

State of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on March 5, 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
Christopher Jessup, Administrative Law Judge
Rheeah Yoo Avelar, Administrative Law Judge
Leticia Tanner, Administrative Law Judge
Weiru Wang, Administrative Law Judge
Aaron Jackson, Chief Counsel
Jeffrey Mojcher, Chief Counsel Emeritus
Elizabeth Clarke, Staff Counsel
Vincent Mersich, Staff Counsel
Karen Halbo, Staff Counsel
Scott Pease, Operations Manager
Anne Marie Plascencia, Senior Legal Typist
Christine Vandermeer, Senior Legal Typist
Beth Reiken, Executive Secretary
Denise Cardoso, Assistant Chief Counsel, DOSH
Rocio Reyes, Assistant Chief Counsel, DOSH
John Steve Barnett, Staff Counsel, DOSH
Keith Mackenzie, Staff Counsel, DOSH
Kita Banks, Cal Fire Staff Counsel
Bruce Wick, Risk Management Director, Housing Contractors of California
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:

No report.

Minutes of February 19, 2025, Meeting:

(Approve or amend minutes of previous board meeting.)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 5, 2025

Action: The Board approved the minutes of the February 19, 2025, meeting.
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: No report.

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

Action: Scott Pease and Board Chair Ed Lowry are working toward finalizing the Memorandum.

Legislation:

(Review and discuss current legislation which may affect the appeals Board.)

Action: The timeframe for new legislation has closed, but Elizabeth Clarke mentioned the following relevant changes: AB 596- Prevents anyone from being asked not to wear a safety mask. AB 845- Workers knowing their rights to protect themselves during extreme heat. AB1371- Repeals section 6311 and introduces a new version detailing when an employee refuses to perform a hazardous task. SB20- Fabrication on activities with Stone Slabs. All of the assembly bills are presently in committees.

Chairperson’s Report:

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

Action: Board Chair Ed Lowry mentioned the latest memo from Governor Newsom regarding the telework schedule and advised there is no further information at this time for him to share, and reminded everyone there is no implementation until July 1st. Board member Judi Freyman asked if the Board Meetings will continue to be available to the public via

Zoom as it has been successful in bringing in attendees. Ed Lowry advised they we would continue to offer Zoom as an option to the public.

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: The top candidate for the Administrative Law Judge (ALJ) position has been selected. Three temps have been added to assist with the appeals initiation process. We have received 284 applications for the two Office Technician (OT) positions. Applications have been scored, and interviews will begin early next week. Marlene Harris' last day is Friday.

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 the following Superior Court cases: 1.) The Board has received a writ for the Geo Group, Inc., (1609228), 2.) Angelus Block Co. Inc. (1743773) is set for hearing on March 28, 2025, 3.) Waterproof and Roofing Solutions (1690885) is set for a trial setting conference on March 18, 2025, 4.) Western Oilfield Supply Company (1498595) is set for a trial setting conference on March 18, 2025, 5.) Arana Residential and Commercial Painting, Inc. (1568252) has a Case Management Conference set for April 1, 2025.

Any matter not completed at this meeting may be continued to subsequent meetings.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 5, 2025

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 again brought up his request to propose procedural or rule making changes to the timelines for uploading exhibits and gave new examples.

Attendee Denise Cardoso asked clarifying questions to Attendee Kevin Bland on his concerns with the timelines.

Administrative Law Judge Christopher Jessup advised that creating timelines also creates more issues for the ALJ to sanction for failure to perform.

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 Decision at this time.

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.)

1684649 Hasa, Inc.

Action: The Board voted to issue a Denial of the Petition for Reconsideration
This motion was moved by Marvin Kropke.
It was seconded by Judi Freyman
The vote was 3-0

1692964 L & S Framing, Inc.

Action: The Board voted to take this matter under submission.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 5, 2025

1549611 Metcalf, Inc.

Action: The Board voted to take this matter under submission.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

1724957 San Bernardino County Fire Protection District

Action: The Board voted to issue an order of remand reinstating the appeal in this matter.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

Orders Dismissing Appeal:

16964678 AV Guys

Action: The Board discussed this matter.

1643391 Category Construction LLC

Action: The Board discussed this matter.

1659384 Crown Precision

Action: The Board discussed this matter.

1237935 D'Ybanag Construction Company

Action: The Board discussed this matter.

1677508 DFA Dairy Brands Fluid, LLC

Action: The Board discussed this matter.

1493320 Gonzalo Luis Jimenez

Action: The Board discussed this matter.

1638538 H Interiors

Action: The Board discussed this matter.

1524348 Higuera Tree Care

Action: The Board discussed this matter.

1768865 Industrial Container Services Inc

Action: The Board discussed this matter.

1525727 Kingsborough Atlas Tree Surgery, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 5, 2025

Action: The Board discussed this matter.

1614581 William Little Real Estate Rental Agency
Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

1698203 Jasbir Singh
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 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.

- 1431672 A. Teichert & Son, LLC
Whether the cited employer was in violation of lockout/tagout requirements.
- 1473644 Amazon.com Services, LLC
Whether the employer's training program was in compliance with the applicable safety order.
- 1466722 Bragg Investment Company, Inc.
Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.
- 1647115 Concord Farms, Inc.
Whether there was good cause for the late appeal.
- 1420923 Drill Tech Drilling & Shoring, Inc.
*Whether the Employer failed to enforce its IIPP as required.
Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.*
- 1488312 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
March 5, 2025

- 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.
- Action: The Board discussed this matter.
- 1475491 Sutter Bay Hospitals dba Mills-Peninsula Medical Center
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)
10. The Geo Group, Inc., 25WM000023 (1609228)

Appellate Court:

There are no cases currently filed with the Appellate Court.

Other Items:

There are no Other Items.

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.)

1552796	180 Snacks, Inc
1713270	Alexia Maria LLC
1261322	Alhambra Foundry Company LTD
1751031	Alia Corp
1567464	American Civil Constructors West Coast, LLC
1516789	American Mobile Nurses Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 5, 2025

1758043	Aqua Hero, Inc
1757085	Baldwin Contracting Company, Inc.
1772636	Beachwood Car Wash
1729069	Bob Marshall Construction Company, Inc.
1763878	Braga Ranch, Inc.
1322074	BWM, Inc.
1698792	California Drywall
1686022	California Solar Integrators, Inc.
1576930	Central Valley Meat Co., Inc.
1627886	City of Los Angeles- Department of General
1663953	City of Private Security Inc.
1669191	Consolidated Electrical Distributors, Inc.
1760320	Cook's Custom Painting Inc
1467946	Davey Tree Surgery Company
1711442	Del Monte Foods, Inc.
1586623	Euro Cabinet and Woodworking
1638531	G & M Mattress and Foam Corporation
1649817	General Dynamics
1588189	GP Builders, Inc.
1760207	GQ Plastering Inc.
1603305	Granite Store Building Supply
1721439	H N S Services Inc.
1508758	Hanson Aggregates Pacific Southwest, LLC
1746045	Harding RV Inc.
1555648	Infinity Service Group, Inc.
1736523	IO7 Management, Inc.
1750166	J and A Dairy, LLC.
1659411	JCM Engineering Corp
1596958	JD2 Inc
1763599	Jetro Holdings Inc.
1631940	Kaiser Foundation Hospitals
1763751	KCI Newport Inc
1737795	Kelly Services, Inc.
1710109	Labella's Pool Service & Supplies
1699530	Landmarc Environmental Systems, LLC
1658829	Largo Concrete Inc.
1751166	Lathrop Construction Associates, Inc.
1694128	Major Plumbing Co Inc.
1680846	Mark Kim
1774996	MGP Caliper Covers LLC
1731679	Nexsentio
1760712	Nitricity Inc.
1510385	Oleander Holdings, LLC
1596624	Orion Plastics Corporation
1749447	Pacifica Hotel Company
1705454	Phillips 66 Company

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 5, 2025

1706534	Producers Dairy Foods, Inc.
1633091	Schiller Roofing, Inc.
1623106	Shimmick Construction
1621582	Shimmick Construction Co., Inc.
1669851	Solano County General Services Facilities Division
1667394	Sonesta International Hotels Corp
1723025	Staples Construction Company, Inc.
1380493	Suren Karapetyan
1586611	TDG Operations, LLC
1535452	The Model Bakery LLC
1775034	The Peterson Family
1565008	Thompson Pipe Ground, Inc.
1778684	Tractor Supply Company
1733313	United Rock Products Corporation
1785099	Unity Forest Products Inc.
1754416	Valley View Foods Inc.
1753591	Vode Lighting LLC
1723729	West Coast Drywall & Company Inc
1743734	Westtech Roofing Inc.
1591050	Westech Systems, LLC
1753120	Yoda Painting Inc.
1659399	Zillo Inc

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:15 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 11:16 a.m.