

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

In the Matter of the Appeal of:

**BOULAY CONSTRUCTION  
2272 Sierra Meadows Dr., Ste. B  
Rocklin, CA 95677**

**Employer**

Inspection No.

**1625267**

**DECISION AFTER  
RECONSIDERATION**

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

**JURISDICTION**

The Division of Occupational Safety and Health (Division) opened its inspection of Employer on September 29, 2022, following a report of a serious injury suffered by an employee. On November 29, 2022, the Division cited Employer for violating three safety orders set forth in title 8 of the California Code of Regulations.<sup>1</sup> Citation 1, Item 1, asserted a Regulatory violation of section 342, subdivision (a) [failure to report a serious injury]. Citation 1, Item 2, asserted a General violation of section 3995, subdivision (i) [failure to establish, implement, and maintain a Heat Illness Prevention Plan (HIPP)]. Citation 2, Item 1, asserted a Serious violation of section 1621, subdivision (a) [failure to provide railings for employees working at height].

Employer filed a timely appeal of the citations and asserted affirmative defenses.

During the course of pre-hearing proceedings and discovery, the Division alleges that it learned that Employer did not conduct an accident investigation according to the terms of its Injury and Illness Prevention Program (IIPP).

On December 16, 2025—more than three years after issuance of the original citations—the Division filed a Motion to Amend Citation 2. The Division sought to add a new General citation “to be designated Citation 1, Item 3,” asserting a violation of section 3203, subdivision (a)(5). Section 3203, subdivision (a)(5) states,

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<sup>1</sup> References are to title 8 of the California Code of Regulations unless otherwise specified.

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum: [ . . . ] (5) Include a procedure to investigate occupational injury or occupational illness.

The Division also requested that the alleged violation description state the following:

Prior to and during the course of the investigation, and continuing, including, but not limited to September 29, 2022, the employer failed to implement and maintain an effective Injury and Illness Prevention Program in that it failed to implement and maintain the accident investigation provisions contained in its established written Injury and Illness Prevention Program.

Date by which violation must be abated: 30 days from the date the motion to amend the citation is granted.

The Division asserts that the amendment relates back to the same general set of facts as the other citations and was not time-barred because it constituted an ongoing violation. The Division also alleges that Employer misrepresented and/or concealed facts resulting in delayed discovery. Employer opposed the motion.

On January 5, 2026, applying section 371.2 (governing pre-submission amendments), the assigned Administrative Law Judge (ALJ) granted the Division's motion and added it as Citation 1, Item 3. The ALJ gave Employer 15 business days to appeal the new citation.

Employer now files a timely Petition. Employer's Petition asserts that (1) the Board does not have authority to issue new citations; (2) the amendment was not authorized by the Board's operative statutes and regulations; and (3) the amendment should be denied on the merits.

Although interlocutory, we granted the Petition to have sufficient time to consider the issues, and, thereafter issue an appropriate decision. We also observe that the Division's requested amendment is sufficiently novel that interlocutory review is warranted to provide guidance in future cases.

## ISSUES

- 1) Should the Board overturn the ALJ's Order adding a new citation?

**REASONS FOR  
DECISION AFTER RECONSIDERATION**

Labor Code section 6617 and its counterpart, California Code of Regulations, title 8, 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 Employer's Petition is made on the grounds that the ALJ exceeded her powers in granting the amendment, the evidence does not justify the findings of fact, and the findings of fact do not support the Order. (Petition, p. 3.)

After careful consideration, we conclude that the ALJ erred when she granted the amendment. This is so because the Board finds that the Division did not actually request an amendment.

The Board's rules contemplate a broad spectrum of permissible amendments. An amendment typically means a change, correction, or modification to an existing citation. Here, however, the Division did not request changes, corrections, or modifications to any of the original three citations, nor did the Division seek to amend an existing citation to plead the violation of another safety order in the alternative. Rather, the Division requested, and the ALJ ordered, the creation of an entirely new citation with a new alleged violation description. The ALJ's order acknowledges that "the Division's motion requests the addition of a new citation. . ."

We do not view the Division's request for the addition of a new citation with an entirely new alleged violation description as an amendment. Rather, it constitutes the creation of a new citation. It is not within the Board's purview to either create or issue citations. Labor Code section 6317, subdivision (a), provides the Division sole authority to issue citations. That section states,

If, upon inspection or investigation, the division believes that an employer has violated . . . any standard, rule, order, or regulation established pursuant to this part, it shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation [ . . . ]

Accordingly, if the Division believes that a sound basis exists for the issuance of a new citation, which is not barred by the statute of limitations, it is free to issue the citation itself. Employer may then appeal and assert any applicable defenses, including asserting the statute of limitations. The ALJ may then decide whether that citation should be consolidated with the other citations.

Should the Division issue such a citation and an appeal follow, we need not, and do not, express any opinion on the merits of the citation or any defenses.

### DECISION

We reverse the ALJ's order granting the amendment and remand with instructions to vacate the order.

### 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