

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session

Held on September 1, 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
Jeff Mojcher, Chief Counsel
Kevin Reedy, Supervising Judge
Sam Lucas, Supervising Judge
Aaron Jackson, Industrial Relations Counsel
Vincent Mersich, Staff Attorney
Janis Jonas, Executive Secretary
Martina Ligsay, Senior Legal Typist, OSHAB
Kerry Lewis, Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Manuel Arambula, Staff Counsel, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
Linette Davis, DIR Office of the Director
Clara Hill-Williams, Staff Counsel, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California

Minutes of August 18, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the August 18, 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: Sam Lucas updated the Board on the progress regarding the pilot program revising the scheduling of ALJs for hearings. The program begins today, September 1, 2022.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: A meeting is scheduled for today, September 1, 2022 to continue discussing the method of sharing information between the eAttorney system and OASIS.

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 have been posted on the OSHAB website and distributed to stakeholders. A 15-day comment period will run through September 9, 2022.

Legislation:

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

Action: Kevin Reddy updated the Board on current Legislation.

Chairperson's Report:

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

Action: No report.

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 and current budget planning.

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: Vincent Mersich provided an update on video hearings.

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

Action: Judge Sam Lucas updated the Board on cases involving COVID related citations.

4. Litigation update:

Action: Jeff Moyer updated the Board 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: Bruce Wick asked questions regarding the timeline of updating the precedential documents on the website. The list was last updated in June 2022. Also Mr. Wick asked questions regarding any rulings on Regulation 3203.

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.)

1487741 BSF Fitness II, LLC
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.)

- 1447944 Che Anthony Coho, an Individual
Action: The Board voted to remand this issue to Hearing Operations.
Moved: Ed Lowry
Seconded: Marvin Kropke
Vote: 3-0
- 1559454 CP Manufacturing, Inc.
Action: The Board voted to remand this issue to Hearing Operations.
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:

- 1496785 West Hills Hospital
Action: The Board voted to remand this issue to Hearing Operations.
Moved: Ed Lowry
Seconded: Marvin Kropke
Vote: 3-0

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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
September 01, 2022

- 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.
- 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)
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)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
September 01, 2022

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)
22. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)

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.
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.)

1491481	99 Cent Only Stores, LLC #383
1569248	Adams And Brooks, Inc.
1510321	Albertsons, LLC
1564225	Alpine Corporation
1396257	American Pacific Builders, Inc.
1226062	AMG Sign Company, Inc.
1371622	Amy's Kitchen, Inc.
1405003	Amy's Kitchen, Inc.
1411279	Amy's Kitchen, Inc.
1557155	Angell & Giroux, Inc.
1504971	Apex Drum Company, Inc.
1571588	Arrowhead Products Corporation
1582118	Ash & Clover Marketing, Inc.
1530902	Azzaro Surfaces
1596834	B & R Head and Block Repair
1504276	B.D.R. Industries, Inc.
1567156	Barry R. Kirshner Wildlife Foundation
1513645	Beyond the Horizon Construction, Inc.
1574248	Bienek Roofing-Construction Inc.
1530891	Borrego Community Health Foundation
1550090	Borrego Community Health Foundation
1555202	Burnett and Son Meat Company, Inc.
1478974	Coastal International, Inc.
1526032	Consolidated Asset Management Services
1549490	County of Los Angeles Department Of Mental
1427520	Crown City Equipment Rental LLC
1595891	Custom Tile & Granite, Inc.
1570685	DC Steel Erectors, Inc.
1567329	Don Lee Farms
1582964	Drilling Equipment & Supply Company
1583159	E. H. Butland Corp.
1574268	East Bay Municipal Utility District
1463170	Eco Renovation Group, LLC
1503795	Elwood Staffing
1577076	Erickson Framing CA LLC
1512618	Excalibur Well Services Corporation
1554566	Fab Ring, Inc.
1380892	Field Fresh Foods Incorporated
1558388	Food Maxx #474
1570225	Four Seasons Roofing

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
September 01, 2022

1581691	Freyssinet Inc.
1525485	Frontier-Kemper Constructors, Inc.
1524950	G.H. Palmer Associates
1448989	General Coatings Corporation
1589967	Granite Rock Company
1561676	Graphic Packaging International, Inc.
1261073	Gruma Corporation
1474684	Hilty's Electric-California, Inc.
1513636	Hollenbeck Palms
1584350	Hy-Tek Material Handling, LLC
1585127	Jammu & Kashmir, Inc.
1490747	Kaiser Foundation Hospitals
1566747	Kitchen Now! Inc.
1556504	Kittyhawk, Inc.
1559805	Lakmann Builders, Inc.
1560649	Lezama Customs, Inc.
1481871	Lifehouse San Diego Operations, LLC
1561853	Lineage Logistics, LLC
1485445	Los Angeles Police Department, Mission Patrol
1559299	Lucky's Express Truck Wash, LLC
1477009	Lusamerica Foods, Inc.
1541588	M & L Professional Services, Inc.
1442564	M Bar C Construction, Inc.
1533629	Mad River Lumber, LLC
1585963	Manning's Beef, LLC
1526904	Mas Iron Co.
1541353	Mas Iron Co.
1498534	Mathews Readymix LLC
1524398	Meggitt Safety Systems, Inc.
1489639	Mercer, Fraser Company
1355094	Michael J. Milton
1569960	Michael L. Manna Ranch, Inc.
1503449	Mitac Information Systems Corp
1551882	Negranti Creamery
1522888	Orange County Water District
1582934	Outback Construction, Inc.
1503577	Pacific Racing Association
1519511	Plumber Hero, Inc.
1578529	Pointer Enterprises, Inc.
1517707	Premium Meats Co.
1553693	R-Dub Foods, LLC
1588471	Rachma Contracting, Inc.
1491735	Rainscape
1487201	Ralph's Grocery Company #271
1541839	Ridgeline Oil & Asphalt Co. Inc.
1570866	Rjp Framing, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
September 01, 2022

1570215	Roydesh, Inc.
1564879	See's Candies
1479279	Servin-Lopez Vineyard Management Inc.
1517336	Sierra Pacific Industries
1573544	Smart & Final Stores, LLC
1580305	Sonray Solar, Inc.
1561673	South Bay Iron, Inc.
1061365	Sphere Alliance Inc. Dba Advanced Aircraft Seal
1532212	St. Francis Memorial Hospital
1507013	Stephan Vineyards, Inc.
1544144	Steve Wills Trucking and Logging, LLC
1516367	Stone Peak Ceramics
1569063	Summit Livestock Facilities, LLC
1566767	Super Center Concepts, Inc.
1508754	Target Corporation
1510348	Target Corporation
1513261	Tharaldson Hospitality Development LLC
1551639	The Blox Group, LLC
1489597	The Growers Company, Inc.
1552411	Town of Loomis
1592479	Tree of Life Tree Service
1538276	Tricor Refining, LLC
1546639	U.S. Rubber Recycling, Inc.
1511212	United Parcel Service, Inc.
1590965	USLS, Inc.
1398128	Verde Cosmetics Labs, LLC
1524062	Weiss-Mcnair LLC
1578484	West-Bag, Inc.
1517736	Wilson Artisan Wineries

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 10:55 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 10: 56 a.m.