

State of California
California Occupational Safety and Health Appeals Board
Closed Session Agenda

Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, August 12, 2021
9:30 a.m.
Held on Zoom

To: Members of the California Occupational Safety & Health Appeals Board

From: J. Jeffrey Mojcher, Chief Counsel

Date: July 30, 2021

RE: Closed Session of the Board to be held on August 12, 2021

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session. Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

Decisions Of Administrative Law Judges:

(Written decision issued by an Administrative Law Judge. The Decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the Decision. The Board Members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)

1229599 Murray Plumbing and Heating Corporation

1461476 Walmart, Inc.

Petitions For Reconsideration:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

None

Petitions For Reconsideration (Second Review):

None

Orders Dismissing Appeal:

1403702 ACK Productions, LLC

1489226 Mollie Stone's Market

Orders Denying Leave To File Late Appeal:

None

Matters Pending Reconsideration:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

1272378 Andrew Harrison Barnes
Whether Mr. Barnes was/is an employer.

1279492 Arriaga USA, LLC
Whether the cited employer's rights were adequately protected at the video hearing.

1141604 Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
Whether adult film performers are employees or independent contractors.

1141604 Boy Racer Inc. DBA Burning Angel
(Dosh's Petition)
Whether adult film performers are employees or independent contractors.

1246527 Cemex
Whether the settlement in this matter was procured by fraud.

1133550 Hansford Industries, Inc. Dba Viking Steel
Whether Employer properly secured a load for movement within its facility, and whether employees were properly supervised.

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- 1135350 Hill Crane Service Inc.
Whether Employer violated the safety orders as alleged.
- 1422951 Lineage Logistics
Whether Employer's motion to amend its appeal should be granted.
- 1290766 Millenium Reinforcing
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients
Whether the Employer committed the alleged violations.
- 1199064 SA Recycling
Whether employer established that, the alleged violation was abated at the time of inspection.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1306170 Siu's Products and Distributor, Inc.
Whether Employer complied with lockout/tagout requirements.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services
Whether the Employer committed the alleged violations.
- 1152851 Vincent Tuomey
Whether the Board ordered to issue a new decision was consistent with the superior court's ruling on a writ of mandate.

Matters Pending Litigation:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

Superior Court:

1. MCM Construction, Inc., 34-2016-80002312 (13-R1D2-3851-3854)
2. Key Energy Service, LLC (12004280)

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3. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
4. R N R Construction, Inc., 34-2017-80002632 (1092600)
5. Ashley Furniture Industries, 34-2017-800002750, (1016514)
6. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
7. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
8. Process Cooling International, 34-2019-80003220 (1232555)
9. Prestige Painting, 37-2019-00066143 (1367265)
10. Davis Development Company, 34-2020-80003373 (1226084)
11. MWL Solutions, 34-2020-80003549 (1436014)
12. Hampton Tedder Electric, 34-2020-80003562 (1233597)
13. BMW West, LLC, 34-2021-80003574 (1399613)
14. Southern California Edison, 34-2021-80003580 (1320327)
15. APTCO, LLC, BCV-21-100421 (1332715)
16. Ventura Coastal, (317808970)
17. L&S Framing, Inc., SCV-0046603 (1173183)
18. Granite Construction, 34-2021-80003634 (1235643)
19. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
20. Golden State FC, LLC dba Amazon Fulfillment,
STK-CV-UWM-2021-0004380 (1310525)
21. USA Waste of California, Inc. dba Blue Barrel Disposal Services,
21STCP01729 (1384029)
22. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
23. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)

Appellate Court:

1. Lion Farms, LLC, MCV075788 (1070258)
2. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
3. United Parcel Service, B308218, 18STCP03195 (1158285)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
2. Categorizing the Board's DARs and Denials on the DIR website.
3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

Orders Of Administrative Law Judges:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1485227	A and S Fire Protection, Inc.
1499522	Advanced Roof Design Inc.
1358246	Archibald Sheet Metal
1400327	Arco National Construction Company, Inc.
1419331	Baker Electric, Inc.
1393183	Bay Area Rapid Transit
1476505	Bodycote
1479063	Calavo/RMG/Garden Highway Foods
1492892	California Agriculture, Inc.
1385905	Contra Costa County Public Works Department
1327498	Cream of The Crop
1472997	David Rearick
1293194	Davis Development Company Inc.
1484106	DHL Express (USA), Inc.
1017588	DSS Company Db a Knife River Construction
1315651	FedEx Freight-ANH
1470934	Frank Alkakos

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1487666	Frank Hyundai
1428990	Fry's Electronics, Inc.
1293127	Greystar LP
1508209	HMK Petro, Inc.
1497239	Hormel Foods Corporation
1481270	Horvath Holdings, Inc.
1447212	Howood Company
1496516	Ikea North America Services, LLC
1413183	Isuzu Logistics North America, Inc.
1484973	J.C. Wattenbarger & Son
1507800	JZB Farming
1478378	Kaiser Foundation Hospitals
1463430	Kimball Hospitality Inc.
1436004	LMC Construction, LLC
1468848	Medical Management International Inc.
1476387	Meyer2meyer Entertainment, LLC
1477366	Miracle Mile Healthcare Center, LLC
1480864	Nansen Associates Inc.
1500814	National Construction and Remediation Inc.
1339807	National Response Corporation
1511121	Northridge Lumber Co. Inc.
1485615	OOMA, Inc.
1493806	PALP, Inc.
1475923	People Ready, Inc.
1491396	Republic Services

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1491795	Salinas Farm Labor Contractor, Inc.
1396093	San Francisco Foods, LLC
1507799	Shannon Bros, Co.
1080515	Shimmick Construction Company, Inc.
1500767	Sierra Pacific Industries
1493851	The Walton Company Inc.
1476392	Towne Park LLC
1429142	Tulare County Resource Management Agency
1351560	Underground Construction Co, Inc.
1361853	USA Waste Of California, Inc. Erroneously Named U.
1353214	Webcor Construction, LP
1479754	West Pico Terrace Healthcare & Wellness, LP
1445695	Wing Lee Fresh Poultry, Inc.
1424578	World Class Distribution, Inc.
1507217	WPUSD Twelve Bridges Elementary School

Personnel:

(Issues regarding staff.)

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