

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

Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, December 2, 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: November 19, 2021
RE: Closed Session of the Board to be held on December 2, 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.)

1410726 Hathaway Dinwiddie Construction Co.

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.)

1494822 Ciasom, LLC dba Advoque Safeguard

Petitions For Reconsideration (Second Review):

1423464 Lineage Logistics LLC

1342017 O.C. Jones & Sons, Inc.

Orders Dismissing Appeal:

317541761 C&L Sparks Inc. dba Sparks Electric 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.

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| 1272378 | Andrew Harrison Barnes
<i>Whether Mr. Barnes was/is an employer.</i> |
| 1279492 | Arriaga USA, LLC
<i>Whether the cited employer's rights were adequately protected at the video hearing.</i> |
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
<i>Whether adult film performers are employees or independent contractors.</i> |
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Dosh's Petition)
<i>Whether adult film performers are employees or independent contractors.</i> |
| 1246527 | Cemex
<i>Whether the settlement in this matter was procured by fraud.</i> |
| 1290766 | Millenium Reinforcing
<i>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.</i> |

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- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients
Whether the Employer committed the alleged violations.
- 1327187 Ontario Refrigeration Service, Inc.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1509967 United Pumping Service, Inc.
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services
Whether the Employer committed the alleged violations.
- 1152851 Vincent Tuomey
Whether the Board order to issue a new decision was consistent with the Superior Court's ruling on a writ of mandate.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.

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. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
3. Ashley Furniture Industries, 34-2017-800002750, (1016514)
4. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
5. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
6. Process Cooling International, 34-2019-80003220 (1232555)
7. Prestige Painting, 37-2019-00066143 (1367265)

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8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)
11. BMW West, LLC, 34-2021-80003574 (1399613)
12. Southern California Edison, 34-2021-80003580 (1320327)
13. L&S Framing, Inc., SCV-0046603 (1173183)
14. Granite Construction, 34-2021-80003634 (1235643)
15. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
16. Golden State FC, LLC dba Amazon Fulfillment,
STK-CV-UWM-2021-0004380 (1310525)
17. USA Waste of California, Inc. dba Blue Barrel Disposal Services,
21STCP01729 (1384029)
18. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
19. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
20. RND Contractors, Inc., CIV SB 2119442 (1436785)
21. Sunview Vineyards of California, Inc. RG21111733 (1153101)
22. Hill Crane Service Inc., 34-2021-80003744 (1135350)

Appellate Court:

1. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
2. 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.)

1441412	3001 ECR Partners, LLC
1508184	Accentcare, Inc.
1499844	Adco South Roofing Company
1481855	Aka General Construction
1513020	Amay's Bakery & Noodle Company, Inc.
1511766	American Honda Motor Co., Inc.
1268738	Arizona Tile, LLC
1380559	Bridgestone Retail Operations, LLC
1397974	Ca Corrections - Corcoran SATF
1463804	Central Bay Roofing & Restoration
1479554	Char Vale Vineyards, LLC
1431319	Clark Pacific Corporation
1481455	Comforcare Home Care
1484991	Correa Pallet, Inc.
1543418	Donald F. Gallino, Inc., General Contractors
1506587	Dreisbach Enterprises Inc.
1480382	Eisenbeiss Inc.
1510767	Entekra
1277107	Esterline/Kirkhill-Ta Co.
1491168	Farm And Land Company Inc.
1312254	Ferreira Construction Co., Inc.
1432621	Foster Poultry Farms
1511657	Frank Lucarelli
1520524	Giampolini & Co.
1494181	Gomez Iron Works Inc.
1486559	Haykingdom, Inc.
1457442	Iron Mechanical, Inc.
1537891	J. Carlos, Inc.
1482930	Joseph J. Albanese, Inc.
1476007	KF Sunray, LLC

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1507591 Kloeckner Metals Corporation
1454056 Kraft Heinz Food Company
1224651 Leslie Environmental Industries, LLC
1492489 Lone Oak Farms 2
1488793 Mariposa Baking Company, Inc.
1543077 Mcintosh Steel, Inc.
1484550 Mechanical Systems Contractor Inc. (MSC)
1494845 Merchants Metals LLC
1536945 Modern Building Company
1473118 Packers Sanitation Services, LTD, LLC
1498335 Paragon Custom Builders
1518232 Paramount Pictures
1531156 Perry Builders
1329674 Plumbing Concepts, Inc.
1474074 Prodigy Works
1517997 Propserv, Inc.
1486910 Rescue Electric Corporation
1487203 Rite Aid Corporation #5821
1476403 Robertson's Ready Mix, LTD
1493350 Ruszel Woodworks, Inc.
1503936 Ryder Systems Incorporated
1479474 S & H Independent Premium Brands West, LLC
1491400 S.R. Freeman, Inc.
1489876 San Joaquin Refining Co., Inc.
1540867 Santa Fe Mercado, Inc.
1453257 Security Paving Company, Inc.
1475651 Sierra Arbor Works
1487537 Sierra Valley Mechanical
1488572 Sinclair Concrete, Inc.
1521274 Skillset Group, Inc.
1502156 St. Paul's Episcopal Home Inc.
1487483 Staffing Solutions, Inc.
1399884 Suffolk Construction Company, Inc.
1531793 Swinerton Builders, Inc.

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- 1501475 Taqueria Senaida's
- 1425920 Top Rank & Air Conditioning, Inc.
- 1298791 Turner Broadcasting System, Inc.
- 1487657 Veterans Transition Center of Monterey County

Personnel:

(Issues regarding staff.)

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