

State of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on February 19, 2025
Sacramento, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Executive Officer
Kerry Lewis, Presiding Administrative Law Judge
Sam E. Lucas, Presiding Administrative Law Judge
Weiru Wang, Administrative Law Judge
Aaron Jackson, Chief Counsel
Jeffrey Mojcher, Chief Counsel Emeritus
Vincent Mersich, Staff Counsel
Karen Halbo, Staff Counsel
Scott Pease, Operations Manager
Maria Rios, Legal Analyst
Christine Vandermeer, Senior Legal Typist
Beth Reiken, Executive Secretary
Javier Castro, Staff Counsel, DOSH
Keith Mackenzie, Staff Counsel, DOSH
Lisa Friedman, Staff Counsel, DOSH
Rachel E Brill, Staff Attorney, DOSH
William Cregar, Retired Annuitant, DOSH
David Wieseman, Staff Counsel, Cal Fire
Kevin D. Bland, Ogletree Deakins

Notice of remote attendance:

As required by Government Code Section 11123.5, subdivision (d), notice is hereby given that Board member Marvin P. Kropke will be participating remotely pursuant to Government Code Section 11123.2, subdivision (j), paragraph (2), and Board member Judith Freyman will be participating remotely pursuant to Government Code Section 11123.2, subdivision (j), paragraph (1).

Request for remote attendance:

Member Marvin Kropke made a motion requesting to attend the March 5, 2025 and March 19, 2025 board meetings remotely pursuant to Government Code section 11123.2, subdivision (j)(2)(A).

This motion was seconded by Judith Freyman.

The Board voted to approve the remote attendance request 3-0.

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Minutes of February 5, 2025, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the February 5, 2025 meeting as amended.
This was moved by Marvin Kropke.
It was seconded by 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 the newly prepared informational stakeholder videos (re “How to File an Appeal”) and discuss whether to post on OSHAB’s website. In addition, discuss whether the Board should explore any other avenues to publicize the availability of these videos to stakeholders.

Action: The Informational stakeholder videos (re “How to File an Appeal”) have been posted on OSHAB’s website. Scott Pease is working towards advertising them to the public.

2. Discuss proposals and comments received at the recent roundtable meeting.

Action: Scott Pease will be making edits to the Stakeholders Memorandum and will send to the Board Members. Once finalized, the notes will be sent to those who attended, the mailing list, and discussed in a future public session.

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: Ed Lowry was reappointed as Chairperson. He is working with the Rules Committee to confirm his appointment.

Board Members’ Reports:

(Hear reports from Board members on activities and issues affecting the Appeals Board.)

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Action: Marvin Kropke voiced his concerns regarding cuts happening at the Federal level and if they will affect the DIR. Judith Freyman had no report.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: The top candidate for the Administrative Law Judge (ALJ) position will be submitted to HR for review soon. Patricia Hapgood is also finalizing the hiring for the new Associate Government Program Analyst (AGPA) position. She has a new Retired Annuitant and Student Assistant starting next week. HR has received 248 applications for the Office Technician (OT) position, however, at this time, they have not released those to us.

Staff Reports:

(Reports from the Supervising ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss and may take action on proposals for new regulations or proposals for modifications to, or repeal of, existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: Karen Halbo has no new updates at this time.

2. Litigation Update

Action: Aaron Jackson reported on three Superior Court cases 1.) Elizabeth Clarke's opposition in Angelus Block Co. Inc. (1743773) was filed, and the hearing is set for March 28, 2025. 2.) Arana Residential and Commercial Painting, Inc (1568252) has a case management conference set for April 1, 2025. 3.) Aaron Jackson's Answer in Waterproof and Roofing Solutions (1690885) was filed and the trial setting conference is set for March 18, 2025.

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: Attendee Kevin Bland proposed procedural or rule making changes to the timelines for uploading exhibits. Presiding

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Judge Sam E. Lucas and Chief Counsel Aaron Jackson made follow-up comments about the process.

Action: Attendee Dave Wiseman proposed exhibits should additionally be uploaded as one document, as scrolling in one document is easier than looking for documents uploaded as separated by exhibits.

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.)

1580564 Vardan Geovshanyan
Action: Board Discussed this matter

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.)

1717277 La Canasta Produce

Action: The Board voted to issue a Denial of the Petition for Reconsideration
 This motion was moved by Judith Freyman.
 It was seconded by Marvin Kropke

Orders Dismissing Appeal:

1716139 Huerta Legacy, Inc
Action: The Board discussed this matter.

1513035 JR Concrete Construction Inc.
Action: The Board discussed this matter.

1369742 Reyco Ag, Inc.
Action: The Board discussed this matter.

1666284 San Diego Humane Society and S.P.C.A
Action: The Board discussed this matter.

1718594 The Camp NR LLC
Action: The Board discussed this matter.

1600292 The Nevell Group, Inc.@Sonic Homes COVINA

Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

The are no Orders Denying Leave to File Late Appeal

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> |
| 1466722 | Bragg Investment Company, Inc.
<i>Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.</i> |
| 1647115 | Concord Farms, Inc.
<i>Whether there was good cause for the late appeal.</i> |
| 1420923 | Drill Tech Drilling & Shoring, Inc.
<i>Whether the Employer failed to enforce its IIPP as required.</i>
<i>Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.</i> |
| 1499137 | Employbridge Holding Company
<i>Whether Employer violated IIPP requirements as alleged.</i> |

Action: The Board voted to issue a Decision After Reconsideration as amended.
This was moved by Marvin Kropke
It was seconded by Judith Freyman

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The vote was 3-0

- 1235643 Granite Construction Company
This matter is on remand from Sacramento County Superior Court.
- Action: The Board voted to issue the Amended Decision After Remand.
This was moved by Judith Freyman.
It was seconded by Marvin Kropke.
The vote was 3-0.
- 1488312 Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1371294 KPRS Construction Services, Inc.
Whether the employer violated section 1632 as alleged? Whether the ALJ's ruling that the Division did not meet its burden of proof regarding the employer's IIPP was correct.
- 1486257 Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 1235941 McCarthy Building Companies, Inc.
Whether the Division proved exposure to Valley Fever.
- 1355061 Republic Electric West, Inc.
Whether fall protection requirements apply to the work. Whether the IEAD was established. Whether penalties were duplicative. Whether the Employer exercised reasonable diligence. Whether it was an error to reduce the classification of the violations and reduce the penalties.
- 1760736 RJS Electric
Was the ALJ's Order Denying Late Appeal correctly decided?
- 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 Hospitals dba Mills-Peninsula Medical Center

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Was the ALJ correct in granting Employer's appeals of the citations alleging violations of section 342, subdivision (a) and section 5199, subdivision (i)?

- 1454931 Tesla Inc.
Whether the ALJ properly affirmed the citations and, if so, whether Employer committed a serious accident-related violation of section 3328, subdivision (a).
- 1486176 Tutor Perini Corporation and O&G Industries, Inc.
Whether the Employer committed a serious accident-related violation of section 3328, subdivisions (a)?

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. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
2. Davis Development Company, 34-2020-80003373 (1226084)
3. Hill Crane Service Inc., 34-2021-80003744 (1135350)
4. USA Waste of California, Inc., 34-2022-80003841 (1384029)
5. Angelus Block Co., Inc., CIVSB2417796 (1113026)
6. Hamilton Iron Works, Inc., 24WM000100 (1497263)
7. Arana Residential and Commercial Painting, Inc. (1568252)
8. Western Oilfields Supply Company, 24WM000169 (1498595)
9. Waterproofing and Roofing Solutions, Inc., 24STCP03693, (1690885)

Appellate Court:

There are no cases currently filed with the Appellate Court.

Other Items:

There are no Other Items.

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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.)

1482523	A Team Services, Inc.
1747925	Able Maintenance Inc
1536321	AFG Farm Labor Contracting, Inc.
1657636	AI California LLC
1694720	Aluminum Precision Products Inc
1611704	American Airlines Group, Inc. et al.
1660546	AMP United, LLC.
1518193	Artisan Bakers
1741901	Autry Plumbing Inc
1671774	Ayoob & Peery Plumbing Company, Inc.
1745149	Bayview Demolition Services Inc.
1726629	Best Formulations, LLC.
1579415	Bigge Group
1591744	BLT Enterprises of Fremont, Inc.
1640586	Brightview Tree Care Services, Inc.
1385292	Browning Contractors, Inc.
1520805	CA Transportation-Highways
1663013	California Waste Services, LLC
1505289	Cen Cal Builders & Developers, Inc.
1601446	Citistaff Solutions, Inc.
1679703	Costco Wholesale Corporation
175077	Cystal Geyser Water Company
1575538	Double O Enterprises, Inc.
1626957	DS Fibertech Corp.
1666821	EMR Restaurant Inc
1740098	Express Greenhouse, Inc.
1730067	F. Radich Motors Inc
1574277	FedEx Express
1757485	Felbro Food Products, Inc.
1609362	Glendale Holdings, LLC
1622983	Golden Ag Management, Inc.
1682066	Headwaters Construction Building Group, LLC
1681289	Hilton Hotel Employer LLC
1749535	Historic Santa Maria Inn LLC
1609225	HR Direct Services, Inc.
1742134	Husks Unlimited Inc
1683473	Intermountain Slurry Seal Inc.
1721767	Kenneth C Ray
1638014	Kindeva Drug Delivery
1620352	Legacy Framers, Inc.

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1702894	Los Angeles Turf Club
1604972	Lyneer Staffing Solutions, LLC
1775262	Martin Hydroblasting Services, Inc.
1531919	McMahon Steel Co.
1735021	Mercury Plastics Inc
1610840	Michaels Corporation
1651962	Montebello Unified School District
1747315	Mosaic Materials Inc.
1763368	Mr Mazda
1724489	Neovia Logistics Services, LLC.
1583691	Nutrien AG Solutions, Inc.
1721908	Oakwood Village Assisted Living and Memory Care
1738703	Ocean Park Mechanical Inc.
1757786	Omega Extruding Corp. of California
1570110	Pabco Clay Products, LLC
1727193	Pacific Forge Inc
1601004	Packaging Corporation of America
1625093	Phillips 66 Company
1651741	Phillips 66 Company
1705411	Phillips 66 Company
1717588	Phillips 66 Company
1760359	Proframe, Inc
1770176	Rajkovich Brothers Partnership, LP
1683402	Rancho Valhalla Nursery
1676577	Reliable Construction Service
1620229	Ruiz Food Products, Inc.
1694714	Sacramento Valley Walnut Growers, LLC
1604116	Safeway Northern California Division
1600822	Safeway, Inc. 1483
1752214	San Diego County Sheriff's Department
1544205	Savemart Supermarkets
1689833	Solarguard Foam Systems, Inc.
1536816	Southwest Traders, Inc.
1773084	Sun Pacific Farming Cooperative Inc.
1757747	Tamita Farms, LLC
1670639	Target Corporation
1677645	Target Corporation Store #2465
1526613	Taylor Farms Pacific, Inc.
1679148	Taylor Farms Pacific, Inc.
1615018	TBW, LLC
1542278	Tesla Energy Operations, Inc.
1694152	The JF Will Co., Inc.
1731135	Thunderbolt Wood Treating Co., Inc.
1762282	Value Vinyl Extrusions, Inc.
1536322	W.O.R.M. Ag, Inc.
1610027	Walmart

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1710194	Walter Robertson
1559602	Weber Distribution, LLC
1660027	West Coast Arborists, Inc.
1670775	Western Tree Nursery, Inc.
1510283	XL Concrete Masonry, LLC

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 10:42 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 10:43 a.m.