BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection Number **1624601**
CALTROL, INC. **2350 E 223RD STREET** **CARSON, CA 90810** **Employer**	**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 Caltrol, Inc. (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) investigated Employer from September 23, 2022, to February 22, 2023, and issued two citations on February 22, 2023. Citation 1, Item 1 alleged a General violation of section 5042, subdivision (a)(9) [Safe operating practices – sling practices] and Citation 2, Item 1[1] alleged a Serious, Accident-Related violation of section 4999, subdivision (d)(2) [Handling loads – moving loads must be secured and properly balanced in the sling or lifting device before it is lifted more than a few inches].

Employer filed a timely appeal and the matter was assigned to administrative law judge (ALJ) Howard Chernin. On March 23, 2026, the Division filed a motion to amend Citation 1, Item 1 to correct the date of the incident and more accurately describe the AVD. On April 3, 2026, the Division emailed the ALJ, requesting to withdraw its motion to amend the citation. By email dated April 6, 2026, the ALJ granted the withdrawal of the Division's motion to amend the citation.

On April 16, 2026, the Division filed another motion to amend, requesting that the ALJ reclassify Citation 1, Item 1 from General to Serious, Accident-Related, correct the incident date, amend the AVD under section 5042(a)(9) to add additional detail, and in the alternative add section 5042(a)(6) [slings shall be set to avoid slippage]. The Division also noted that the penalty would increase from $935 to $25,000.

On April 27, 2026, Employer filed a response wherein it requested that the ALJ deny the Division's motion to amend because Employer did not appeal the classification of Citation 1, Item 1 as a specific ground on its appeal form, thereby waiving the issue. Employer contends that because the issue is waived, the Division is not able to request an amendment of Citation 1, Item 1, as there was no jurisdiction to do so, and the penalty amount could not be increased.

[1] Employer's Petition only disputes Citation 1, Item 1, and Citation 2, Item 1 will not be further discussed.

On April 29, 2026, the Division responded to Employer's reply, arguing that the Employer is not prejudiced by the motion to amend and there is no legal basis to support Employer's contention that the citation could not be reclassified because Employer had not selected classification as a specific ground for appeal.

On August 21, 2026, the ALJ issued an Order Granting Division's Motion to Amend Citation 1, Item 1 (Amendment Order), finding that Employer's arguments were "bereft of a factual basis on which to determine that Employer would suffer prejudice as a result of the proposed amendments." (Amendment Order, p. 4.)

On September 8, 2026, Employer filed a prehearing motion, claiming its failure to discuss how it would be prejudiced by the motion to amend Citation 1, Item 1 was due to the Board's lack of jurisdiction over the issue, as the classification issue was deemed waived since Employer did not appeal that particular issue as a specific ground on its appeal form. Further, Employer argued that the ALJ acted without or in excess of his powers and the Amendment Order should be vacated.

On September 11, 2026, the ALJ issued an Order Denying Prehearing Motion (Denial Order), finding that the relief requested by Employer "is not contemplated by the regulations of the Appeals Board. A party seeking reconsideration of an ALJ order must comply with Article 5 of the Appeals Board's procedures." (Denial Order, p. 1.)

On September 17, 2026, Employer filed its interlocutory Petition and requested expedited review as the hearing is scheduled for October 14-15, 2026. In its Petition, Employer cites Labor Code section 6617, subdivision (a) as its basis for its Petition, asserting 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.

Employer's Petition raises a due process argument and essentially reiterates in greater detail the arguments made in its response brief and prehearing motion, which the ALJ summarily rejected in both the Amendment Order and Denial Order. The Division has not filed an Answer.

ISSUE

1. Should the Board grant review of Employer's interlocutory petition?

The ALJ's Amendment Order and Denial Order are interlocutory in nature, meaning they are orders issued before a final determination of the rights of the parties has occurred. (*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); *Adept Process Services*, *Inc*., Cal/OSHA App. 1570353, Decision After Reconsideration (Apr. 24, 2023).) "[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." (*Fedex Ground*, *supra*, Cal/OSHA App. 13-1220 [other citations omitted]; *Adept Process Services*, *Inc*., *supra*, Cal/OSHA App. 1570353.)

There are recognized exceptions allowing for interlocutory review in some circumstances. (*Fedex Ground*, *supra*, Cal/OSHA App. 13-1220, citing *Muse Trucking Company*, Cal/OSHA App. 03-4535, Denial of Petition for Reconsideration (Dec. 24, 2004).) In deciding whether to engage in an interlocutory review, the Board considers the same principles followed by the courts in deciding whether to allow for such review. (*Ibid*.) "Courts have held that review of an interlocutory order may be appropriate where it concerns an issue of first impression of general importance to the legal profession, or where it may implicate a privilege." (*Adept Process Services*, *Inc*., *supra*, Cal/OSHA App. 1570353, citing *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1031.) However, "[t]he grant of interlocutory review is extraordinary in nature and it is only exercised sparingly, and any request for such review must be supported by adequate citation to legal authority and to the record." (*Shimmick Construction Company, Inc*., Cal/OSHA App. 1080515, Decision After Reconsideration (Mar. 30, 2017).)

In the instant matter, we decline to grant interlocutory review. We are not persuaded that interlocutory review is necessary or required. The instant petition does not fall squarely within one of the recognized exceptions permitting interlocutory review. Additionally, as we have noted, "[t]he grant of interlocutory review is extraordinary in nature and it is only exercised sparingly . . ." (*Shimmick Construction Company, Inc*., Cal/OSHA App. 1080515, Decision After Reconsideration (Mar. 30, 2017).)

While we decline to take a position on the merits our conclusion to deny interlocutory review is supported by additional considerations. The hearing has not occurred yet. Even if the ALJ erred in granting the citation amendments and denying Employer's request to vacate the Amendment Order, the opportunity to file a petition for reconsideration after a final ruling is generally an adequate remedy if Employer is dissatisfied with the ALJ's decision. (e.g., *Maniago v. Desert Cardiology Consultants' Medical Group, Inc*. (2026) 20 Cal. 5th 91, 102; *Provencher v. Municipal Court* (1978) 83 Cal. App. 3d 132, 134.)

Moreover, we must necessarily limit interlocutory review because "it is not fair to parties on appeal who have often waited years for the final resolution of their disputes to have litigants in the pretrial stage elbow their way into the line at our door." (*Ordway v. Superior Court* (1988) 198 Cal. App. 3d 98, 101, fn.1.)

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For the reasons stated above, Employer's Petition is denied and the matter is remanded for further proceedings.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 10/30/2026