



California Occupational Safety and Health Appeals Board

Presented By:

Sam E. Lucas, Presiding Administrative Law Judge (Southern)

Kerry Lewis, Presiding Administrative Law Judge (Northern)

Mission Statement and Board Regulations

The mission of the Occupational Safety and Health Appeals Board (OSHAB) is to fairly, timely, and efficiently resolve appeals and to provide clear, consistent guidance to the public, thereby promoting workplace safety and health.

- California Code of Regulations, title 8

- Article 1. General. (Sections 345-354.1)

- Article 1.5. Service of Documents and Duty to Notify Others of Appeal and Hearing. (Sections 355-370)

- Article 3. Prehearing Procedure, Discovery, and Motions. (Sections 371-374.3)

- Article 4. Hearing. (Sections 375-386)

- Article 5. Reconsideration. (Sections 389-394)

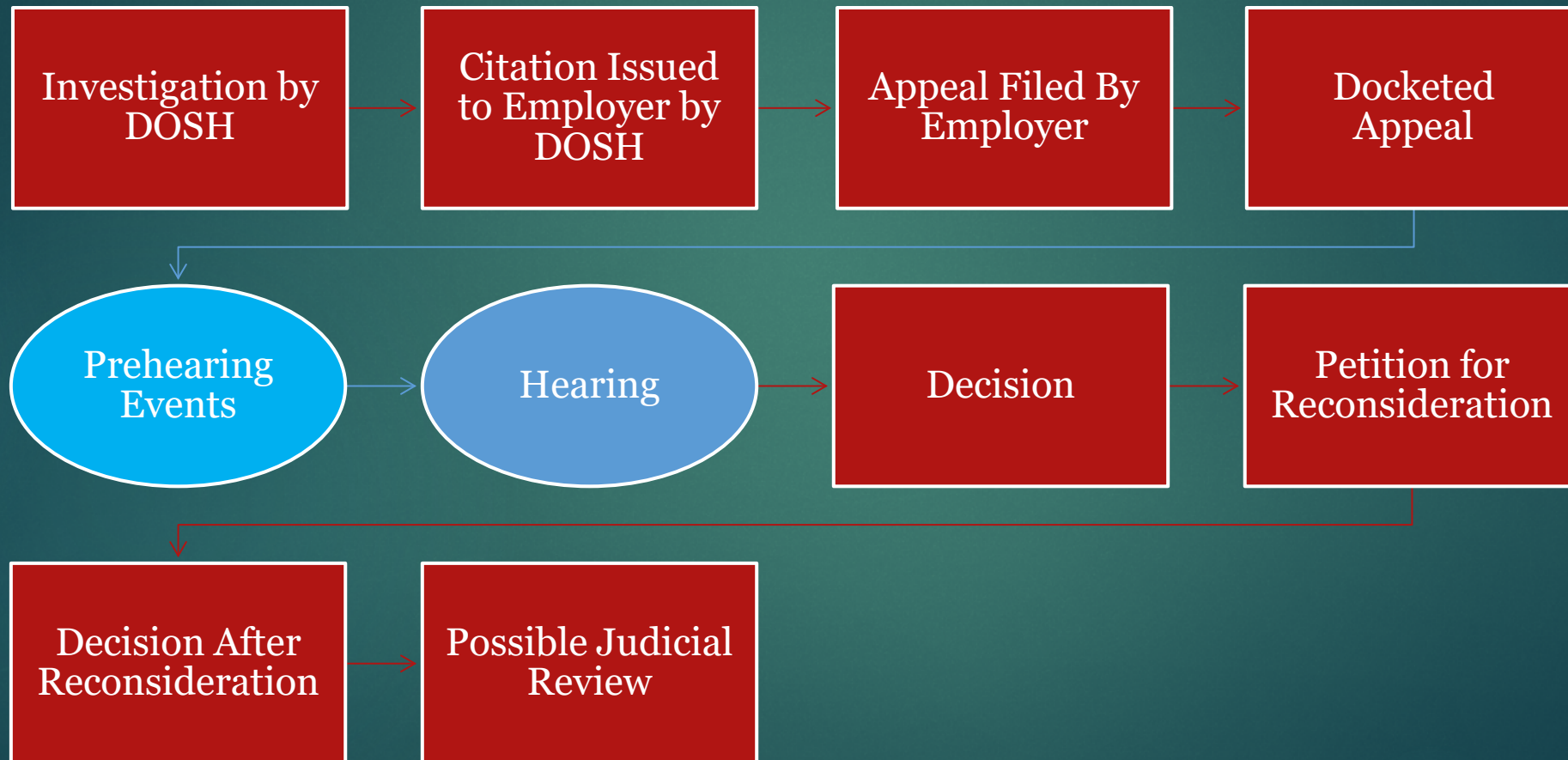
- Article 6. Employers' Cost Recovery. (Sections 395-397)

About the Appeals Board

The Appeals Board and the Division of Occupational Safety and Health (Division) are separate, independent agencies.

The Appeals Board is a three-member, judicial body appointed by the Governor and confirmed by the Senate that handles appeals from private and public-sector employers regarding citations issued by the Division for alleged violations of workplace safety and health laws and regulations.

Appeal Process Overview



Prehearing Events

- ▶ Informal Conference
- ▶ Status Conference
- ▶ Settlement Conference*
- ▶ Prehearing Conference

*Settlement Conferences are not mandatory and do not happen in every case, but may be helpful in some cases, depending on the circumstances and the ALJ's discretion.



Informal Conference

- ▶ Informal conferences are meetings set up between Employer and the Division. Although not part of the Appeals Board's procedures, they are strongly encouraged.
- ▶ Informal conferences are meetings where the parties can discuss the issues on appeal, share documents, and discuss how to settle the case without a hearing.
- ▶ PLEASE make every effort to participate in an informal conference BEFORE the first status conference. All too often, the first status conference is a waste of everyone's time because the parties have not spoken yet, the inspection file has not been requested/produced, and the parties have nothing to report to the ALJ.



Status Conference

- ▶ Status conferences are meetings where the parties report to the ALJ on the status of discovery, settlement discussions, motions that may be filed, and any other issues that the parties want the ALJ to know.
- ▶ In order to make good use of everyone's time, the parties should be engaging with one another, exchanging discovery, discussing issues in dispute, and earnestly exploring the possibility of settlement in between status conferences.
- ▶ PLEASE do not wait until the day or week before a scheduled status conference to reach out to the other party. There are often several months between conferences in order to give you time to make progress on the case.



Settlement Conference

- ▶ Settlement Conferences are an opportunity for the parties to further attempt to come to terms of settlement, but with the assistance of an Appeals Board ALJ.
- ▶ If the parties have already engaged in extensive settlement discussions and would benefit from the input of an ALJ to try to reach a compromise, we can schedule a settlement conference (mediation).
- ▶ The parties can discuss the issues in confidence with the settlement judge, who can give his/her opinion regarding the strengths and weaknesses of the parties' respective positions in an effort to bring the parties together for a settlement without the need for a formal hearing.



Settlement Conference

- ▶ The ALJ that participates in the settlement conference will not share any of the information discussed in the conference unless the parties consent to such disclosure.
- ▶ The settlement ALJ will not be the ALJ that conducts a formal hearing in the event that the case does not settle.

Prehearing Conference

- ▶ The prehearing conference is a more comprehensive discussion about the case and preparation for a hearing.
- ▶ The parties should come prepared in advance to discuss the key issues in dispute, the facts that are not in dispute (stipulations), the witnesses they plan to bring to the hearing and about what aspect of their case those witnesses will testify, and the exhibits they intend to introduce at the hearing, including what elements of the case those exhibits establish.
- ▶ The prehearing conference is not the first time the parties should be discussing issues and stipulations. There are numerous opportunities for the parties to engage in substantive discussions prior to the conference to determine what is at issue and what is not.
- ▶ PLEASE prepare for the prehearing conference by thinking critically about the elements that you need to prove to establish the violations, the classifications, the penalties, and the affirmative defenses. Then decide what evidence and witnesses you need in order to meet your burden of proof. **NARROW THE ISSUES** to focus the testimony during the hearing.



Hearing

- ▶ Hearings are held via Zoom or in the Appeals Board's offices (Sacramento or West Covina).
- ▶ Witnesses appearing by Zoom should be prepared to use the technology. Ensure that they have a quiet place to testify, that their microphone works, that their camera works, and make sure their setup allows for sufficient lighting and good visibility.

Hearing

- ▶ Things to think about for you and your witnesses appearing via Zoom:
 - ▶ No bright windows backlighting the participant.
 - ▶ Camera straight ahead, not at an angle below or to the side.
 - ▶ Laptop/notebook/phone are fully charged.
 - ▶ Using a phone should be the *last resort* only if there is no other device available. It is not ideal for viewing exhibits, so please consider whether the witness can come to your office or the Appeals Board's office to use a computer.



Hearing

- ▶ The hearing should be focused on those issues that are in dispute. If the parties do not dispute certain facts or can stipulate to the resolution of some of the citations, it will make for a more efficient hearing.
- ▶ Identify the elements of the safety order that you have to establish, or the affirmative defense that you are asserting, and plan your case presentation around those elements.
- ▶ Only present documents or photographs that are relevant to your burden of proof.



Hearing

- ▶ When you are considering whether you need a particular document as an exhibit, ask yourself, “What does this prove? Which element of my burden of proof does this establish?”
- ▶ The witnesses that you bring should base their testimony on their percipient knowledge.
- ▶ The witnesses should be able to identify the document you are asking them about and testify as to its authenticity. (Have they seen it before? Did they create it? Is it a business record that is kept in the course of their business?)

Hearing

- ▶ You do not need five witnesses to testify about the same thing. Prioritize witnesses that have the most relevant information and knowledge related to the issues about which you are questioning them.
- ▶ Visit the Appeals Board's website to find our ALJ Decisions. Read them to see what evidence the judges are relying on when making their decisions on an issue.

Decisions

- [Precedential Decisions of the Appeals Board](#)
- [Appeals Board Decisions and Denials of Petitions for Reconsideration](#)
- [Administrative Law Judge Decisions](#)

Administrative Law Judge Decisions

Decisions of Administrative Law Judges are binding on the parties in the particular matter but do not have precedential value. They should not be cited or relied on as precedent in any proceeding. Decisions posted here may not be final and may be subject to modification by the Appeals Board and the Courts.

The following list is intended to inform stakeholders and members of the public of what the Appeals 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. For those cases listed that are not yet linked to the website, you may contact the Appeals Board's office at (916) 274-5751 to obtain a copy of the Decision.

Decision

Administrative Law Judge Decisions		
ALJ Decision Date	Case Number	Case Name



Sections of the ALJ Decision

- ▶ Statement of the Case
- ▶ Issues
- ▶ Findings of Fact
- ▶ Analysis
- ▶ Conclusion
- ▶ Order

How to Submit Settlement Terms

- ▶ If the parties agree to terms of settlement, you will submit them to the ALJ for approval. The ALJ will review the proposed terms to ensure that the terms cover all items on appeal, that there are no terms included for items that are *not* under appeal, and that there are no errors or inconsistencies in what has been submitted.
- ▶ The terms should be sent to the assigned ALJ via email and should have the opposing party's confirmation of the terms already in the email.
- ▶ Do not send the terms to the ALJ without including the other party's confirmation.

How to Submit Settlement Terms

- ▶ Your settlement terms email should include:
 - ▶ Each item on appeal, and *only* those items on appeal;
 - ▶ Indicate whether the citation is affirmed or vacated;
 - ▶ If affirmed, indicate whether there is a change in the classification;
 - ▶ If there are modifications to the penalty amount, indicate generally how the modifications were calculated (Good Faith increased, adjustment factors applied, abatement credit applied, etc.);
 - ▶ If there is a proposed payment plan longer than 12 months, make sure there is a waiver of the statute of limitations on collection of the penalty;
 - ▶ Clearly include other terms you want the ALJ to consider (amendments to the cited regulation, the AVD, the cited employer name, etc.);
 - ▶ The representatives of record should be clearly listed on the proposal as having agreed to the terms;
 - ▶ Do not send partial terms or terms that have not been agreed upon by both parties.

To: Assigned ALJ
From: Division Representative
Cc: Employer Representative
Subject: FW: Insp. No. 1234567—ABC Corporation—Settlement Terms

Good afternoon, Assigned ALJ:

The parties have agreed to the following settlement terms. Please review and, if acceptable, we request a Settlement Order and removal of the July 1, 2026, status conference from the calendar.

I have copied Employer Representative on this [email](#) and his confirmation of the terms is included below.

Thank you.

Division Representative

Citation 1, Item 1: \$342(a) -- **Affirmed.** -- Regulatory

Adjustment factors applied for late report of serious injury:

30% GF, 40% Size, 10% History

Original penalty: \$5,000 New penalty: **\$1,000**

Citation 2, Item 1: 3380(a) -- **Vacated.**

Citation 3, Item 1: 3395(d) -- **Affirmed.** -- Classification remains SAR

Size adjustment factor (40%) applied.

Original penalty: \$18,000 New Penalty: \$10,800

Employer requests a **2-year payment plan** and the Division does not object. Employer agrees to waive the statute of limitations for collection of the penalties in the event of a default.

Employer requests the Appeals Board's standard **non-admissions clause**. The Division does not object.

Employer waives any rights it might have pursuant to **LC §149.5 or T8CCR §397** to petition for or recover costs or fees, if any, incurred in connection with this appeal.

To: Division Representative
From: Employer Representative
Subject: re: Insp. No. 1234567—ABC Corporation—Settlement Terms

I confirm that the terms you have proposed are agreeable to Employer. Thank you for your cooperation in getting this resolved quickly.

Sincerely,

Employer Representative

To: Employer Representative
From: Division Representative
Subject: Insp. No. 1234567—ABC Corporation—Settlement Terms

Good afternoon, Employer Representative:

Pursuant to our discussion last week, please see the settlement terms below. If you agree with the terms, please respond to me with your agreement, and I will forward the email chain to the assigned ALJ.

Thank you.

Division Representative

Citation 1, Item 1: \$342(a) -- Affirmed. -- Regulatory

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How to Submit Settlement Terms

Helpful Info on Our Website

Help & Resources

- FAQs
 - [File an Appeal](#)
 - [General](#)
- [Training videos on the appeal process](#)
- [Learn about video hearings](#)

Training Videos on the Appeal Process

The Occupational Safety and Health Appeals Board (OSHAB) provides training videos to explain the appeal process. For additional assistance, [contact the Appeals Board by phone or email](#).

Click to view the videos on YouTube. The videos are in English with auto-generated subtitles available for selection in other languages.

- [How to File an Appeal with OSHAB Using the OASIS Online Portal](#)
- [How to File an Appeal with OSHAB Using Printed Appeal Forms](#)
- [After Your Appeal is Filed, What Happens Next? An Overview of the Initial Stages of the Occupational Safety and Health Appeals Board's Process](#)

Spanish/Español:

- [¿Qué sucede después de presentar su apelación? Descripción general del proceso de apelación de OSHAB](#)
- [Cómo presentar una apelación ante OSHAB mediante el portal en línea de OASIS](#)
- [Cómo presentar una apelación ante OSHAB utilizando formularios de apelación impresos](#)

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3. [Links to Learn More About Zoom:](#)
 - a. [YouTube: Zoom 101 Sign Up & Download Meeting Client](#)
 - b. [YouTube: Audio and Video Connection](#)
 - c. [YouTube: Joining & Configuring Audio & Video](#)
4. [How to File Your Exhibits in OASIS - Video Presentation](#)
5. [How to File Your Exhibits in OASIS - Document](#)



Questions?