

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

Held on October 20, 2022

Sacramento, California

West Covina, California

Zoom Platform

Present:

Ed Lowry, Chair, Public Member

Marvin Kropke, Labor Member

Patricia Hapgood, Acting Executive Officer

Jeff Mojcher, Chief Counsel

Kevin Reedy, Supervising Administrative Law Judge

Sam Lucas, Supervising Administrative Law Judge

Aaron Jackson, Staff Attorney

Vincent Mersich, Staff Attorney

Meghan Zapata, Staff Services Manager

Janis Jonas, Executive Secretary

Christopher Jessup, Administrative Law Judge

Dale Raymond, Administrative Law Judge

Rocio Reyes, Assistant Chief Counsel, DOSH

Linette Davis, Office of Legislative & Regulatory Affairs (OLRA)

Dan Lucido, Chief Counsel, DOSH

Tresten Keys, Safety & Regulatory Affairs Manager, AGC of California

Excused absence: Judith Freyman, Management Member

Minutes of October 6, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the October 6, 2022 Board meeting.

Moved: Marvin Kropke

Seconded: Ed Lowry

The vote was 2-0

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: Judge Sam Lucas and Judge Kevin Reedy reported on this pilot scheduling program. The pilot program ends December 13, 2022. At this time, there have been no scheduling conflicts using this calendaring method.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: Dan Lucido notified the Board the anticipated start date for the eAttorney system is March 2023. The name of the program is expected to change.

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: Aaron Jackson updated the Board on status of Regulation changes.

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: Ed Lowry reported on the staff meeting held in the West Covina office.

Chair Lowry also updated the Board on his presentation at the Ogletree Deakins workshop held October 18, 2022 in Berkeley. Judith Freyman is representing the Board at the workshop being held in Costa Mesa today, October 20, 2022.

The Advisory Committee meeting is scheduled for November 10, 2022. Judith Freyman will represent the Board at this meeting.

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 reported that all personal computer towers will be removed in the Sacramento office, and staff will be given laptops and docking stations.

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: The Board received comments from the public.

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.)

- 1262720 General Dynamics Nassco
Action: The Board reviewed this Decision.
- 1436480 Interline Brands, 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.)

- 1159345 2 & 3 Electric
Action: The Board voted to issue a denial for this petition.
Moved: Marvin Kropke
Seconded: Ed Lowry
Vote: 2-0
- 1397958 America's Best, Inc.
Action: This matter was inadvertently added to the agenda.
- 1506586 American Fumigation Services, LLC
Action: The Board discussed this petition.
- 1564732 Calvary Chapel of San Jose
Action: The Board voted to take this petition under
submission
Moved: Marvin Kropke
Seconded: Ed Lowry
Vote: 2-0
- 1465354 Natural Alternatives International, Inc.
Action: The Board voted to extend time to consider the
petition.
Moved: Marvin Kropke
Seconded: Ed Lowry
Vote: 2-0
- 1437436 Par Electrical Contractors, Inc.
Action: The Board discussed this petition.

Orders Dismissing Appeal:

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| 1528648 | Gotworx Staffing, Inc.
Action: The Board reviewed this Order. |
| 1310514 | Greengo Farms
Action: The Board reviewed this Order. |
| 1544476 | Veridiam, Inc.
Action: The Board reviewed this Order. |

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeals 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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| 1360156 | CA Forestry and Fire Protection |
| 1300984 | General Dynamics NASSCO
<i>Whether Employer committed the violations alleged.</i> |
| 1004280 | Key Energy Services, LLC
<i>Matter remanded to the Board from the Court.</i> |
| 1340591 | Lennar Corporation
<i>Whether Employer committed the violations alleged.</i> |
| 313381584 | Modern Pro Builder |
| 1291481 | Sierra Pacific Forest Products
<i>Whether Employer was in compliance with the cited safety order.</i> |
| 1303461 | SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
<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. Barnard Impregilo Healy, JV, CPF 17-515575 (317134021)
2. Ashley Furniture Industries, 34-2017-800002750 (1016514)
3. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
4. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
5. Davis Development Company, 34-2020-80003373 (1226084)
6. Southern California Edison, 34-2021-80003580 (1320327)
7. RND Contractors, Inc., CIV SB 2119442 (1436785)
8. Sunview Vineyards of California, Inc. RG21111733 (1153101)
9. Hill Crane Service Inc., 34-2021-80003744 (1135350)
10. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)
11. Sierra Forest Products, VCU290996 (1291481)
12. USA Waste of California, Inc., 34-2022-80003841 (1384029)
13. Ranch of the Golden Hawk, 22STCP02302 (1224802)
14. 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.)

1560018	Adam De Garza
1540052	Adolph's A-1 Tree Service
1297877	Albertson's, LLC
1315624	All American Asphalt
1372844	Bayview Environmental Services, Inc.
1437222	Best Contracting Services, Inc.
1556954	CapTek Softgel International, Inc.
1568449	Cinnabar California, Inc.
1407040	City of Los Angeles, Department of Public Works
1556194	D9 Industries LLC
1558648	Energy Solutions and Services, Inc.
1562608	Erickson Framing Ca LLC
1533265	ETCO Homes, Inc.
1516105	Fairway Staffing Services, Inc.
1537556	General Coatings Corporation
1504141	Imperfect Foods, Inc.
1561347	Intelligent Blends Office Coffee
1491833	Kaiser Foundation Hospital Panorama City
1564452	KFC

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Minutes of the Public Meeting and Closed Session
October 20, 2022

1512744	LA City Police - Metro Communications Dispatch
1569786	Lloyds Manufacturing Services, Inc.
1523499	Mattson Technology, Inc.
1553445	Michael Leslie
1477629	Morley Builders, Inc.
1596621	Northcentral Pizza, LLC
1517015	Oakley Union School District
1505022	Pacific Gas & Electric Company
1554517	Pharaoh Staffing, LLC
1517744	Porter Rents, LLC
1555968	PR Plumbing, Heating & Air Conditioning, Inc.
1566454	Rancho San Joaquin Golf Course
1596953	Richard Hancock, Inc.
1507598	Riverside County Behavioral Health Department
1555513	S.J. Grigolla Construction Company
1570566	Sharcar Enterprises, Inc.
1539960	South Coast Baking, LLC
1510230	Stand Up Placer
1532889	Sylvester Roofing Company, Inc.
1511270	The City of Los Angeles
1566752	The Regan Group
1526908	Torn and Glasser Inc.
1554397	Trapac, LLC
1488195	Unique Building Group, Inc.
1420700	US Framing West, Inc.
1509148	VF Outdoor, LLC
1505148	Wallace Curb & Gutter, Inc.
1543425	Westside Petroleum & Carwash, Inc.
1525461	Wood-N-Wood Products

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

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 11:15 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 11:16 a.m.