

State of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on April 9, 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
Jennie Culjat, Administrative Law Judge
Leticia Tanner, Administrative Law Judge
Rheeah Yoo Avelar, Administrative Law Judge
Kevin Reedy, Retired Annuitant, CalOSHAB
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
Beth Reiken, Executive Secretary
Denise Cardoso, Assistant Chief Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
John Steve Barnett, Staff Counsel, DOSH
Kathryn Woods, Staff Counsel, DOSH
Keith Mackenzie, Staff Counsel, DOSH
Ina Fitzgibbon, Office of Director, DIR
Fred Walter, Conn Maciel Carey LLP

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 March 19, 2025, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the March 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: Patty Hapgood noted that we will be adding the subject of abatements to our next meeting agenda.

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: No report.

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 reported that he, Patty and Scott recently met with the new Chief Deputy Director of DIR.

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.)

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Action: Patty Hapgood reported on her efforts to secure a location for the Board's next round table meeting in Sacramento and provided an update on the Board's hiring efforts.

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 provided economic and fiscal analysis number totals for the proposed regulation changes related to the Prehearing and Hearings rulemaking and requested the Board's approval to submit the ISOR, notice of proposed rulemaking, and the other required documents to DIR to start the review and approval process that must be completed before the Board can initiate the rulemaking with notice publication.

The Board approved the submission of the ISOR and noticed of proposed rulemaking to DIR.

This was moved by Marvin Kropke.

It was seconded by Judith Freyman.

The vote was 3-0.

2. Litigation Update

Action: Aaron Jackson provided the following updates: Angelus Block Co., Inc. (1113026) was heard in superior court on March 28, 2025, and has been taken under submission, the Board is working on responding to writs in the matters of the Geo Group, Inc. (1609228) and Uber Technologies, Inc. (1594663), finally, there are hearings coming up on June 3, 2025, and July 22, 2025, in the matters of Baldi/Arana Residential and Commercial Painting, Inc. (1568252) and Waterproofing and Roofing Solutions, Inc. (1690885), respectively.

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.)

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Action: The Board heard members of the public on matters including abatement issues, pending litigation cases, "Zoom Bombing" and questions about current rulemaking changes. The issue of abatement will be added to the agenda for the April 23, 2025, meeting to be discussed further at that time. Ina Fitzgibbon commented that she appreciated hearing from the Board members and would take that feedback to her colleagues to address the concerns of the Board members.

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.)

1602873 White Forest Nursery, Inc.

Action: The 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.)

1660546 AMP United, LLC

Action: The Board voted to issue an order extending time to act on the petition for reconsideration
This motion was moved by Marvin Kropke.
It was seconded by Judi Freyman
The vote was 3-0

1677508 DFA Dairy Brands Fluid, LLC

Action: The Board voted to issue an order reinstating and remanding the appeal.
This motion was moved by Marvin Kropke.
It was seconded by Judi Freyman
The vote was 3-0

1762256 Surface Solutions

Action: The Board voted to issue an order reinstating and remanding the appeal.
It was seconded by Judi Freyman
The vote was 3-0

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1763124 Michael Muhareb dba Old Mill Cafe

Action: The Board discussed this matter.

Orders Dismissing Appeal:

170382 Argo Pack, LLC

Action: The Board discussed this matter.

1632663 Chartwell Staffing Solutions

Action: The Board discussed this matter.

1649308 Elite Rooter San Diego

Action: The Board discussed this matter.

1688881 Gilton Resource Recovery/Transfer Facility, Inc.

Action: The Board discussed this matter.

1727665 Glendale Adventist Academy

Action: The Board discussed this matter.

1627560 Infratel, Inc.

Action: The Board discussed this matter.

1580703 Lowell Joint School District

Action: The Board discussed this matter.

1731014 Murphy Industrial Coatings, Inc.

Action: The Board discussed this matter.

1663480 RD Waldman Construction Inc.

Action: The Board discussed this matter.

1728000 Trans Freight Enterprises Inc.

Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

There 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

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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.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.

Action: The Board discussed this matter.
- 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.

Action: The Board discussed this matter.
- 1692964 L & S Framing, Inc.

Whether Employer committed the violations alleged in the citations, including alleged violations of section 1704, subdivision (f) [failure to adopt a compliant Code of Safe Practices]; section 1704, subdivision (b)(2) [failure to ensure that nailers and staplers were operated in accordance with manufacturer's recommendations], and section 1704, subdivision (g), 1509, and section 3203 [inadequate safety training on the use of nailers and staplers].

- 1235941 McCarthy Building Companies, Inc.
Whether the Division proved exposure to Valley Fever.
- 1549611 Metcalf, Inc.
Whether Employer committed the violations alleged in the citations, including alleged violations of section 3203, subdivision (a)(6) [failure to correct an unsafe condition]; section 1621, subdivision (b) [failure to provide toeboards on scaffolding]; and (3) section 3276, subdivision (e)(15)(B) [safe use of ladders], and whether Employer established its affirmative defense.
- 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
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)
11. Uber Technologies Inc (1594663)

Appellate Court:

1. General Dynamics NASSCO (1300984)

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.)

1694334	Adrian J Ventura, An Individual
1741906	Advanced T I Inc.
1699131	Air Methods Corporation
1680266	Alpha Polishing Corporation

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1623576	American Tire Recycling, LLC
1627510	Androp Packaging, Inc.
1571875	Arco/Murray National Construction Company, Inc.
1530540	Ardenbrook, Inc.
1563914	Artesia Sawdust Products
1603453	Atlantic Solutions Group, Inc.
1697943	Beacon Roofing
1745510	Best Formulations LLC
1604099	Boxed Out, LLC
1781861	Brashear Construction and Concrete Plumbing Inc
1599364	Brightview Landscape Services, Inc.
1752800	Calderon Drywall Contractors Inc.
1573536	California Department of Corrections and Rehabilitations
1708283	California State University Channel Islands
1745051	Carlton Senior Living LLC
1601345	Cavanaugh Machine Works, Inc.
1600345	Cen Cal Builders & Developers, Inc.
1759438	Champion Cabinets Corporation
1605303	Chrisp Company
1786378	Cirks Construction Inc.
1576602	Contra Costa County- Employment & Human Services
1666278	Costco Wholesale Corporation
1757186	County of Lassen
1675523	Covenant Care California LLC
1761285	Cowboy Roofing Inc
1769602	De Mattei Construction Inc.
1777930	Direct Staffing, LLC
1534409	Duda Farm Fresh Foods
1565976	EDCO Disposal Corporation
1700495	Elliott/Drinkward Construction Inc.
1758765	Euro Pacific Coatings, Inc.
1728559	Evergreen Landscape & Sprinklers Inc.
1720164	FD Thomas, Inc.
1607378	Federal Realty OP, LP
1688582	Ferrocrite Builders Inc.
1747600	Fidel Navarro
1554352	Fresno Surgery Center, LP
1759393	Garvey School District
1759754	Gary's Radiator Service
1536108	General Dynamics Nassco
1731529	Gonsalves & Santucci, Inc.
1588647	Granite Rock Company
1746414	Great Valley Inc.
1656900	Heritage-Crystal Clean
1777293	Hilfiker Pipe Company
1759658	Hoffman Construction Company of California Inc.

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1742175	Hoskins Equipment LLC
1554502	JB Interiors
1760437	Joseph Crown Construction & Development, Inc.
1756184	Joseph Quinn Inc
1775081	KDC West, LLC
1750262	Lakmann Builders, Inc.
1695792	Lamar Central Outdoor LLC
1775343	Landscape Development, Inc.
1762071	Latino Theater Company
1749873	Local Delivery Service LLC
1700332	Lux Builders Group Inc
1544662	M4 Concrete and Drywall
1700800	Madison Window Products
1782035	McCullough Construction Inc
1762673	Mehar Car Wash LLC
1761281	Moto Engineering & Prototype, Inc.
1692567	MPC General Construction
1660028	MSL Properties, MBK Senior Living
1650497	National Ready Mixed Concrete Co.
1761438	New Carrott Farms, LLC
1735873	Noble Construction Services, LLC
1781870	Northern California Roofing Co.
1778994	O2 Employment Services, Inc.
1729596	Orchard's Tree Service Inc
1750239	Pacific Builders of SLO, Inc.
1751828	Pallet Market, Inc.
1570574	Petersen Builders, Inc.
1723442	PP Tango CA LLC
1580926	Pro-Form Laboratories LLC
1767416	Prospect Medical Holdings, Inc.
1768605	Pyramid for Construction Inc.
1701975	Ramirez Roofing & Gutters, Inc.
1686384	Raymond Velasquez Ground Inc.
1762025	Redding Tile & Stone Works, Inc.
1647838	Restoration Hardware, Inc.
1762287	Salvador Sanchez
1616322	Selma Pallet, Inc.
1569044	Signal Restoration West, Inc.
1677779	Stafford Crane Group
1706962	Stanford Health Care
1692437	Stanislaus Food Products Company
1771810	Stauts Building Company, Inc
1744435	Steve Urquidez
1559118	Sun-Maid Growers of California
1725468	Swinerton
1765925	Tehama Tire Service Inc

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1698219	The Elevator Company
1641369	The Mon-May Company Inc.
1507245	The Von Companies, Inc.
1635510	Therma LLC
1560281	Timberworks Construction, Inc.
1772781	Titan Senquest Management, Inc.
1754205	Treesap Farms, LLC
1592173	United Parcel Services, Inc.
1638660	Universal Building Maintenance, LLC
1615688	UPS
1633063	VCA Animal Hospital
1604962	VCA Animal Hospitals Inc.
1780481	Walmart Inc.
1765488	Walmart, Inc.
1713790	Weber General Engineering Inc.
1776172	Wisoman Foods, Inc.

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:33 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 11:34 a.m.