

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

In the Matter of the Appeal of:

**SOLAR OPTIMUM
614 W. Colorado Street
Glendale, CA 91204**

Employer

Inspection No.
1370798

**DENIAL OF PETITION FOR
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code, hereby denies the petition for reconsideration filed in the above-entitled matter by Solar Optimum. (Employer).

JURISDICTION

On May 23, 2019, the Division issued several citations to Solar Optimum (Employer), including Citation 3. Citation 3 alleged a violation of section 3648, subdivision (1)(4) [improperly moving an aerial device with employees in basket without surveying area to be traveled for overhead obstructions]. Employer filed a timely appeal and a hearing was eventually scheduled for June 9, 2022.

On May 25, 2022, the Division filed a motion to amend Citation 3. The Division sought to amend Citation 3 to instead allege a violation of section 3646, subdivision (b) [units shall be used in accordance with manufacturer's recommendations], and to modify the alleged violation description.

On June 16, 2022, the ALJ granted the Division's motion to amend Citation 3 and to modify the alleged violation description. Employer has now filed an interlocutory Petition for Reconsideration challenging the ALJ's order granting the amendment.

ISSUE

- 1) Should the Board consider Employer's interlocutory petition for reconsideration?**

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

The Board has fully reviewed the record in this case, including the arguments presented in the Petition. We have taken no new evidence. We conclude the Petition must be denied as interlocutory.

Employer's Petition challenges the ALJ's Order granting the Division's requested amendment to Citation 3. The ALJ's Order granting the amendment to Citation 3 is **interlocutory** in nature. "An *interlocutory order* is one issued by a tribunal before a final determination of the rights of the parties to the action has occurred. 'In determining whether a judgment is final or merely *interlocutory*, the rule is that if anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the judgment is *interlocutory* only[.]' [emphasis in original]" (*Fedex Ground*, Cal/OSHA App. 13-1220, Decision After Reconsideration (Sept. 17, 2014), citing *Gardner Trucking, Inc.*, Cal/OSHA App. 12-0782, Denial of Petition for Reconsideration (Dec. 9, 2013).) "[B]oard precedent holds that reconsideration will not be granted concerning interlocutory rulings, reasoning that they are not 'final' orders with the meaning of... Labor Code section 6614." (*Ibid.*) However, the Board has recognized that there are exceptions to this rule, which do allow for review of interlocutory orders, "such as those involving questions of law, orders which are effectively final regarding issues independent of a case's merits, or matters which are final as to a particular person." (*Ibid.*)

Employer's petition argues that interlocutory review of the order granting amendment is appropriate because it is effectively final regarding an issue independent of the case's merits. We disagree, and concur with the Board's prior ruling in *A.L.L. Roofing & Building Materials Corporation*, Cal/OSHA App. 92-290. Denial of Petition for Reconsideration (Dec 2. 1992), which held,

A motion to amend the citation or appeal seeks an interlocutory determination of the administrative law judge. The Board has long held that a petition for reconsideration may not be filed challenging a judge's ruling on such matters until the hearing is concluded and the administrative law judge issues a final decision. [...]

In the present case, Employer must wait until completion of the hearing and issuance of a decision to raise any appropriate issues for reconsideration under Labor Code Section 6617. Thus, its petition is premature and must be denied.

We conclude that Employer's petition is premature. The Board will not consider the issue until the hearing is concluded and the administrative law judge issues a final decision.

DECISION

For the reasons stated above, the petition for reconsideration is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 08/22/2022

