

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on January 20, 2022
on Zoom platform

Present:

Ed Lowry, Chair, Public Member
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Kevin Reedy, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Elizabeth Clarke, Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Kerry Lewis, Administrative Law Judge
Jennie Culjat, Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Dan Lucido, DOSH Acting Chief Counsel
Bruce Wick, Risk Management Director, HCC
Cherice Daniels, Project Manager, DIR
Jessie Rios, Project Manager, Journal Technologies

Minutes of January 6, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the January 6, 2022 Board meeting.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 3-0

New Business:

(The appeals Board hears and discusses new reports presented by staff.)

1. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: Cherice Daniels, Project Manager with DIR and Jessie Rios, Project Manager with Journal Technologies, led a presentation and discussion regarding the proposal to have DOSH eAttorney system interface with OSHAB's OASIS system. This was informational and no decision was determined.

Old Business:

(The appeals Board hears and/or discusses matters on a follow-up basis.)

1. Consideration of regulatory amendments to the Board's rules of practice and procedure to govern, address and permit Board hearings via telephone or videoconference, including consideration of proposed amendments to Board regulation 376.

Action: Aaron Jackson updated the Board on the progress regarding approving the regulatory amendments to the Board regulation 376.

Legislation:

(Review and discuss current legislation which may affect the appeals Board.)

Action: No report.

Chairperson's Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

Action: Chair Lowry notified the Board of the meeting with Fed/OSHA on February 1, 2022.

Board Members Reports:

(Hear reports from Board members on activities and issues affecting the Appeals Board.)

Action: No report.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Acting Executive Officer Patricia Hapgood updated the Board on new staffing.

In addition, Ms. Hapgood notified the Board that Form 700 is due April 1, 2022. Hard copies of the form are no longer accepted. All submissions are to be done electronically.

DIR Covid protocols have been updated and Ms. Hapgood will distribute the current information.

Staff Reports:

(Reports from the presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss whether there are any proposals for new regulations or proposals for modifications to existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: No report.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
January 20, 2022

2. Discuss status of Video Hearings.

Action: Judge Reedy reported on currently scheduled video hearings.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: Judge Reedy discussed the current filing of appeals relating to the COVID pandemic. It was noted that 80% of COVID cases filed have been abated.

4. Litigation update:

Action: Counsel Aaron Jackson and Elizabeth Clarke reported on current court cases.

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.

Public Comment:

(Public comment will be entertained during discussion of each agenda item of the open meeting.)

Action: The Board received public comments.

The board recessed to its closed session.

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.)

None

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each have 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.)

None

Petitions for Reconsideration (Second Review):

None

Orders Dismissing Appeal:

1502988 La Vie Wellness Inc.
Action: The Board discussed this Order.

Order 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.

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

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
January 20, 2022

- 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.
Action: The Board discussed this matter.
- 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.
Whether the citations were issued timely.
Action: The Board discussed this matter
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services
Whether the Employer committed the alleged violations.
Action: The Board voted to issue a DAR on this case.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 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, CPF 17-515575, (317134021)
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)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
January 20, 2022

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

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.

Action: No report.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
January 20, 2022

2. Categorizing the Board's DARs and Denials on the DIR website.

Action: No report.

3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

Action: Cases with citations related to COVID-19 were discussed.

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.)

1195416	Alon Kaspi
1385353	APM Terminals Pacific LTD
1563337	Beeler Industries, Inc.
1508370	Bold Quail Holdings, Inc.
1523318	Boreal Ridge, Inc.
1495767	Bragg Crane and Rigging Company
1533521	Chinchiolo Stemilt California, LLC
1335193	City Of San Diego Fire Rescue Dept.
1342184	CMEBUILD, Inc.
1293907	Crown Energy Services, Inc.
1515070	CVS Pharmacy, Inc.
1474531	EE Hall Inc.
1496758	Foley Family Wines
1532355	General Production Service of California, Inc.
1500448	Hall Management Corp.
1510943	HBA Incorporated
1526623	L/C/F LYT Auttun, LLC
1514639	Medstar, LLC
1491142	Mental Health Management, Inc.
1523915	NFI, L.P.
1545203	Personnel Staffing Solutions Group, Inc.
1333964	Platinum Pipeline, Inc.
1499293	Richwood Meat Company, Inc.
1490265	Rubicon Bakers LLC
1378128	Salsbury Industries, Inc.
1480869	Setzer Forest Products, Inc.
1492581	UC Davis

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
January 20, 2022

1474385 Wayfair, LLC
1410265 Yonts Construction

Action: The Board reviewed and discussed the Settlement
Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 12:09 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its actions in the Closed Session, as indicated above. The meeting adjourned at 12:10 p.m.