

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on February 2, 2023
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Supervising Administrative Law Judge
Sam Lucas, Supervising Administrative Law Judge
Rheeah Avelar, Administrative Law Judge
Aaron Jackson, Staff Attorney
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Bill Kroutil, Member of the Public
Bruce Wick, Risk Management Director, Housing Contractors of California
Dan Lucido, DOSH Chief Counsel
Rocio Garcia-Reyes, DOSH Assistant Chief Counsel
Denise Cardoso, DOSH Assistant Chief Counsel

Excused Absence: Marvin Kropke, Labor Member

Minutes of January 19, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the January 19, 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 hearing schedules and ALJ availability for the pilot program.

Action: No report.

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: Aaron Jackson reported that the Regulatory package is with the Department of Finance.

4. Roundtable planning.

Action: Patricia Hapgood reported that June 27, 2023, has been set as a tentative date to hold the Roundtable Seminar.

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: Ed Lowry reported that the quarterly meeting with Fed OSHA is scheduled for Tuesday, February 7, 2023.

Also, for those required, Form 700 should be submitted by April 3, 2023.

Ed discussed plans for introducing the Appeals Board in DIR's New Employee Orientation.

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: Conference room and Hearing room remodel is scheduled tentatively for February 13, 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 updated the Board on the process of reviewing the regulations.

2. Discuss status of Video Hearings. Aaron Jackson updated the Board on the process of reviewing the regulations.

Action: No report.

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: The Legal Unit 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 comments and answered questions from the public.

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 ALJ Decisions 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.)

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| 1431672 | A. Teichert & Son, LLC
Action: The Board voted to take this petition under submission.
Motion: Judith Freyman
Seconded: Ed Lowry
Vote: 2-0 |
| 1565022 | Victorio Mufflers, Inc.
Action: The Board voted to issue the Denial for this matter.
Motion: Judith Freyman
Seconded: Ed Lowry
Vote: 2-0 |
| 1555357 | Quest Diagnostics Nichols Institute
Action: The Board discussed this matter. |

Orders Dismissing Appeal:

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| 1575874 | Associated Ready Mixed Concrete, Inc.
Action: The Board reviewed this order. |
| 1559858 | Century 26 Construction, Inc.
Action: The Board reviewed this order. |
| 1505339 | Howood Company
Action: The Board reviewed this order. |
| 1565898 | Nationwide Builders, LLC
Action: The Board reviewed this order. |

Orders Denying Leave To File Late Appeal:

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| 1576231 | Pacifica Union City, LLC
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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| 1314092 | 99 Cents Only Store, LLC
<i>Whether the employer committed a foot protection violation as alleged.</i> |
| 1380273 | Bigge Crane & Rigging, Co.
<i>Whether the employer committed the alleged violation.</i> |
| 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> |
| 1490008 | Elite MD, Inc. |
| 1262720 | General Dynamics NASSCO
<i>Whether the employer followed proper procedures in rigging a load.</i> |
| 1436480 | Interline Brands, Inc.
<i>Whether the employer violated foot protection standards.</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> |
| 1465354 | Natural Alternatives International, Inc.
<i>Whether the ALJ erred in dismissing the matter.</i> |

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- 1336276 Rios Farming Company, LLC
Whether the ALJ's decision was correct.
Action: The Board to issue the DAR for this matter.
Moved: Judith Freyman
Seconded: Ed Lowry
Vote: 2-0
- 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.
- 1565022 Victorio Mufflers, Inc.
Action: The Board voted to issue a denial for this matter.
Moved: Judith Freyman
Seconded: Ed Lowry
Vote: 2-0

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)
8. USA Waste of California, Inc., 34-2022-80003841 (1384029)

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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. 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)
6. BMC West LLC, 34-2020-80003459 (1399613)
7. Hampton Tedder Electric, 34-2020-80003549 (1233597)
8. Sierra Forest Products, VCU290996 (1291481)
9. 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.)

1489471	7-Eleven
1537070	Alden John Cusick
1582906	American Metal Filter Co.
1563677	Antelope Valley Hospital Foundation
1559772	Apec International, Inc.
1568440	Bella + Canvas, LLC
1592348	BFS Group, LLC
1473488	Brent-Wood Products Inc.
1602822	Cal Trans
1476248	Cantaloupe Holdings, LLC
1520256	Clayco, Inc.
1506972	Clearwater Landscape Services
1596745	Climate Pros, LLC
1472340	Coca-Cola North America Group
1485062	Core-Mark International, Inc.
1630490	County of Colusa
1336380	Crew, Inc.
1536791	Domries Enterprises, Inc.
1374156	Eco.Logic Brands, Inc.
1492117	Farm Labor Service of Central Cal, Inc.
1599342	Five Star Woodland, Inc.
1580011	Flatiron West, Inc.
1602398	Freedom Forever, LLC
1563164	Harbor Distributing LLC
1554963	JCF Farm Labor Contractor, Inc
1577540	Jetton Construction, Inc.
1566907	K.L.K. Young Meat Market, Inc.

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1518316	Kaiser Foundation Health Plan, Inc.
1329229	KC Paving, Inc.
1332489	L & S Framing, Inc.
1606657	La Superior Super Mercados
1567626	Larry F. Kandarian
1457824	Larry Homen
1557012	Lascari's and Sons, Inc.
1578127	Los Angeles County Fire Department, Fire Station
1590018	Marie Grabill, an Individual
1539122	Marlene Ivcevich
1554694	Midway Construction
1546203	Milk Specialties Global
1434352	Mozzini Ranch
1551759	P & R Dagorret, Inc.
1598398	Pacific Spawn Company
1473875	Panorama Meadows Nursing Center, LP
1515466	PCC Aerostructures ADI
1630443	People Ready Skill Trades, Inc.
1601180	Premium California Foods, Inc.
1586301	Quest Diagnostics Incorporated
1556956	Rancho Toyota Recycling, Inc.
1431357	Ray Tech Professional Painting, Inc.
1568170	Reliance Inspection, Inc.
1540929	Rose & Shore, Inc.
1600274	Ruppert, Inc.
1519369	Safeway, Inc.
1543363	SG Construction & Framing Inc.
1542678	Shaw & Sons, Inc.
1488602	Sierra View Homes
1558362	South Coast Inflatable, LLC
1385931	St. Francis Electric, LLC

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1615271	Takhar Farm
1579509	Torrance Refining Company, LLC
1594124	Torrance Refining Company, LLC
1556751	Trader Joe's #49
1535789	Tree Sculpture Group, a California Corporation
1621327	Trinity International Industries, LLC
1301407	Tutor Perini/Zachry/Parsons, a Joint Venture
1598027	Valroy Construction, Inc.
1517051	Walmart Associates, Inc.
1608665	Walmart, Inc.
1545050	Washington Ornamental Iron Works, Inc.
1520776	Wonderful Pistachios & Almonds, LLC

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 10:35 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 10:37 a.m.