

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

In the Matter of the Appeal of:

**CHEDRAUI USA INC
dba EL SUPER
600 Cital
Commerce, CA 90040**

Employer

Inspection Number
1778959

**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 the Division of Occupational Safety and Health (Division or DOSH).

JURISDICTION

On March 11, 2025, the Division cited Chedraui USA, Inc. (Employer) with two citations alleging three violations of safety orders set forth in title 8 of the California Code of Regulations.¹ Citation 1, Item 1, alleged a General violation of section 3203, subdivision (a)(6) [failure to implement and maintain an Injury and Illness Prevention Plan]; Citation 1, Item 2, alleged a General violation of section 5162, subdivision (c) [failure to have proper emergency eyewash and shower equipment]; and Citation 2 alleged a Repeat-Serious violation of section 4543, subdivision (c) [failure to use pusher plate to hold and cut meat when slicing.] Employer initiated a timely appeal.

After Employer initiated its appeal of the Division's citations, the proceeding was assigned to an administrative law judge (ALJ) of the Board. The Division subsequently noticed the depositions of several of Employer's employees, to take place on July 29 and 30, 2025, prior to the hearing. However, the depositions did not take place.

On August 1, 2025, the Division filed a motion to compel depositions which was granted by the ALJ on September 10, 2025, during the scheduled pre-hearing conference. After meeting and conferring with Employer, the Division conducted depositions of the witnesses on September 23 and 25, 2025.

The first day of hearing occurred on September 30, 2025. During the first day of the hearing, the ALJ took witness testimony and permitted Employer to amend its appeal to address the reasonableness of abatement. On October 1, 2025, one day after the first day of hearing, the

¹ Unless otherwise specified references are to California Code of Regulations, title 8.

Division served a new discovery request, seeking production of photos and videos from six accidents and the deposition of a different employee, whose deposition had not previously been sought by the Division. Employer’s counsel objected and the Division filed a motion to compel on October 9, 2025.

After briefing from both parties, on December 16, 2025, the ALJ issued an Order Denying Division’s Motion to Compel Production of Documents and Deposition During Hearing (Order). The Division timely filed a Petition for Reconsideration (Petition) on December 23, 2025. Employer filed an Answer to the Petition on January 13, 2026.

ISSUE

Should the Board grant Division’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 for reconsideration. We have taken no new evidence.

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (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’s petition asserts none of the statutory grounds upon which we may grant reconsideration, which is reason alone to deny the petition. (*Arodz Motorsports, LLC, dba AI Tune & Lube*, Cal/OSHA App. # 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) However, even construing the Petition as asserting that the ALJ acted in excess of his powers or that the evidence does not justify the findings, we could not grant reconsideration.

Board precedent holds that reconsideration will not be granted concerning interlocutory rulings, reasoning that they are not “final” orders within the meaning of the Labor Code section 6614. (*Gardner Trucking, Inc.*, Cal/OSHA App. 12-0782, Denial of Petition for Reconsideration (Dec. 9, 2013).) The Board has long held that granting interlocutory review is extraordinary in nature and must be exercised sparingly. (*Shimmick Construction Company, Inc.*, Cal/OSHA App. 1080515, Decision After Reconsideration (March 30, 2017).)

The Board has recognized some exceptions to the general prohibition on interlocutory

review. (*Fedex Ground*, Cal/OSHA App. 13-1220, Decision After Reconsideration (Sept. 17, 2014), citing *Gardner Trucking, Inc.*, supra, Cal/OSHA App. 12-0782.) In determining whether an interlocutory order is warranted, the Board has relied on the “general principles” recognized by the courts as permitting interlocutory review. (See *Muse Trucking Company*, Cal/OSHA App. 03-4535, Denial of Petition for Reconsideration (Dec. 24, 2004).)

Applying those judicially recognized “general principles” here, we remain cognizant that interlocutory review of discovery matters is generally disfavored. (*O’Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, 1439.) “Interlocutory writ review of discovery rulings is ordinarily limited to situations involving (1) an issue of first impression that is of general importance to the legal profession, (2) an order denying discovery that effectively precludes a litigant from having a fair opportunity to litigate his or her case, or (3) a ruling compelling discovery that violates a privilege.” (*City of Petaluma v. Superior Court* (2016) 248 Cal. App. 4th 1023, 1031.)

Here, we conclude that the Division did not adequately raise any justification that would necessitate a departure from the ordinary rule that interlocutory review of discovery proceedings is disfavored. To the extent that the Division claims it needs additional documents for hearing, we observe that there are other mechanisms to request the documents. (e.g., § 372.2 [permitting subpoenas duces tecum after a hearing has commenced].)

We hold that the Order which Division petitions us to reconsider is interlocutory, and we decline to reconsider the petition on that basis.

DECISION

For the reasons stated above, the petition for reconsideration is denied. The Order 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: 02/02/2026

