



issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered evidence, material to the appeal, which the party seeking a rehearing could not have reasonably discovered and provided prior to issuance of the Opinion; (4) there is insufficient evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law occurred in the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Riedel*, 2024-OTA-004P.)

Here, appellant argues that a rehearing is warranted on the following grounds: (1) an irregularity in the proceedings prevented the fair consideration of the appeal; (2) there is insufficient evidence to support OTA's Opinion; (3) the Opinion is contrary to law; and (4) an error in law occurred during the appeals proceedings. In support of each of these alleged grounds, appellant accuses the panel of administrative law judges that issued the Opinion of being biased, prejudiced, and incompetent.<sup>2</sup> For this reason, appellant believes his appeal proceedings have not been administered "by any lawful or reasonable standard." Appellant has not provided any reasonable basis to support a finding of a lack of impartiality or competency. OTA finds appellant's accusations to be meritless. Thus, appellant's accusations are insufficient to establish that a rehearing is warranted under any of the aforementioned grounds.

Appellant did, however, assert an additional contention with respect to his argument that there is insufficient evidence to support the Opinion. Specifically, appellant contends that OTA issued the Opinion without any regard for appellant's facts, evidence, and arguments.

To find that there is insufficient evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including making reasonable inferences based on that evidence, OTA clearly should have reached a different opinion. (Code Civ. Proc., § 657; *Appeals of Swat-Fame Inc., et al.*, 2020-OTA-045P.) OTA considers the evidence in the light most favorable to the prevailing party (here, CDTFA). (*Appeals of Swat-Fame Inc., et al.*, *supra.*)

In the Opinion, OTA determined that appellant had not provided credible or competent evidence to meet his burden. Specifically, OTA found inconsistencies among the submitted evidence and explained that the evidence provided failed to establish that appellant was in fact holding the trading cards at issue for resale. For these reasons, OTA upheld CDTFA's

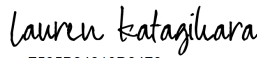
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<sup>2</sup> In his petition, appellant directs his accusations toward the lead administrative law judge who issued the underlying Opinion. However, the Opinion was issued by a panel of three administrative law judges who each concurred with the entirety of the Opinion. (See Cal. Code Regs., tit. 18, § 30102(y)(z).)


determination. Said differently, OTA did not ignore appellant’s facts, evidence, and arguments, but instead, addressed and rejected them in the Opinion. Appellant’s dissatisfaction with the Opinion and attempt to reargue the same issue does not constitute grounds for a rehearing. (*Appeal of Smith*, 2018-OTA-154P.)

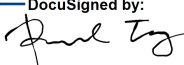
Appellant additionally argues that OTA neglected to consider the closure of small businesses and cancellation of events during the COVID-19 pandemic. Appellant asserts that these closures and cancellations prevented appellant from holding the trading cards out for resale and securing a retail store from which he could make such sales. However, as noted in the Opinion, appellant’s submissions included a spreadsheet of sales he made in 2021 and 2022 and his online advertisements of trading cards for sale.<sup>3</sup> Both documents evidence that appellant was not completely precluded from making sales during the COVID-19 pandemic. As such, appellant’s statements regarding the COVID-19 pandemic were considered but were ultimately disregarded as unfounded and contradicted by appellant’s own evidence.

In order to grant a rehearing, OTA must consider the evidence in the light most favorable to CDTFA and find that OTA should have reached a different opinion. For the reasons previously stated, OTA finds that there was sufficient evidence to justify the Opinion. Therefore, OTA finds that appellant has not established a basis for a rehearing.

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Lauren Katagihara  
Administrative Law Judge

We concur:

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Josh Aldrich  
Administrative Law Judge

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Richard Tay  
Administrative Law Judge

Date Issued: 4/2/2024

<sup>3</sup> As discussed in the Opinion, appellant did not offer any evidence that the trading cards at issue were included in the spreadsheet or advertisements. Appellant also provided conflicting statements, indicating that the trading cards were simultaneously held out for resale, retained for transport out of state, and retained for sale at a later date.