 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.)

1362970 Carioscia Corporation

1224802 Ranch of the Golden Hawk

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.)

1410726 Hathaway Dinwiddie Construction Co.

1192534 Shimmick Construction Company Inc.

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

- 1474610 Happy Boy Farms
- 1498777 M and N Consulting Inc., dba A-Line Messenger

Orders Denying Leave To File Late Appeal:

- 1477436 California Department of Corrections
- 1499137 Employbridge Holding Company
- 1490346 S'top Roofing Company, Inc.

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.

- 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.
- 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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted December 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.
- 1327187 Ontario Refrigeration Service, Inc.
Whether the Division proved the "serious" classification.
- 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.
- 1509967 United Pumping Service, Inc.
Whether the citations were issued timely.
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services
Whether the Employer committed the alleged violations.
- 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)

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

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. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
2. 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.

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

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.)

1498336	AG Force LLC
1288694	AKM Fire, Inc.
1476002	Amazon.Com Services Inc.
1278587	ASA Group Construction, Inc.
1499572	Big J Produce Sales
1429466	Black Diamond Blade Company
1491465	Breakfast Club LLC
1502663	Califia Farms, LLC
1481578	California Prison Industry Authority
1510242	City of Hope National Medical Center
1398308	Conceptual Management Inc.
1489590	Conejo Hardwoods, Inc.
1293907	Crown Energy Services, Inc.
1515674	Dasco Commercial Construction, Inc.
1492499	Del Pacifico Farm Labor Services, Inc.
1474119	Eco Bay Services, Inc.
1447842	Ferma Corporation
1490787	Gibraltar Convalescent Hospital Inc. / Del Mar Care
1503594	Golden Gate Bell, LLC
1524528	Gradetek, Inc.
1483179	Grocery Outlet Bargain Market
1479906	Hayward Sisters Hospital
1491402	Holland Brothers Construction, Inc.
1510760	Joseph Crown Construction and Development, Inc.
1503947	K-Deer La, Inc.
1230624	La City Animal Services
1453611	Los Angeles County Registrar - Recorder/County
1508559	Los Angeles County Sheriff
1488389	Mannington Mills, Inc.
1487509	Marcos Renteria AG Services, Inc.
1454053	McWane, Inc.
1453879	Mirage Builders, Inc.

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

1531904	New Life Vinyl, Inc.
1329137	New-Indy Oxnard, LLC
1355394	NGS Holdings, Inc.
1475925	OSL Construction, Inc.
1321161	Pacific Utility Installation, Inc.
1441738	P J Cleveland, LLC
1230163	Process Cooling International
1448474	Raymond Handling Solutions
1308619	Roberto Rojas Jr., Individually
1514882	SF MTA
1494043	Snyder Langston
1493603	Sonoco Products Company
1475643	South Bay Tree Care, Inc.
1470261	Superior Electrical, Mechanical & Plumbing, Inc.
1419918	Taylor-Listug, Inc.
1494045	Trademark Construction
1477528	Tranquility Inc.
1452727	Transform Sr. Holding Management LLC
1404675	Trees, LLC
1474359	United Landscape Resources, Inc.
1328044	United Parcel Service, Inc.
1486311	Valledor Holding, Inc.
1479537	Vintage Tree Care Inc.
1506722	Wal-Mart Inc.
1495914	Waste & Recycling Services, Inc.
1337433	West Builders, Inc.
1480327	West Creek Builders, LLC
1509378	Western Colloid, S.C., Inc.
1469509	Whiteside Construction Corporation
1491464	Winco Foods, LLC
1486132	Wright Tree Service of the West Inc.

Personnel:

(Issues regarding staff.)

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