

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

**MARQUES GENERAL ENGINEERING, INC.
200 S. Harding Blvd.
Roseville, CA 95678**

Employer

Inspection No.
1581944

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Appeals Board or Board), acting pursuant to authority vested in it, and having taken the Division of Occupational Safety and Health's (Division) Petition for Reconsideration (Petition) under submission, renders the following decision after reconsideration.

JURISDICTION

Marques General Engineering, Inc.'s (Marques or Employer) is an underground construction contractor. From March 7, 2022, to June 9, 2022, the Division conducted an inspection of Employer's worksite at Donner Lane and Red Lake Way, Lincoln, CA 95648 (the worksite).

On June 16, 2022, the Division issued two citations to Employer, alleging violations of the California Code of Regulations, title 8.¹ Citation 1, Item 1, alleges that Employer failed to maintain safety and health training records. Citation 2, Item 1, alleges that Employer failed to provide traffic control at work sites that encroach upon public streets or highways.

Citation 2 specifically alleges a violation of section 1598, subdivision (a), which states:

Traffic Control for Public Streets and Highways

Where a hazard exists to employees because of traffic or haulage conditions at work sites that encroach upon public streets or highways, a system of traffic controls in conformance with "California Manual on Uniform Traffic Control Devices for Streets and Highways, January 13, 2012," which is herein incorporated by reference and referred to as the "Manual", published by the State Department of Transportation, shall be required so as to abate the hazard.

¹ References are to title 8 of the California Code of Regulations unless otherwise specified.

The Division's alleged violation description stated:

Prior to and during the course of the investigation, including, but not limited to March 7, 2022, the employer failed to provide traffic controls to abate the hazard in accordance with this section.

Employer filed a timely appeal of each citation on the grounds that the safety order was not violated. For Citation 2, Employer also asserted that the classification was incorrect, and the proposed penalty was unreasonable. Employer also raised affirmative defenses.

Prior to the hearing, the parties settled Citation 1, Item 1, and the ALJ issued a partial settlement order.

The appeal of the remaining citation proceeded before Ka H. Leung, Administrative Law Judge for the Appeals Board. The hearing took place on June 17 and 18, 2025. Attorney Perry Poff of Donnell, Melgoza & Scates LLP represented Employer. Jordan Davis, Staff Counsel, represented the Division. The matter was submitted on August 29, 2025.

On September 24, 2025, the ALJ issued a Decision vacating Citation 2. The ALJ concluded that the cited safety order "applies to public streets and highways." (Decision, p. 3.) The ALJ noted that a "Public Road" is one under "the jurisdiction of and maintained by a public agency and open to public travel." (Decision, p. 3, citing Exh. 12, p. 87.) The ALJ found that "the Division presented no evidence that the worksite was maintained by a public agency." (Decision, p. 3.) The ALJ also noted that the Division's inspector "ultimately confirmed the worksite was private roads." (Decision, p. 3.) The ALJ held that "[b]ecause the Division failed to prove that the worksite encroached on or was located on a public road, section 1598, subdivision (a), does not apply. Citation 2, Item 1, is vacated." (Decision, p. 3.)

The Division filed a Petition requesting a post-Decision amendment of the citation. Employer filed a timely Answer. The Division requests that the citation be amended to assert a violation of section 1590, subdivision (a)(4), governing private roadways. That subsection states,

(a) Private Roadways and Off-Highway Conditions.

[...]

(4) Where a hazard exists to employees because of traffic or haulage conditions, a system of traffic controls shall be required so as to abate the hazard. (See Section 1598(b)).

Section 1598, subdivision (b), in turn, states:

“Specifications for the size and design of signs, lights, and devices used for traffic control shall be as described in the "Manual", pursuant to the provisions of California Vehicle Code Section 21400, which is incorporated by this reference.”

ISSUES

1. Whether to grant the Division’s Petition, which requests a post-Decision amendment to Citation 2.

REASONS FOR DECISION AFTER RECONSIDERATION

Labor Code section 6617 and its counterpart, section 390.1, set forth five grounds for a petition for reconsideration. Labor Code section 6617 states,

The petition for reconsideration may be based upon one or more of the following grounds and no other:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

The Division asserts that its Petition is made on the grounds “that the findings of fact do not support the decision.” (Petition, pp. 2-3.)

Employer’s Answer argues that the Division’s Petition does not actually assert any of the identified grounds for reconsideration, i.e., that the Board exceeded its powers, that the evidence does not support the findings, or that the findings do not support the decision. (Answer, pp. 3-4.) We agree with Employer.

The Division’s Petition does not identify any findings of fact that do not support the Decision, nor any actual error made by the ALJ within the Decision or otherwise. Rather, the Division argues that a different result might be warranted *if* the Board granted a post-Decision amendment. In other words, the Division argues that the facts do not support the order or decision *if* it is allowed to proceed under a theory it did not present to the ALJ.

We do not view this as adequately raising any of the identified grounds justifying a Petition, which generally focus on whether an error or impropriety exists in the ALJ's decision or order.²

The failure to bring the Petition on any of the bases set forth in Labor Code section 6617 is sufficient grounds to deny the petition. (*M&J Design, Inc.*, Cal/OSHA App. 1745466, Denial of Petition for Reconsideration (Oct. 31, 2025).) We therefore need not express any view on whether there are circumstances that might exist permitting a post-Decision amendment.

DECISION

For the reasons stated above, the Division's Petition is denied. The Decision is affirmed.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin Kropke, Board Member



FILED ON: 02/26/2026

² It should also be noted that *L&S Framing, Inc.*, Cal/OSHA App. 1173183, Decision After Reconsideration (April 2, 2021) procedurally distinguishable. There, the Division requested each amendment, including the post-submission amendment, prior to the ALJ's issuance of the Decision. The Board found the ALJ erred in denying the amendment and then ruled upon the merits. In contrast, here, the request occurs for the first time after issuance of the decision.