

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on November 2, 2023**  
**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 Office  
Kerry Lewis, Presiding Administrative Law Judge  
Sam Lucas, Presiding Administrative Law Judge  
Chris Jessup, Presiding Administrative Law Judge  
Aaron Jackson, Staff Attorney  
Vincent Mersich, Staff Attorney  
Elizabeth Clarke, Staff Attorney  
Janis Jonas, Executive Secretary  
Dan Lucido, Chief Counsel, DOSH  
Megan Shaked, Attorney, Conn Maciel Carey LLP  
David Wiseman, Staff Counsel, CalFire

**Minutes of October 19, 2023, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the October 19, 2023, 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. Discuss process for purging of files in OASIS.

Action: No report.

2. West Covina Board Meeting Discussion.

Action: This meeting will be scheduled sometime during the first quarter of 2024.

3. Review stakeholder comments from June 27, 2023, roundtable discussion.

Action: The Board continued reviewing the summary of issues raised at the June 27, 2023, roundtable discussion.

4. Discuss Cal/OSHA Reporter's request for OASIS access for all cases.

Action: No report.

**Old Business:**

*(The appeals Board hears and/or discusses matters on a follow-up basis.)*

1. Update of DOSH LEGEND system interfacing with OASIS.

Action: No report.

2. Discussion of precedential index.

Action: No report.

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

Action: No report.

**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: 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 reported on meeting with DIR Director Katie Hagen. DIR will begin providing bottled water for offices.

Staff Services Manager 1 position was posted. Efforts are being made to post the ALJ positions.

**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: Sam Lucas updated the Board on the Appeals with COVID related citations.

4. Litigation update:

Action: Aaron Jackson 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: Public comments were received. Megan Shaked asked for information on the policy regarding the public attending an Appeals Board hearing. The hearings are open to the public. Interested people can reach out to the OSHAB office, and someone on staff can access the hearing calendar and provide the appropriate zoom link.

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.)*

1475491      Sutter Bay Medical Foundation  
Action:        The Board voted to submit this matter for  
                     reconsideration on its own motion.  
                     Moved: Marvin Kropke  
                     Seconded: Judith Freyman  
                     Vote: 3-0

**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.)*

1497263      Hamilton Iron Works, Inc.  
Action:        The Board voted to take the matter under submission.  
                     Moved: Marvin Kropke  
                     Second: Judith Freyman.  
                     Vote: 3-0

1651755      Jennings Construction  
Action:        The Board voted to remand this matter to hearing  
                     operations.  
                     Moved: Marvin Kropke  
                     Second: Judith Freyman.  
                     Vote: 3-0

1565033      T & R Automotive Repair  
Action:        The Board voted to issue the denial for this matter.  
                     Moved: Marvin Kropke  
                     Seconded: Judith Freyman  
                     Vote: 3-0

1609228      The Geo Group, Inc. dba Golden State Annex  
                     (DOSH PFR)  
Action:        The Board voted to take the matter under submission.  
                     Moved: Marvin Kropke  
                     Second: Judith Freyman.  
                     Vote: 3-0

**Orders Dismissing Appeal:**

- |         |  |
|---------|--|
| 1522972 | Arterberry, William C.<br>Action: The Board discussed this matter.                 |
| 1393455 | Contract Builders Corp.<br>Action: The Board discussed this matter.                |
| 1432009 | Horizon Personnel Services Inc.<br>Action: The Board discussed this matter.        |
| 1629190 | Owens Construction & Engineering, Inc.<br>Action: The Board discussed this matter. |

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

- |         |  |
|---------|--|
| 1613791 | E & B Natural Resources Management Corporation<br>Action: The Board discussed this matter. |
| 1638013 | G N L Development Inc.<br>Action: The Board discussed this matter.                         |

**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<br><i>Whether the employer committed a foot protection violation as alleged.</i><br>Action: The Board voted to issue the DAR for this matter.<br>Moved: Marvin Kropke<br>Seconded: Judith Freyman<br>Vote: 3-0 |
| 1431672 | A. Teichert & Son, LLC<br><i>Whether the cited employer was in violation of lockout/tagout requirements.</i>  |

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
November 2, 2023

- 1473644 Amazon.com Services, LLC  
*Whether the employer's training program was in compliance with the applicable safety order.*
- 1113026 Angelus Block Co., Inc.  
*Whether Employer violated lock out/tag out requirements as alleged.*
- 1398352 Anheuser-Busch, LLC  
*Whether the evidence supports the holding that employer violated lockout/tagout requirements.*
- 1490008 Elite MD, Inc.  
*Whether the ALJ's denial of leave to file a late appeal was correct.*
- 1674336 Finishing Touch Moulding, Inc.  
*Whether employer established good cause for its late appeal.*
- 1436480 Interline Brands, Inc.  
*Whether the employer violated foot protection standards.*
- 1486257 The Kroger Company  
*Whether the cited employer adequately trained employees regarding workplace hazards.*
- 1465354 Natural Alternatives International, Inc.  
*Whether the ALJ erred in dismissing the matter.*
- 1405107 S.C. Anderson, Inc.  
*Whether employer committed the alleged violations.*
- 1291481 Sierra Pacific Forest Products  
*Whether Employer was in compliance with the cited safety order.*
- 1465119 Sun Belt Rentals  
*Whether certain information accepted into evidence was inadmissible hearsay, and whether the evidence supports a finding that Employer violated sections 3203 and 3328, as alleged.*
- 1609228 The Geo Group, Inc. dba Golden State Annex (3<sup>RD</sup> PTY PFR)  
*Whether the motion for third party status was properly denied.*
- 1488312 The Indiana Finish Line, Inc.  
*Whether the cited employer established procedures adequate to protect employees from COVID-19.*

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
November 2, 2023

1594663 Uber Technologies, Inc.  
*How Proposition 22 interacts with the Board's statutes and operative regulations.*

Action: The Board discussed this matter.

**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. Ashley Furniture Industries, 34-2017-800002750 (1016514)
2. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
3. Davis Development Company, 34-2020-80003373 (1226084)
4. Southern California Edison, 34-2021-80003580 (1320327)
5. Hill Crane Service Inc., 34-2021-80003744 (1135350)
6. USA Waste of California, Inc., 34-2022-80003841 (1384029)
7. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)
8. American Fumigation Services, LLC, 22STCP04305 (1506586)

**Appellate Court:**

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

**Other Items:**

1. Stakeholders' comments from June 27, 2023, Roundtable Discussion.

Action: No report.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
November 2, 2023

2. Discuss Cal/OSHA Reporter's requests for access to OASIS.

Action: No report.

3. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.

Action: No report.

4. Categorizing the Board's DARs and Denials on the DIR website.

Action: No report.

5. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

Action: No report.

6. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: No report.

7. Discussion regarding Board communications with stakeholders.

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.)*

1679170	3B Farms, Inc.
1690923	AC Framers Inc
1665887	Advanced Decorating Co., Inc.
1531515	AJM Packaging Corporation
1627463	Albertsons Companies, Inc.
1604615	Alpha & Omega Roofing, Inc.
1595634	Altair Paramount, LLC
1661975	Arbor Md Tree Care, Inc.
1623362	Axis Building Components, Inc.
1626598	Balboa Market, Inc.
1664325	Bejac Corporation
1543060	Buffalo Wild Wings
1651318	C & J Cold Storage, Inc.
1554132	Ca Corrections & Rehabilitation
1477043	Ca Corrections & Rehabilitation



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
November 2, 2023

1546253	Ca Corrections & Rehabilitation
1564192	Ca Corrections & Rehabilitation Ca State Prison,
1556473	Ca Corrections and Rehabilitation Substance Abuse
1616443	Ca Corrections and Rehabilitation Substance Abuse
1508982	Ca Corrections Corcoran Substance Abuse
1519380	California Department of Corrections And
1654201	California Electronic Asset Recovery (Cear)
1618797	Central Coast Residential Builders, Inc.
1672689	Circular Polymers LLC
1675916	Core Construction Management
1521669	Cortech West Staffing, LLC
1666277	Davis Development Company, Inc.
1527595	Deacon Construction, LLC
1587407	Dr. Smoothie Enterprises
1691872	Dragados USA, Inc.
1592990	Dux Mfg., Inc.
1674899	Eberhard Benton Roofing
1679877	Empire Nut Company, LLC
1615321	Eskaton Care Center Manzanita
1656553	ESL Power System Inc
1618829	Evcon
1596335	Evergreen Recycling, Inc.
1670325	Fairfield Inn by Marriott Limited Partnership
1693328	Fernando Gradilla-Torres
1590976	Gabriel Chaidez
1618825	Gil's Plumbing, Inc.
1591264	Gino / Giuseppe, Inc.
1634174	Golden West Packaging Group
1343726	Henkels & Mccoy
1664371	Houweling's Camarillo, Inc.
1683832	IMI Pallet Factory Us LLC
1557040	Infinity Structures, Inc.
1582141	JD Framing, Inc.
1580491	Johnstone Moyer, Inc.
1424736	Kashmir Rai
1457253	Leon Krous Drilling, Inc.
1637406	Marques General Engineering, Inc.
1642185	Marrokal Design & Remodeling, LLC
1666955	Matagrano Inc.
1668424	Maverick Enterprises

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
November 2, 2023

1527265	New-Indy Tripaq, LLC
1641282	Ohmega Technologies, LLC
1683761	OLS Hotels & Resorts
1647764	Pacific Gas and Electric Company
1418046	Pacific Gold Marketing Inc.
1639064	Preferred Pump and Equipment, LP
1576643	Prime Electrical Services, Inc.
1678156	Princeton International, Inc.
1608438	PWB Vulcan, Inc.
1671082	Rainbow Orchards
1542763	RCP Construction, Inc.
1690703	Rite Aid Corporation
1621615	Santa Clara County Office of Emergency
1621620	Santa Clara Valley Medical Center
1673725	Saticoy Lemon Association
1630152	Sharper Landscaping Services, Inc.
1639252	Sierra Pacific Industries
1644204	Sierra Pacific Industries
1681342	Sierra Pacific Industries
1392813	Smithfield Foods
1666691	Square Three Inc.
1565736	Steel Craft, Inc.
1640532	Steffens Family Wines, LLC
1624458	Stencil Blast Us Inc.
1668658	Structural Glass Installation
1606387	The Soundcoat Company, Inc.
1197645	Toro Enterprise, Inc.
1663425	Trinity River Lumber Company
1611950	United Solar Electric
1621012	Urbino Construction, Inc.
1627342	Veloria DI Contracting
1580949	Ventura Harbor Boatyard, Inc.
1369696	Vista Verde Farms, Inc.
1689480	Walkers Tree Service
1627910	Walmart, Inc.
1625326	Yosca, Inc.

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

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
November 2, 2023

**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session adjourned at 12:04 p.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 12:05 p.m.