

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on January 10, 2024
Sacramento, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Patricia Hapgood, Acting Executive Officer
Kerry Lewis, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Aaron Jackson, Staff Attorney
Vincent Mersich, Staff Attorney
Janis Jonas, Executive Secretary
Chris Jessup, Presiding Administrative Law Judge
Lisa Prince, The Prince Law Firm
Dave Wiseman, Staff Counsel, CalFire
Dan Lucido, Chief Counsel, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California

Absent: Marvin Kropke

Minutes of December 20, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the December 20, 2023,
Board meeting.
Moved: Judith Freyman
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 precedential index.
Action: No report.

2. Discuss process for purging of files in OASIS.
Action: No report.

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3. Discussion regarding prehearing conference practices and procedures, including identification of issues at prehearing conference.
Report: No report.
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: Vincent Mersich reported that the State Legislators are back in session and updated the Board regarding topics being discussed.

Chairperson's Report:

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

Action: Julie Su has been renominated for Secretary of Labor by President Biden.

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: Ethics training due by January 31, 2024. Telework agreements due by February 9, 2024.
Karen Halbo, a new attorney for the Appeals Board begins 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: Aaron Jackson updated the Board on a project to update regulations.

2. Litigation update:

Action: Vincent Mersich 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:

1629781	Jobbers Meat Packing Co., LLC Action: The Board discussed this matter.
1462374	Jobsource North America, Inc. Action: The Board discussed this matter.
1596779	L & M Roof Removal, Inc. Action: The Board discussed this matter.
1619862	Super Center Concepts, Inc. Action: The Board discussed this matter.
1640774	Universal Custom Auto Body, LLC 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> |
| 1113026 | Angelus Block Co., Inc.
<i>Whether Employer violated lock out/tag out requirements as alleged.</i> |
| 1398352 | Anheuser-Busch, LLC
<i>Whether the evidence supports the holding that employer violated lockout/tagout requirements.</i> |
| 1568252 | Arana Residential and Commercial Painting, Inc.
<i>Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.</i> |
| 1490008 | Elite MD, Inc.
<i>Whether the ALJ's denial of leave to file a late appeal was correct.</i> |
| 1674336 | Finishing Touch Moulding, Inc.
<i>Whether employer established good cause for its late appeal.</i> |

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- 1497263 Hamilton Iron Works, Inc.
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.
Action: The Board voted to issue a DAR in this matter.
Moved: Judith Freyman
Seconded: Ed Lowry
Vote: 2-0
- 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.
Action: The Board discussed this matter.
- 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.
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. 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.)

1660599	24 Windward Ave. LLC
1554100	Ameri-Kleen
1653620	Angelo Vieira and Cristina Vieira (Sole Owners)
1661498	ARB Inc.
1684042	Arizandy Dominguez Grasida
1342167	Balfour Beatty Construction
1616945	Cali Concrete Corporation
1488393	California Drywall Co.
1669410	California Steel Industries Inc.
1664350	Carmel Construction West LLC
1693558	Chatsworth Products Inc.
1626046	Chick-Fil-A LLC
1659289	City of Manteca Public Works Department
1610843	Collins Roofing, Inc.
1701942	Combined Transport Inc.
1270421	Commercial Scaffolding of California, Inc.
1590024	Community Research Foundation
1577504	Cosway Company, Inc.
1667526	Custom Iron Corporation
1635763	Delta Air Lines, Inc.
1661983	Dependable Handyman Services, Inc.
1640775	Derek Lee Boner, An Individual
1662105	Diamond J Custom Farming Inc.
1604073	E.R. Structural Steel, Inc.
1509522	Eskaton Properties, Incorporated
1540628	Esparza Enterprises, Inc.
1622738	Espinoza Cable Construction
1656648	Fortune Avenue Foods, Inc.
1628074	Fowler Packing Company, Inc.
1529732	Gonsalves & Santucci, Inc.
1594689	Gorman Roofing Services, Inc.
1642175	GRC Roofing, Inc.
1653632	Hayden Products LLC
1635202	Industrial Battery Engineering Inc.
1544009	Jamison Services, Inc.

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1552332	Kim Schutz and Monte Schutz Dba Schutz Farms
1664336	Largo Concrete, Inc.
1646760	Mabry Management Company, Inc.
1659334	Mark Alvarado
1627891	MMPC Construction, Inc.
1631066	Morada Farming Company, LLC
1677230	Morley Builders Inc.
1623556	MP Manufacturer Corp.
1690464	MWG Construction Services Inc.
1453200	Nemat Inc.
1627007	O'Grady Paving, Inc.
1621599	Oltmans Construction Co.
1504891	Pacific Bell Telephone
1686305	Pacific Bell Telephone Company
1616830	Pacific Farm Management, Inc.
1418789	Pitman Family Farms
1614413	Production Framing, Inc.
1442251	Raley's
1657691	Randstad General Partner (US) LLC
1576781	RC Properties
1553266	Ross Dress for Less, Inc.
1680814	RRG Garden Farming Operations LLC
1691604	S & H Cabinets & Manufacturing, Inc.
1654666	S.J. Distributors, LLC
1558630	Santa Monica Big Blue Bus
1587595	SF Public Utilities
1564779	Southern California Permanente Medical Group
1687259	SS Project Management
1153101	Sunview Vineyards of California, Inc.
1299700	Triple B Corp.
1620666	United Natural Foods, Inc.
1630514	University of California San Diego
1699504	Ventura County Community College District
1688580	Veteran Power Infrastructure
1633278	Villara Corporation
1485798	Vino Farms, Inc.
1645884	Walmart, Inc.
1624604	Webcor Construction LP
1685339	Western Pacific Storage Solutions
1560657	Wilshire Park Place, LLC

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1677598 Young's Market Company, LLC
1675695 Youngren Tradeworks Inc.
1673200 Z3 Plumbing Corp.

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 11:25 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 11:27 a.m.