

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 16, 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: December 3, 2021

RE: Closed Session of the Board to be held on December 16, 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.)

1192534 Shimmick Construction Company 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.)

1332867 Guy F. Atkinson Construction, LLC

Petitions For Reconsideration (Second Review):

1272378 Andrew Harrison Barnes

1423464 Lineage Logistics LLC

Orders Dismissing Appeal:

None

Orders Denying Leave To File Late Appeal:

1508297 County Of Santa Barbara

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> |
| 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> |
| 1494822 | Ciasom, LLC dba Advoque Safeguard |
| 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> |
| 1334740 | Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients
<i>Whether the Employer committed the alleged violations.</i> |

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- 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.
- 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)
8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)

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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)
3. Interline Brands, Inc., CIVDS2021813 (1251604)

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.)

1498240	1317 Hope LLC
1447613	BSA Framing, Inc.
1507400	Cedarwood Young
1473410	City Lift Parking, LLC
1360859	City Of Los Angeles Department Of General Services
1400541	City Of Los Angeles Department Of Transportation
1483221	CLW Foods LLC
1336942	Colleen & Herb Enterprises, Inc.
1463103	Costco Wholesale Corporation
1505341	ECMD, Inc.
1549076	Employee Force Provider, Inc.
1503959	Employer Solutions Staffing Group
1439927	Eriberto Martinez
1424941	Frederick L. Richter & Son, Inc.
1405952-1	Green Smile Energy and Electric Age and Dia Teck
1486333	Guns, Fishing And Other Stuff 2, LLC
1482357	H & R Labor Contracting, LLC
1506777	Heritage Inn Of Roseville, LLC
1489043	Human Bees, Inc., fka Avitek Recruit, Inc.
1516775	Inclusion Services, Inc.
1398106	Jamison Services, Inc. / 600 Commonwealth LP
1438216	Justin Price Construction
1486507	Kindercare Education, LLC
1427524	Kraft Heinz Company
1487962	L&J Demo
1420696	Lennar Multifamily Builders, LLC
1503503	Liberty Packing Company, LLC
1500572	Los Angeles Department Of Water And Power
1406351	McClone Construction Company
1291099	Murfey Company, Inc.
1488397	Orange Treeidence OPCO, LLC
1017349	Polydeck Screen Corporation
1490737	QVC, Inc.
1439858	Retail Services WIS Corporation
1476657	Riviera Nursing & Convalescent Home, Inc.

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1471344	RND Contractors, Inc.
1509596	Sequoia Hospital
1514000	Shiloh Ranch
1499866	Skechers USA, Inc.
1434564	SSA Pacific, Inc.
1485284	SSC Tarzana Operating Company, LP
1402203	Stomper Company, Inc.
1478320	Sutter Bay Hospitals
1490766	The Hulling Co.
1482581	TOFF, Inc.
1499605	United Staffing Associates, LLC
1499123	VForce, Inc.

Personnel:

(Issues regarding staff.)

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