

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on August 18, 2022
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Chair, Public Member
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Kevin Reedy, Supervising Judge
Sam Lucas, Supervising Judge
Aaron Jackson, Industrial Relations Counsel
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Kerry Lewis, Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Matthew Lugo, DIR Analyst, DIR Office of the Director
Manuel Arambula, Staff Counsel, DOSH
Lisa Wong, Staff Attorney, DOSH
Melissa Viramontes, Staff Counsel, DOSH
Sesilya Saraydarian, Staff Counsel, DOSH
Daniel Choy, Cal/OSHA Reporter
Denise Cardoso, Assistant Chief Counsel, DOSH
Dan Lucido, Chief Counsel, DOSH
Linette Davis, DIR Office of the Director

Minutes of August 4, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the August 4, 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.)

Action: No report.

Old Business:

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

1. Discussion of hearing schedules and ALJ availability for the pilot program.

Action: Kevin Reedy and Sam Lucas updated the Board on progress regarding the pilot program for scheduling ALJ for hearings, which will begin September 1, 2022.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: No report.

3. Discussion and update concerning 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, and consideration of public comments received.

Action: The proposed modifications are being remediated and prepared for posting on the OSHAB website. They will be then noticed and a 15-day comment period will be scheduled.

Legislation:

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

Action: Elizabeth Clarke updated the Board on current Legislation.

Chairperson's Report:

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

Action: Chair Lowry reported on planning staff meetings for the Appeals Board's Sacramento and West Covina offices.

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: Patricia Hapgood updated the Board on staff hiring.

Ms. Hapgood also reported that both Appeals Board's offices are in lease negotiations.

Staff Reports:

(Reports from the Supervising 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 current regulations. In addition, discuss whether any concerns exist regarding regulations.

Action: No report.

2. Discuss status of Video Hearings.

Action: Judge Kevin Reedy provided an update on video hearings.

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

Action: Judge Kevin Reedy updated the Board on cases involving COVID related citations.

4. Litigation update:

Action: No report.

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: There were no 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.)

1333620

Plant Construction Company, L.P.

Action: The Board reviewed this Decision.

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.)

- | | |
|---------|--|
| 1568241 | Citistaff Solutions, Inc.
Action: This matter was remanded at a prior Board meeting. |
| 1410194 | Natural Pack, Inc.
Action: The Board voted to issue a Denial of this Petition.
Moved: Ed Lowry
Seconded: Marvin Kropke
Vote: 3-0 |
| 1417616 | Robert E. Sutton
Action: The Board voted to issue a Denial of this Petition.
Moved: Ed Lowry
Seconded: Marvin Kropke
Vote: 3-0 |
| 1370798 | Solar Optimum
Action: The Board voted to issue a Denial of this Petition.
Moved: Ed Lowry
Seconded: Marvin Kropke
Vote: 3-0 |

Orders Dismissing Appeal:

There are no Orders Dismissing Appeal scheduled for review.

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeal scheduled for review.

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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- 1300984 General Dynamics NASSCO
Whether Employer committed the violations alleged.
- 1340591 Lennar Corporation
Whether Employer committed the violations alleged.
- 1291481 Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
Action: The Board voted to issue a DAR as edited.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Vote: 3-0
- 1192534 Shimmick Construction Company Inc.
Whether the employer committed the violation alleged.
Action: The Board voted to issue a DAR.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Vote: 3-0
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.

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)

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6. Process Cooling International, 34-2019-80003220 (1232555)
7. Davis Development Company, 34-2020-80003373 (1226084)
8. MWL Solutions, 34-2020-80003549 (1436014)
9. Hampton Tedder Electric, 34-2020-80003562 (1233597)
10. BMW West, LLC, 34-2021-80003574 (1399613)
11. Southern California Edison, 34-2021-80003580 (1320327)
12. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
13. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
14. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
15. RND Contractors, Inc., CIV SB 2119442 (1436785)
16. Sunview Vineyards of California, Inc. RG21111733 (1153101)
17. Hill Crane Service Inc., 34-2021-80003744 (1135350)
18. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)
19. Sierra Forest Products, VCU290996 (1291481)
20. USA Waste of California, Inc., 34-2022-80003841 (1384029)
21. Ranch of the Golden Hawk, 22STCP02302 (1224802)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. Golden State FC, LLC, STK-CV-UWM-2021-004380 (1310525)
3. L & S Framing, Inc. S-CV-0046603 (1173183)
4. Granite Construction Company, 34-2021-80003634 (1235643)

Other Items:

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

Action: No report.

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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: No report.

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

Action: No report.

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.)

1527320	Agro Pack LLC
1578946	Alford Distributing Company
1493769	Alisal Properties, Inc. dba Alisal Guest Ranch
1512743	Bcok, Inc.
1473915	BJ Perch Construction Inc.
1474111	BJ Perch Construction Inc.
1568997	Branching Out Tree Care
1568954	Cal Electro Inc.
1517724	California Conservation Corps
1325393	Caston, Inc.
1367251	Citistaff Solutions, Inc.
1368770	Citistaff Solutions, Inc.
1495168	City of Santa Monica Big Blue Bus
1560663	Clearlake Lava, Inc.
1565036	Coastline Imports
1535517	Comprehensive Care of Oakland
1508296	Contra Costa County Health Services
1564985	Dependable Roofing, Inc.
1546932	Don Vito Ozuna Food Corp.

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1352563	Duracorp, LLC
1555910	Earthlite LLC
1492144	Erewhon Organic Cafe and Grocer
1566462	Erickson Framing Ca LLC
1530029	Fairway Staffing Services
1553888	Fenix Marine Services
1506776	Food 4 Less Holdings, Inc. #314
1507897	GHC of Walnut Creek, LLC
1516787	Greenwaste Recovery, Inc.
1337623	Hartmark Cabinet Design & Manufacturing, Inc.
1580555	Integrity Ag Solutions, LLC
1568762	J Reliable Construction Cleanup, LLC
1445122	Jason D. Watson
1492935	Kaiser Foundation Hospital
1476167	Kaiser Foundation Hospitals
1573755	Kaiser Foundation Hospitals
1558909	Kingspan Light & Air, LLC
1584203	KW Industrial Management, Inc.
1494259	Leopoldo's Farm Service, Inc.
1533649	Luxfer, Inc.
1586615	M Perez Company, Inc.
1489623	Mr. Crane
1385924	New Way Tree Services, Inc.
1175441	Newport Mesa Unified School District
1538295	Nissan of Duarte
1431220	P & D Environmental, Inc.
1266518	Pacific Coast Containers, Inc.
1584227	Peninsula Plastics Recycling, Inc.
1556631	Pioneer VNS, Inc.
1564862	Proframe, Inc.
1554448	Q&B Foods, Inc.

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1555528	R/D Construction-Roberts & Delatorre
1502587	Radford Studio Center, Inc., dba CBS Studio Center
1475903	Ralphs Grocery Company
1377123	Rivulis Irrigation, Inc.
1534501	Sierra Pacific Industries
1579166	Sierra Pacific Industries
1521652	Southern California Permanente Medical Group
1286304	SSA Pacific, Inc.
1514703	Sunrun, Inc.
1480197	Supreme Construction, Inc.
1508094	Sutter Street Manufacturing, Inc.
1567370	Sweet Fix Creamery, LLC
1553446	Tawa Supermarket, Inc.
1564549	The Hulling Co.
1572624	Tri-Modal Distribution Services, Inc.
1194912	Ubaldo Munoz
1461066	Unique Garage Door, Inc.
1461146	Watson Companies, Inc.
1534191	WCC, Inc.

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 11:21 a.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 11:22 a.m.