



appeal proceedings which occurred prior to issuance of the Opinion and prevented fair consideration of the appeal; (2) an accident or surprise, occurring during the appeal proceedings and prior to the issuance of the Opinion, which ordinary caution could not have prevented; (3) newly discovered evidence, material to the appeal, which the party could not have reasonably discovered and provided prior to issuance of the Opinion; (4) insufficient evidence to justify the Opinion; (5) the Opinion is contrary to law; or (6) an error in law in the OTA appeals hearing or proceeding. (Cal. Code Regs., tit. 18, § 30604(a)(1)-(6); *Appeal of Shanahan*, 2024-OTA-040P.)

#### Irregularity in the Proceedings

An irregularity in the proceedings warranting a rehearing would generally include any departure by OTA from the due and orderly method of conducting appeal proceedings by which the substantial rights of a party (here, appellant) have been materially affected. (*Appeal of Graham and Smith*, 2018-OTA-154P; see also *Jacoby v. Feldman* (1978) 81 Cal.App.3d 432, 446.) In an appeal before OTA, the grounds for a rehearing pursuant to California Code of Regulations, title 18, (Regulation) section 30604 can exist both where an oral hearing is held and where an appeal is submitted for an Opinion based upon the written record. The granting or denial of a rehearing on such basis “is largely in the discretion of the” presiding officer. (*Loggie v. Interstate Transit Co.* (1930) 108 Cal.App. 165, 171.)

Here, appellant asserts that OTA denied appellant the right to be heard at an oral hearing, and that such denial constitutes an irregularity in the proceedings. As evidence, appellant refers to OTA’s Ruling on Appellant’s Motion to Disqualify (Ruling), issued on July 11, 2024, which explicitly stated that the appeal shall proceed solely on the written record and without an oral hearing.<sup>1</sup> Appellant contends that this Ruling denied appellant his right to an oral hearing, which infringed upon his right to seek redress.

However, in accordance with Regulation section 30404(a) “[i]f the party who requested an oral hearing fails to respond to the notice of oral hearing by the deadline stated in the notice of oral hearing, OTA will notify the parties in writing that the appeal has been removed from the oral hearing calendar. The appeal will then be submitted to a Panel for a decision on the basis of the written record.” In this appeal, OTA sent a Notice of Oral Hearing to appellant on March 7, 2024. The Notice of Oral Hearing specifically stated that if OTA did not receive a

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<sup>1</sup> Appellant also frivolously argues that Judge Lam “acted in an irregular capacity” by issuing the Ruling. However, as the Ruling explained, there was no basis to disqualify Judge Lam from this appeal. Therefore, Judge Lam’s issuance of the Ruling was in accordance with his duties under Regulation section 30421(c).

response to the Notice of Oral Hearing from appellant by March 22, 2024, that, pursuant to Regulation section 30404(a), the appeal would be submitted for a decision without an oral hearing and would be decided on the basis of the written record. Appellant did not respond, so OTA issued a letter to appellant dated April 3, 2024, confirming that the appeal was removed from the oral hearing calendar, and that OTA's decision would be based on the written record. This outcome is consistent with Regulation section 30404(a). As the cancellation of the oral hearing was due to appellant's failure to respond to the Notice of Oral Hearing, and OTA adhered to the due and orderly procedures for conducting its appeal proceedings, no irregularity in the proceeding occurred.

#### Insufficient Evidence

To find that there is insufficient evidence to justify the Opinion, OTA must find that, after weighing the evidence in the record, including 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, FTB). (*Appeals of Swat-Fame Inc., et al., supra.*)

Appellant claims that the inability to present evidence during an oral hearing, which was cancelled due to appellant's failure to respond to the Notice of Oral Hearing, resulted in there being insufficient evidence to support the Opinion. Here, the record reveals no basis for appellant's dissatisfaction regarding the ability to submit evidence to OTA. In fact, a letter from OTA dated September 25, 2023, confirmed receipt of appellant's brief and evidence and stated that the briefing period was closed unless additional briefing was requested. Under Regulation section 30304(c), a party to an appeal may request to submit additional evidence outside the briefing schedule if good cause is shown. There is no evidence in the record suggesting appellant made such a request after the briefing period closed or was otherwise restricted from submitting evidence.

Furthermore, in the underlying Opinion, OTA explained that appellant had the burden of proving the proposed assessment was incorrect. (See *Appeal of Bindley*, 2019-OTA-179P.) As appellant provided no credible, competent, or relevant evidence showing error in FTB's proposed assessment, FTB's determination must be upheld. Moreover, appellant's dissatisfaction with the outcome of his appeal is not grounds for a rehearing. (*Appeal of Shanahan, supra.*)

### Contrary to Law

The contrary to law standard of review involves reviewing the Opinion for consistency with the law. (Cal. Code Regs., tit. 18, § 30604(b).) A holding is contrary to law “only if it was ‘unsupported by any substantial evidence, i.e., [if] the entire evidence [was] such as would justify a [holding] against the part[y] in whose favor the [holding was] returned.’” (*Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 907 (*Sanchez-Corea*), citing *Kralyevich v. Magrini* (1959) 172 Cal.App.2d 784, 789.) This requires indulging “in all legitimate and reasonable inferences” to uphold the Opinion. (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907; see also *Appeals of Swat-Fame Inc. et al., supra*.) The question does not involve “examining the quality or nature of the reasoning behind [OTA’s Opinion], but whether [the Opinion] can or cannot be valid according to the law.” (*Appeal of Shanahan, supra*, citing *Appeal of NASSCO Holdings, Inc.* (2010-SBE-001) 2010 WL 5626976, at p. \*5.) A rehearing may be granted when, examining the evidence in the light most favorable to the prevailing party (here, FTB), with all legitimate inferences to uphold the Opinion, the petitioning party (here, appellant) establishes that the Opinion incorrectly stated or applied the law and, therefore, is contrary to law. (*Appeal of Shanahan, supra*.)

Here, appellant asserts that the underlying Opinion is contrary to law but fails to identify any specific law upon which OTA incorrectly stated or applied, or to otherwise support a finding that the holding was unsupported by substantial evidence. Instead, appellant argues that OTA’s issuance of the Opinion violated appellant’s federal and state constitutional due process rights, and that OTA acted in an arbitrary and capricious manner. However, OTA’s issuance of an opinion is mandated by Government Code section 15674 and Regulation section 30501. Moreover, OTA does not have jurisdiction to determine whether a provision of Regulation section 30000 et seq. is invalid, or to refuse to follow the Regulations on that basis. As such, the Opinion was issued in compliance with the law, and appellant has not established a proper basis for rehearing.

### Newly Discovered Evidence

Regulation section 30604(a)(3) only permits a rehearing for newly discovered evidence, material to the appeal, which the filing party (here, appellant) could not have reasonably discovered and provided prior to issuance of the Opinion. “Evidence” includes testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. (Evid. Code, § 140.) In the context of newly discovered evidence, courts have concluded that new evidence is material when it is likely to produce a

different result. (*Appeal of Shanahan, supra*, citing *Santillan v. Roman Catholic Bishop of Fresno* (2012) 202 Cal.App.4th 708, 728.)

Here, appellant asserts that the underlying Opinion itself is newly discovered evidence of a proceeding held in violation of the appellant’s federal and state constitutional due process rights. Appellant does not, however, argue that he has discovered new, material evidence that would produce a different outcome of the appeal. The Opinion itself does not constitute evidence of the existence or nonexistence of any fact germane to the issues presented in the appeal. (See Evid. Code, § 140.) Consequently, appellant’s argument fails to meet the established standards for a rehearing on the basis of new discovered evidence.

Accordingly, OTA finds that appellant has not established that a ground exists for a rehearing.

DocuSigned by:  
*Eddy Y. H. Lam*  
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Eddy Y.H. Lam  
Administrative Law Judge

We concur:

Signed by:  
*Lauren Katagihara*  
F595B34010D8470  
Lauren Katagihara  
Administrative Law Judge

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*Erica Parker*  
6651F0AAC34B4E6  
Erica Parker  
Hearing Officer

Date Issued: 2/26/2025