State of California
California Occupational Safety and Health Appeals Board
Closed Session Agenda
Government Code § 11126 (a), (c)(3), (e) and (f)
for
Thursday, February 3, 2022
9:30 a.m.
Held on Zoom

To: Members of the California Occupational Safety & Health Appeals Board
From: J. Jeffrey Mojcher, Chief Counsel
Date: January 21, 2021
RE: Closed Session of the Board to be held on February 3, 2022

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.)

1291481 Sierra Forest Products

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.)

1498777 M and N Consulting Inc., dba A-Line Messenger Service
1224802 Ranch of the Golden Hawk
1490346 S'top Roofing Company, Inc.
1291481 Sierra Forest Products

Petitions For Reconsideration (Second Review):
None
Orders Dismissing Appeal:

1379562  Dycora Transitional Health - Fresno LLC
1507363  JS Sacramento, Inc.
1512605  Mindlance 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 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.

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

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(Dosh’s Petition)
Whether adult film performers are employees or independent contractors.

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

1494822  Ciasom, LLC dba Advoque Safeguard
Whether Employer operated an industrial truck within appropriate limits.

1332867  Guy F. Atkinson Construction, LLC
Whether the Division proved the alleged violation.

1410726  Hathaway Dinwiddie Construction Co.
Whether the Division proved the alleged violation.
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.

1327187  Ontario Refrigeration Service, Inc.

Whether the Division proved the “serious” classification.

1155042  Signal Energy LLC

Whether Employer appropriately oversaw the actions of the subcontractors.

1192534  Shimmick Construction Company Inc.

Whether the employer committed the violation alleged.

1303461  SSA Terminals (Oakland), LLC DBA SSA Marine Terminals

Whether Employer violated section 3212(a)(2)(A) as alleged.

1509967  United Pumping Service, Inc.

Whether the citations were issued timely.

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)
7. Prestige Painting, 37-2019-00066143 (1367265)
8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
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. 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.
4. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.
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.)

1527875  13000 Victory Boulevard LLC
1444413  A. Vidovich Construction, Inc.
1512913  Air Products & Chemicals, Inc.
1421653  Arbor-Tech Tree Care, Inc.
1487546  Bevill Vineyard Management
1476250  Blue Mountain Construction Services, Inc.
1521639  Bob Jahn’s Roofing, Inc.
1531571  Brad Nyman
1393063  Cal State Auto Parts
1483472  California Enterprises Employment, Inc.
1284153  Cannon Constructors
1546563  Cast Parts, Inc.
1455824  College of The Sequoias
1486729  Concrete Builders Group Inc.
1404384  County of San Luis Obispo, Public Works Department
1469848  CP Construction West Inc.
1478727  Doctors Medical Center, Inc.
1530265  Electro Switch Corp
1194493  Express Services, Inc.
1487977  Gordon Biersch Brewing Company
1481253  I-5 Rentals Inc.
1520264  John William Dykstra
1476258  Juan Martinez
1474956  Kaiser Foundation Hospital Ontario
1475605  Kaiser Foundation Hospitals Redwood City Medical
1516433  Kakuichi America, Inc.
1522950  KD Electric
1520472  Kloechner Metals Corporation
1511221  Kohl's, Inc.
1460569  Lagorio Brothers, Inc.
1467702  Letner Roofing Co.
1515045  Lineage Logistics, LLC
1498842  Loma Linda University Medical Center
1397717  Los Angeles Community College District
1530900  M & N Bodwell, LLC
Personnel:
(Issues regarding staff.)

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