

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

Held on December 1, 2022

Sacramento, California

West Covina, California

Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management 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
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Janis Jonas, Executive Secretary
Christopher Jessup, Administrative Law Judge
Maira Doherty, Member of the Public
Denise Cardoso, Assistant Chief Counsel, DOSH
Matt Lugo, DIR Analyst, Office of Director, Legislation and Regulations
Bruce Wick, Risk Management Director, Housing Contractors of California

Minutes of November 17, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the November 17, 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. Roundtable planning.

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: Results are being evaluated and a memo will be prepared for the Board. The overview of the pilot program is that no hearings needed to be reassigned due to conflicting scheduling.

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: Motion to give final approval for adoption of amendments to California Code of Regulations, title 8, sections 372.6, 372.8, 376, and 376.8, , and to delegate authority to the Executive Officer to submit them, and the associated rulemaking package, to the Office of Administrative Law for final approval and filing with the Secretary of State, and to make non-substantive changes to the language, if necessary.

Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

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 Ed Lowry reported taking the DIR training on discrimination and inclusion.

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 OSHAB staffing.

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: Aaron Jackson updated the Board on the process of reviewing the regulations.

2. Discuss status of Video Hearings.

Action: Judge Sam Lucas reported on the status of video hearings. Also updated the Board on the question of uploading and logging exhibits into OASIS. Currently, there are few problems with the process of entering exhibits and all issues have easily been resolved.

Judge Kevin Reedy reported there is a hearing scheduled to be held in-person at the Sacramento office.

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 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.)

1444899 City of Los Angeles Department of General Services
Action: The Board reviewed this Decision.

1391266 Dave & Busters of California, 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.)

1565034 J's Automotive Repair
Action: The Board voted to issue a denial.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1371294 KPRS Construction Services, Inc.
Action: The Board voted to issue a denial.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1314092 99 Cents Only Store, LLC
Action: The Board voted to take this petition under
submission for reconsideration.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1402729 Butch Pope Engineering, Inc.
Action: The Board voted to issue a denial.
Moved: Ed Lowry
Seconded: Judith Freyman
Vote: 3-0

1573605 XL Concrete Masonry, LLC
Action: The Board voted to grant this petition and remand the
appeal to the Appeal Initiation Unit.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

Orders Dismissing Appeal:

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| 1529204 | J Woods Flooring, Inc.
Action: The Board reviewed this Order. |
| 1500853 | Milton Aparicio
Action: The Board reviewed this Order. |
| 1548288 | Owens Corning, Inc.
Action: The Board reviewed this Order. |
| 1525246 | Quality Road Side Service, Inc.
Action: The Board reviewed this Order. |

Orders Denying Leave To File Late Appeal:

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| 1569296 | Precision Metal Products, Inc.
Action: The Board reviewed this Order. |
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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
<i>Whether it was an error to assign a particular ALJ to the matter.</i> |
| 1564732 | Calvary Chapel of San Jose dba Calvary Chapel Academy
<i>Whether the ALJ correctly excluded evidence from the inspection.</i> |
| 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> |

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- 313381584 Modern Pro Builder
Whether the ALJ's granting of a late appeal was appropriate under the circumstances.
Action: The Board discussed this item.
- 1465354 Natural Alternatives International, Inc.
Whether the ALJ erred in dismissing the matter.
- 1336276 Rios Farming Company, LLC
Whether the ALJ's decision was correct.
- 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. 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. Hill Crane Service Inc., 34-2021-80003744 (1135350)
9. Sierra Forest Products, VCU290996 (1291481)
10. USA Waste of California, Inc., 34-2022-80003841 (1384029)
11. Ranch of the Golden Hawk, 22STCP02302 (1224802)
12. 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)
5. MWL Solutions, C097353, 34-2020-80003549 (1436014)

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.)

1587590	Altman Specialty Plants
1529123	Americold Logistics, LLC
1518315	AMN Healthcare
1509770	Antin Sachs
1601540	Autozone Parts, Inc.
1575643	Avron Associates, Inc.
1590399	Barbosa Cabinets, Inc.
1578244	Bella Brands, Inc.
1511434	BMC West, LLC
1518276	Bradshaw International, Inc.

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1592465	Bristol Farms
1606024	Brookfield Calwest Builders, LLC
1509161	Ca Employment Development Department
1507564	Cal Ag Resources, Inc.
1573785	CJ Foods Manufacturing Beaumont Corp.
1579318	County of Del Norte
1478983	County of Tulare Resource Management Agency
1547568	Del Mar Food Products Corp.
1418768	Diversified Asphalt Products, Inc.
1546492	DL Farm Management, Inc.
1579931	Dobra Vina, Inc.
1588498	Filemon Salgado Jimenez
1581939	Flatiron West, Inc
1489609	Folsom Lake Appliance, Inc.
1507558	Food 4 Less Holdings, Inc.
1512611	Fourest Tree Service, Inc.
1574432	Fruth Custom Plastics, Inc.
1586309	Ghiringhelli Specialty Foods Inc.
1538359	Hasa Pool, Inc.
1558664	Hill Crane Service, Inc.
1602441	Huebert Farms
1545731	I Link Business Management, Inc.
1481280	Invacare Corporation
1596957	Jensen's Finest Foods
1451910	John Bean Technologies Corporation
1581008	KB United Fashion, Inc.
1554321	L.A. Pillow & Fiber, Inc.
1260749	Lamps Plus, Inc.
1568014	Lana Design Incorporated
1570245	Linde Gas & Equipment, Inc.
1480842	Liquivision Technology, Inc.
1491645	Mario Ramirez
1471769	Mcalister Electric, Inc.
1578301	Mission Rubber Company, Inc.
1497482	Monterey Mushrooms, Inc.
1505064	Monterey Mushrooms, Inc.
1606706	Nor Cal Fast Foods, Inc.
1528099	O S L Construction, Inc.
1462937	Olam International
1554576	Oldcastle Infrastructure

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1547474	Orange County Public Works
1587945	Orco Block & Hardscape
1523517	Pinedale Construction
1585418	Porter's Plumbing, Inc.
1536837	Pro Wall Lathe Plaster, Inc.
1583631	Quality Staffing of Southern California, Inc.
1568008	Ruskin Company
1227761	S.L.S. & N., Inc.
1575225	Sacramento Regional Transit District
1531378	Safelite Auto Glass Group
1605819	Sedgwick Claims Management Services, Inc.
1373464	Shasta Landscaping, Inc.
1370798	Solar Optimum
1298734	Sun-Maid Growers of California
1495490	Superior Court of California, Contra Costa County
1515235	Target Corporation
1568725	The Langlois Company
1520711	Timberworks Construction, Inc.
1537214	Togliatti Farms Inc.
1499598	Trincherro Construction Company, Inc.
1580377	USA Construction Management, Inc.
1346783	Utility Tree Service, LLC
1483569	Vie De France Yamazaki, Inc.
1584552	Zimmerman Development, Inc.

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 11:30 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 11:31 a.m.