

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

**Held on May 4, 2023**  
**Sacramento, California**  
**West Covina, California**  
**Zoom Platform**

**Present:**

Ed Lowry, Public Member, Chair  
Judith Freyman, Management Member  
Marvin Kropke, Labor Member  
Jeff Mojcher, Chief Counsel  
Patricia Hapgood, Acting Executive Officer  
Kevin Reedy, Presiding Administrative Law Judge  
Sam E. Lucas, Presiding Administrative Law Judge  
Aaron Jackson, Staff Attorney  
Elizabeth Clarke, Staff Attorney  
Vincent Mersich, Staff Attorney  
Janis Jonas, Executive Secretary  
Dan Lucido, Chief Counsel, DOSH  
Bruce Wick, Risk Management Director, Housing Contractors of California

**Minutes of April 20, 2023, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the April 20, 2023,  
Board meeting.

Moved: Judith Freyman

Seconded: Ed Lowry

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. Update of DOSH eAttorney system interfacing with OASIS.

Action: Patty Hapgood updated the Board on the progress of the  
DOSHS eAttorney interfacing system.

2. 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 Regulations have been approved and will be filed with  
the Secretary of State.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

3. Roundtable planning.

Action: Patty Hapgood updated the Board on the plans for the Roundtable discussion. The invitation was sent and there have been positive responses from the stakeholders.

4. Discussion of precedential index and whether to add any cases to the index.

Action: The Board agreed to add the following cases to the precedential index:

*Rios Farming Company, LLC*, Cal/OSHA App. 1336276, Decision After Reconsideration (Feb. 6, 2023).

*Olam West Coast, Inc. dba Olam West Spices and Vegetable Ingredients*, Cal/OSHA App. 1334740, Decision After Reconsideration (Feb. 17, 2022).

*Walmart Associates, Inc., dba Walmart Fulfillment Center #8103*, Cal/OSHA App. 1461476, Decision After Reconsideration (July 22, 2022).

*Golden State FC, LLC dba Amazon Fulfillment Center SJC7*, Cal/OSHA App. 1310525, Decision After Reconsideration (Apr. 14, 2021).

*United Pumping Service, Inc.*, Cal/OSHA App 1509967, Decision After Reconsideration (March 23, 2022).

*Papich Construction Company, Inc.*, Cal/OSHA App. 1236440, Decision After Reconsideration (March 26, 2021).

*Shimmick Construction Company, Inc.*, Cal/OSHA App. 1192534, Decision After Reconsideration (Aug. 26, 2022).

5. Discuss creation of an appeals advisor for cited employers to help them avoid dismissals on technicalities.

Action: There was a discussion regarding ways of helping the public file an appeal. The possibility of creating a position for someone, with the focus on answering questions and assisting employers filing an appeal was suggested. Jeff Mojcher was asked to look into the needs and options for such a position.

**Legislation:**

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

Action: Elizabeth Clarke updated the Board on current legislation. Highlighted was SB544 which will allow remote locations of Board Members to be omitted from the notice of Meeting times and locations.

As of July 1, the current temporary provision allowing virtual meetings, will expire.

**Chairperson's Report:**

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

Action: Ed Lowry reported on the meeting with DIR Director, Katie Hagen.

Also Mr. Lowry updated the Board on the meeting held with the Fed OSHA representative.

**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 on the meeting with the Fed OSHA representatives.

There is a new Senior Legal Typist hired for the West Covina office.

Nichole Franco is retiring May 24, 2023.

Kevin Reedy submitted his retirement papers and will be retiring July 31, 2023.

**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 reported that the next project will be looking at all the regulations and making sure they are written clearly in plain English and are able to be understood by the layperson.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

2. Discuss status of Video Hearings.

Action: No report.

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

Action: Kevin Reedy updated the Board on the Appeals with 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 comments will be entertained during discussion of each agenda item of the open meeting.)*

Action: There were no public comments made during this meeting.

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.)*

There are no Decisions scheduled for this meeting.

**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.)*

1488312 The Indiana Finish Line, Inc.

Action: The Board voted to issue an order extending time on this matter.

Moved: Judith Freyman

Seconded: Marvin Kropke

Vote: 3-0

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

1601337 Three Star Demolition & Janitorial, Inc.  
Action: The Board voted to issue an order to reinstate the appeal in this case.  
Motion: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

1580817 Cameron Sparks, an Individual  
Action: The Board voted to issue an order to remand this case the appeals initiation.  
Motion: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

**Orders Dismissing Appeal:**

1600527 ACS Staffing, Inc.  
Action: The Board discussed this order.

1447933 E.R.R.A. Brothers  
Action: The Board discussed this order.

1578370 Horizon Personnel Services  
Action: The Board discussed this order.

1557466 Solarm, Inc.  
Action: The Board discussed this order.

1564173 Tal Construction, Inc.  
Action: The Board discussed this order.

**Orders Denying Leave To File Late Appeal:**

1610350 Baron HR  
Action: The Board voted to issue an order to reinstate the appeal for this matter.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
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.*

- 1314092      99 Cents Only Store, LLC  
*Whether the employer committed a foot protection violation as alleged.*
  
- 1431672      A. Teichert & Son, LLC  
*Whether the cited employer was in violation of lockout/tagout requirements.*
  
- 1538332      Albeco, Inc.  
*Whether denial of motion for late appeal was correct.*
  
- 1473644      Amazon.com Services, LLC  
*Whether the employer's training program was in compliance with the applicable safety order.*
  
- 1360156      CA Forestry and Fire Protection  
*Whether it was an error to assign a particular ALJ to the matter.*
  
- 1564732      Calvary Chapel of San Jose dba Calvary Chapel Academy  
*Whether the ALJ correctly excluded evidence from the inspection.*
  
- 1490008      Elite MD, Inc.  
*Whether the ALJ's denial of leave to file a late appeal was correct.*
  
- 1262720      General Dynamics NASSCO  
*Whether the employer followed proper procedures in rigging a load.*

Action:            The Board voted to issue the DAR for this matter.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

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|---------|---|
| 1436480 | Interline Brands, Inc.<br><i>Whether the employer violated foot protection standards.</i>                                   |
| 1004280 | Key Energy Services, LLC<br><i>Matter remanded to the Board from the Court.</i>   |
| 1486257 | The Kroger Company  |
| 1340591 | Lennar Corporation<br><i>Whether Employer committed the violations alleged.</i>   |
| 1465354 | Natural Alternatives International, Inc.<br><i>Whether the ALJ erred in dismissing the matter.</i>                          |
| 1405107 | S.C. Anderson, Inc.<br><i>Whether employer committed the alleged violations.</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. 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. Hill Crane Service Inc., 34-2021-80003744 (1135350)

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

8. USA Waste of California, Inc., 34-2022-80003841 (1384029)
9. Ranch of the Golden Hawk, 22STCP02302 (1224802)
10. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)
11. American Fumigation Services, LLC, 22STCP04305 (1506586)

**Appellate Court:**

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. L & S Framing, Inc. S-CV-0046603 (1173183)
3. Granite Construction Company, 34-2021-80003634 (1235643)
4. MWL Solutions, C097353, 34-2020-80003549 (1436014)
5. BMC West LLC, 34-2020-80003459 (1399613)
6. Hampton Tedder Electric, 34-2020-80003549 (1233597)
7. RND Contractors, Inc., CIVSB2119442 (1436785)

**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.)*

1567702	1st Choice Fumigation, Inc.
1629056	4949 Venice, LLC



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

1494241	Ability Home Care, Inc.
1560255	Acorn Arboricultural Services, Inc.
1619953	Adame Communications, Inc.
1589456	Aerovironment, Inc.
1473107	Alameda Care Center
1488766	Alden Terrace
1622731	Ashley Callu, an Individual
1513812	Aulakh Farms
1335883	Balboa Trucking, Inc.
1517045	Brandenburg Industrial Service Company
1638002	Brapga Security Systems, Inc.
1490555	Brookdale Senior Living Communities, Inc.
1617610	Builder Brothers Carpentry, Inc.
1570609	Builder Services Group, Inc.
1520358	Burbank Healthcare, Inc.
1513231	Ca Corrections & Rehabilitation - Mule Creek State
1632885	Caito Fisheries Inc
1548275	California Department of Corrections And
1491827	California Healthcare and Rehabilitation Center
1561426	Carlsbad Air Service, Inc.
1295103	Citistaff Solutions, Inc.
1577136	Citistaff Solutions, Inc. @ RWP Transfer, Inc.
1481964	City of Clovis
1160373	City of Oceanside
1557152	CONFLO Services, Inc.
1485881	Cosmetix West, Inc.
1633090	Crane Rental Service, Inc.
1539999	Cream of The Crop Ag Service, Inc.
1562807	Delta Groups Engineering, Inc.
1570230	Demler Brothers, LLC.
1580076	Dexion Industries, Inc.
1571629	Drill Tech Drilling & Shoring, Inc.
1530460	Eat Sweet Farms, LLC
1640801	Ecco Bay Services, Inc.
1438276	El Pollo Loco, Inc.
1517719	Fieldsource Food Systems, Inc.
1596333	G. E. A. Framing Corporation
1616037	Gaddis Nursery, Inc
1634383	Grain Craft
1579551	Graziano Roofing, Inc.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

1521036	Gregory Littman
1582042	Guy Yocom Construction
1377483	Irvine Management Company
1635425	JBC General Construction, Inc.
1618103	John Mourier Construction, Inc.
1627017	Juan Orozco, An Individual
1531564	K&J Ag Services
1493462	K.W. Curtis Enterprises, Inc.
1583957	Kevin Duffy Landscaping
1595682	Kia Contractors, Inc.
1549482	Kincaid Industries, Inc.
1508079	Longwood Manor
1472265	Los Angeles County Department Of Health Services,
1521032	Los Angeles County Sheriff's Department
1590729	Lowe's Home Centers, LLC
1476125	Magnolia Gardens Convalescent Hospital, Inc.
1600188	Mask EDC, Inc.
1639754	Modern Building, Inc.
1569304	Moraga Library
1479056	Morlet Estate Hilltop, LLC.
1602309	Mr. Paint, Inc.
1625545	Myers & Sons Construction LLC
1528477	North Shore Greenhouses, Inc.
1611768	Northgate Gonzalez, LLC
1501889	Pacific Gas & Electric Company
1637706	Pacific Hotel Management, LLC
1505922	Palm Springs Operating Company, LP
1491341	Pico Rivera Healthcare, Inc.
1624851	Premium Health OC Inc.
1605242	Quikserve Restaurants, Inc.
1639473	Quinn Company
1572644	Republic Services
1541120	RJ's Demolition & Disposal
1614006	Robertson's Transport, LTD
1580347	Rock'n JK Farms, LLC
1518317	San Dimas Retirement Center, Inc.
1599998	San Leandro Color, Inc.
1550519	Seafood City Supermarket
1578020	Solano County Juvenile Detention Facility
1633789	Solid Rock Construction & Fine Carpentry, Inc.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

1554553	Sun Shippers Distribution LLC
1495505	Super Center Concepts, Inc.
1603634	Trader Joe's Company
1612386	Trader Joe's Company
1612477	Trader Joe's Company
1635032	Trader Joe's Company
1635412	Trader Joe's Company
1640730	Trader Joe's Company
1564407	Tyrrell Resources, Inc.
1578338	UCLA-Health - Outreach Clinical Laboratory
1575650	Val-Pro, Inc.
1408249	Wag Hotels, Inc.
1416143	Webcor Builders, Inc.
1625256	Yosef Peretz

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

**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session adjourned at 11:23 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 Board meeting was adjourned at 11:24 a.m.