

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on September 15, 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, Staff Attorney  
Elizabeth Clarke, Staff Attorney  
Vincent Mersich, Staff Attorney  
Meghan Zapata, Staff Services Manager  
Janis Jonas, Executive Secretary  
Rheeah Avelar, Administrative Law Judge  
Kerry Lewis, Administrative Law Judge  
Christopher Jessup, Administrative Law Judge Cynthia  
Perez, Staff Counsel, DOSH  
Kathryn Woods, Staff Counsel, DOSH  
Sesilya Saraydarian, Staff Counsel, DOSH  
Clara Hill-Williams, Staff Counsel, DOSH  
Matthew Lugo, DIR Analyst, Office of the Director Rocio  
Reyes, Assistant Chief Counsel, DOSH

**Minutes of September 1, 2022 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action:           The Board approved the minutes of the September 1, 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 first week of the program went well with three of the four hearings scheduled coming off calendar.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: A meeting was held September 14, 2022, and all issues related to creating the OSHAB relationship with the eAttorney system were resolved. The process will be reviewed before implementing the program.

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: Comments on the modifications to the regulation were received. Recommendations on the comments will be submitted for next Board meeting.

**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: Ed Lowry is scheduling staff meetings for the OSHAB West Covina and Sacramento 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: There will be a server update in the Sacramento office.

**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: No report.

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: Jeff Mojcher 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: Public comments were received regarding the policies for removing expedited cases from calendar once they are abated.

Congratulations were given to the legal staff for their presentation of the arguments in the RND court case.

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.)*

1465354      Natural Alternatives International, Inc.  
Action:      The Board reviewed this Decision.

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1437436 Par Electrical Contractors, Inc.  
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.)*

1360156 CA Forestry and Fire Protection  
Action: The Board voted to grant the petition and request further briefing.  
Moved: Ed Lowry  
Seconded: Marvin Kropke  
Vote: 3-0

1532874 Golden State Construction & Framing, Inc.  
Action: The Board voted to deny this petition.  
Moved: Ed Lowry  
Seconded: Marvin Kropke  
Vote: 3-0

1556100 H & H Manufacturing & Metal Spinning, Inc.  
Action: The Board voted to remand this issue to the Appeals Initiation Unit for perfecting.  
Moved: Ed Lowry  
Seconded: Marvin Kropke  
Vote: 3-0

**Orders Dismissing Appeal:**

1491569 Del Terra Farms, LLC  
Action: The Board reviewed this Order.

**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.*

- |         |   |
|---------|---|
| 1300984 | General Dynamics NASSCO<br><i>Whether Employer committed the violations alleged.</i>  |
| 1340591 | Lennar Corporation<br><i>Whether Employer committed the violations alleged.</i>   |
| 1291481 | Sierra Pacific Forest Products<br><i>Whether Employer was in compliance with the cited safety order.</i>                    |
| 1303461 | SSA Terminals (Oakland), LLC DBA SSA Marine Terminals<br><i>Whether Employer violated section 3212(a)(2)(A) as alleged.</i> |

**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)

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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)
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 agendaized.  
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.)*

1572413	Ace Machine Shop
1532400	Aurora Charter Oak - Los Angeles, LLC
1528061	Baker Commodities, Inc.
1554357	Bayer Research and Development Services LLC
1585766	Bell Carter Food, LLC
1580568	Bell-Carter Foods, LLC
1397989	Brightview Landscape Development, Inc.
1390243	Bunge Milling, Inc.
1555202	Burnett and Son Meat Company, Inc.
1380148	California Drywall
1410712	Carmel Partners VI Franklin LLC
1596945	Central Valley Paving, Inc.
1507534	CG Roxane, LLC
1514445	Chevron Richmond Refinery
1409982	Circle M Contractors, Inc.
1573828	CJ Foods
1543592	CJ Foods Manufacturing Beaumont Corp.
1459231	Clark Pacific, A California General Partnership
1523228	Comite Civico Del Valle, Inc.
1602119	D.J. Scheffler & Nye, Inc.
1593345	Dar-Kim, Inc.
1508753	Dignity Health
1577164	Discovery Builders, Inc.
1564868	Doreva Produce Company, Inc.
1473416	DPR Construction
1568350	Excalibur Well Services Corporation
1493075	FedEx Freight, Inc.
1554974	Feese Solid Surface Specialties Inc
1581247	Figueroa Landscape Company Inc.
1521021	Finishing Touch Moulding, Inc.
1452859	Ganahl Lumber
1590619	Gauthier Construction
1556655	Golden State Boring & Pipe Jacking, Inc.
1541257	GSM Industries, Inc.
1510074	Hawkeye Equipment Rentals

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1575055	Healthcare Services Group, Inc.
1581613	Hilbers Incorporated
1558159	Hughes Construction
1509385	J & M Keystone, Inc.
1404058	J A J Roofing
1549477	J B Steel, Inc.
1458696	JBT Aerotech Airport Services
1582049	Jet Midwest, Inc.
1492963	Kaiser Permanente Richmond
1542300	Kevin Miller Painting, LLC
1557824	Key Mechanical Co. Of Washington
1539534	L & S Construction Services, Inc.
1551558	Los Vegas Kitchen Cabinets Corp.
1542467	Lucky88 Enterprises LLC
1563562	Maricela Daniela Lopez
1587983	Marich Confectionery Company, Inc.
1425149	Marievic Wang
1414886	Metro Builders & Engineers Group Ltd
1321137	Michael Roberts Construction, Inc.
1541537	MSI Structural Steel LLC
1562458	Newsell, LLC
1579781	Nextcrop, Inc.
1578970	Norman Etchison, Inc.
1590740	North Star Development
1568724	Oilar's Ag Services
1560835	OTS Solutions, LLC
1542121	P.W. Gillibrand Co., Inc.
1345622	Pacific Bell Telephone Company
1486131	Pacific Construction and Framing LLC
1545921	Phoenix Day, Inc.
1575568	Premium Roof Services, Inc.
1535870	R & S Supply
1574722	Rain Bird Corporation
1600314	Ritemp Refrigeration, Inc.
1542713	Sacramento City Unified School District
1476870	Safety Compliance Management, Inc.
1553027	San Diego County Sheriff's Department
1527871	San Gabriel Superstore
1601770	SCB & SSB, Inc.
1549854	SJHD Partners, LLC



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1566204	Smalley General Contracting
1491834	Southern California Hospital At Van Nuys
1549841	Specialized Elevator Corp.
1451187	Stanley Healthcare Center Operating Company, LLC
1522276	Starfish Printing Inc.
1557038	Stateline Farms, Inc.
1491483	Target Corporation
1497590	The Davey Tree Expert Company
1362372	The Good Earth Nursery, Inc.
1581036	Thomas Property Management, Inc.
1537851	Truck Body Sales, Inc.
1451251	TSA Construction, Inc.
1513314	Twin Electric, Inc.
1602929	UC Davis
1556933	V3 Electric, Inc.
1553187	Valdemar Pires
1598664	Walnut/Diamond Bar Sheriff Station
1547929	Wesley Allen, Inc.
1565104	West Coast Berry Farms, LLC
1549125	West Coast Harvesting & Packing Inc.
1586546	Western Municipal Water District
1476555	Windsor Care Center National City, Inc.
1537585	Woods Family Investments, LP
1518762	Yamasa Enterprises

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 11:39 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 11:40 a.m.