

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on December 20, 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
Jeff Mojcher, Chief Counsel
Kerry Lewis, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Aaron Jackson, Staff Attorney
Vincent Mersich, Staff Attorney
Elizabeth Clarke, Staff Attorney
Janis Jonas, Executive Secretary
Chris Jessup, Presiding Administrative Law Judge
Les Murad, Presiding Administrative Law Judge
Rheeah Yoo Avelar, Administrative Law Judge
Howard Chernin, Presiding Administrative Law Judge
Mario Grimm, Presiding Administrative Law Judge
Jacqueline Jones, Presiding Administrative Law Judge
Andrea Chavez, Attorney, Conn Maciel Carey LLP
Lisa Prince, The Prince Law Firm
Rachael Brill, Staff Attorney, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
William Cregar, Staff Attorney, DOSH
Kathryn Woods, Staff Attorney, DOSH
Luciane Yeh, Staff Attorney, DOSH
Javier Castro, Staff Attorney, DOSH
Remesuses Surban, Staff Attorney, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California
Rocio Reyes, Assistant Chief Counsel, DOSH

Minutes of December 7, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the December 7, 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.)

Action: No report.

Old Business:

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

1. Discuss precedential index.

Action: No report.

2. Discuss process for purging of files in OASIS.

Report: No report.

3. Discuss prehearing conference practices and procedures, including identification of issues at prehearing conference.

Report: The Board held a discussion regarding prehearing conference practices and procedures, including identification of issues at prehearing conference.

4. Reminder: the February 7, 2024, Board meeting will be held in West Covina and on the Zoom video platform.

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: Chair Lowry reminded everyone that the February 7, 2024, Board meeting will be held at the West Covina office.

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 spoke to staff hiring status.

Karen Halbo, a new attorney for the Appeals Board begins January 23, 2024.

Appeals Board Administrative Law Judge Jacqueline Jones announce retirement as of January 16, 2024.

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. 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: Public comments were received.

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 review.

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.)

There are no Petitions for Reconsideration for review.

Orders Dismissing Appeal:

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| 1598411 | Horizon Personnel Services
Action: The Board discussed this matter. |
| 1629779 | Priorityworkforce, Inc.
Action: The Board discussed this matter. |
| 1616914 | Sci California Funeral Services, Inc.
Action: The Board discussed this matter. |
| 1608412 | Turner's Outdoors, Inc.
Action: The Board discussed this matter. |

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 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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| 1431672 | A. Teichert & Son, LLC
<i>Whether the cited employer was in violation of lockout/tagout requirements.</i> |
| 1473644 | Amazon.com Services, LLC
<i>Whether the employer's training program was in compliance with the applicable safety order.</i> |

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- 1113026 Angelus Block Co., Inc.
Whether Employer violated lock out/tag out requirements as alleged.
Action: The Board discussed this matter.
- 1398352 Anheuser-Busch, LLC
Whether the evidence supports the holding that employer violated lockout/tagout requirements.
- 1568252 Arana Residential and Commercial Painting, Inc.
Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.
- 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.
- 1497263 Hamilton Iron Works, Inc.
Whether the evidence supports a finding that employer violated section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) be reduced.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 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.
- 1475491 Sutter Bay Medical Foundation
Whether the employer failed to comply with COVID protections as alleged.
- 1609228 The Geo Group, Inc. dba Golden State Annex (3RD PTY PFR)
Whether the motion for third party status was properly denied.

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- 1488312 The Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 1486257 The Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 1594663 Uber Technologies, Inc.
How Proposition 22 interacts with the Board's statutes and operative regulations.

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. American Fumigation Services, LLC, 22STCP04305 (1506586)
8. General Dynamics NASSCO, 37-2023-00024521 (1300984)

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. 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.

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.)

1603786	A Plus Roofing and Construction
1562193	Anheuser-Busch, LLC
1622722	Anillo Industries, Inc.
1580016	Asurion Delivery and Installation Services, Inc.
1642903	Atlas Building and Roofing Inc. Dba Atlas Roofing
1564186	Betts Company
1643995	Briles Aerospace, LLC
1533501	Brown
1597834	Calavo Growers, Inc.
1607872	City of Ontario - Police Department
1632138	CLK Development, Inc.
1597858	ClubCorp Braemar Country Club, Inc.
1625338	D&D Equipment Rental, LLC
1591616	Desert Valley Date LLC
1670961	Don Lawley Company, Inc.
1618375	Dragados USA, Inc.
1483206	Elkhorn Packing Co. LLC
1637308	Fahy Tree Service
1628039	Flowers Electric & Service Co., Inc.
1606681	Force Framing, Inc.
1632637	Freedom Forever, LLC
1490240	Gimbal Brothers LLC
1467390	Hunt Buildingworks, Inc.
1692214	Jamar Electric San Diego Inc
1640780	Jose Luis Esqueda, An Individual
1655210	LB Harvesting Inc
1655553	Los Angeles Department of Water and Power

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1622984	Madera Concrete Company, Inc.
1636759	Martinez Wood Pallets Inc.
1583188	McLane Food Service, Inc.
1593053	Mercury Plastics
1540329	Metal Container Corp.
1668697	Meza Environmental, Inc.
1594685	N Leasing Company, LLC
1660573	O'reilly Auto Enterprises LLC
1626047	Onni Contracting (California) Inc.
1618607	Pacific Farms Management, Inc.
1531392	Peet's Coffee, Inc.
1682873	Polvera Drywall Corporation
1697232	Ramada Limited Redding
1448260	Randstad USA, LLC
1592184	Raymond Handling Solutions, Inc.
1691648	Revamp Solar Energy LLC
1641665	RHP, Inc.
1625980	SA Recycling
1598032	SFPUC - CDD
1416232	Southern California Gas Company
1653335	Specialty Engineering & Manufacturing Company
1604105	Starpoint Property Management, LLC
1508686	The Vons Companies, Inc.
1627564	Titely Holdings, Inc.
1581581	Tutor Perini Corporation and O & G Industries, Inc.
1655062	US Custom Fabrication, Inc.
1675545	US Wood And Service, Inc.
1635252	VanLaw Food Products, Inc.
1666164	Vista Hill Foundation
1578257	Vopak Terminal Los Angeles, Inc.
1686922	Wespak Inc.
1566998	West Builders, Inc.
1661981	West Coast Hot Mop Inc.
1659413	West Coast Turf

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

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Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 11:29 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 11:30 a.m.