

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 26, 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: August 13, 2021

RE: Closed Session of the Board to be held on August 26, 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.)

None

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:

- 1253054 C & F Foods, Inc.
1474657 Schmidt Industries, Inc.

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.
- 1135350 Hill Crane Service Inc.
Whether Employer violated the safety orders as alleged.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted August 13, 2021

- 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)

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted August 13, 2021

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)
24. RND Contractors, Inc., CIV SB 2119442 (1436785)

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.)

1274415	Argus Contracting, LP
1293822	Baker Electric, Inc.
1474830	Bakersfield Shingles Wholesale Inc.
1434558	Balfour Beatty Construction, LLC
1318877	BSA Framing, Inc.
1407456	Burgeson's Heating & Air Conditioning, Inc.
1479303	California Plastic Containers, Inc.
1481860	Carter's Retail Inc.
1488366	Courtside Basketball Center
1476232	Discovery Builders, Inc.
1447955	Downing Construction, Inc.
1354161	Dr. Smoothie Enterprises dba Bevolution Group

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted August 13, 2021

1466333	Electric City Butcher LLC
1453710	Escondido Disposal, Inc.
1485836	Freedom Forever Solar
1167729	Gizelle Investments, Inc.
1479275	Graham-Prewett Inc.
1494653	High Speed Steel Treating Co., Inc.
1473820	J. L. Produce
1491823	Janitorial Equipment Services, Inc.
1475454	Jason Clifford
316212224	KTI Inc. DbA Rialto Concrete Products
1493146	La Crescenta Roofing Inc.
1505149	La Mar USA, LLC dba La Mar Cebicheria Peruana
1476238	Liberty Staffing USA LLC
1477051	Marin General Hospital
1492772	McNicoll Construction Inc.
1516802	MG Lifetime Construction
1474821	Mody Pumps, Inc. A Nevada Corporation
1463361	Mycrodyne Plastics Inc.
1449998	Norman Jacobson Realty Resources, Inc.
1417571	Olivas Construction
1506969	Pacific Alloy Casting Company, Inc.
1473934	Pronto Plumbing & Drains, Inc.
1491768	RA&B Development LLC
1476044	Ralphs Grocery Company
1110939	RDY Construction, Inc.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted August 13, 2021

1479800	Reliance Steel & Aluminum Co.
1474272	Republic Services Vasco Road, LLC
1473832	Rion Alnas
1391580	Safeway Inc.
1497589	Sanchietti Farming Inc.
1493471	Santana's Pumping & Plumbing, Inc.
1245480	Shambaugh & Son LP
1309507	Sierra Mountain Aviation, Inc.
1498128	Sierra Pacific Industries
1504648	Simmons Construction, Inc.
1482812	Sycamore Labor Inc.
1434987	T & M Wholesale Plumbing Supply, Inc.
1508397	Temple Park Convalescent Hospital, Inc.
1499284	Valle El Paraiso Berry Farms, LLC
1487919	VCA Animal Hospitals, Inc. #1171
1471890	Vignolo Farms, Inc.
1514218	Wesley Allen Inc.
1215273	Workforce Enterprises WFE Inc.

Personnel:

(Issues regarding staff.)

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