

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on March 6, 2024
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Jeff Mojcher, Chief Counsel
Patricia Hapgood, Acting Executive Officer
Kerry Lewis, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Aaron Jackson, Staff Attorney
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Karen Halbo, Staff Attorney
Scott Pease, Staff Services Manager
Janis Jonas, Executive Secretary
Rheeah Yoo Avelar, Administrative Law Judge
Karin Umfrey, Attorney, WorkSafe
Rocio Reyes, Assistant Chief Counsel, DOSH
Dan Lucido, Chief Counsel, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
Silas Shawver, Staff Counsel, DOSH
Dave Wiseman, Staff Counsel, Cal Fire

Minutes of February 21, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the February 21, 2024,
Board meeting.
Moved: Marvin Kropke
Seconded: 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. Discussion of precedential index.

Action: 8 cases were reviewed and approved to be added to the precedential list. The list will be posted on the OSHAB website.
Presiding Administrative Law Judge Kerry Lewis acknowledged Administrative Law Judge Christopher Jessup's work on recommending cases to be added to the precedential list.
Moved: Judith Freyman
Seconded: Marvin Kropke
Vote: 3-0

2. Discuss process for purging of files in OASIS.

Action: No report.

3. Discussion regarding ideas to improve the efficiency and effectiveness of the Board's prehearing and hearing practices and procedures, including the Board's appeals initiation and prehearing conference processes.

Action: No report.

Legislation:

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

Action: Elizabeth updated the Board on Legislation highlighting three bills.
AB2264 would require employees to obtain heat illness prevention certification from Cal/OSHA and maintain the certification during employment, starting July 1, 2028.
AB3043 would protect artificial stone fabrication and countertop workers from contracting silicosis, a fatal lung disease caused by breathing in tiny bits of silica, a common mineral found in quartz, sand and many other rock types.
AB3106 would require the Standards Board to adopt a standard that ensures workers in California continue to receive their pay and benefits while excluded from the workplace due to testing positive for or displaying symptoms of COVID-19.

Chairperson's Report:

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

Action: Chair Lowry mentioned in his report that as part of his required training he enrolled in a document remediation course in order to better understand its process.

He also mentioned that the DOSH Advisory Committee meeting is scheduled for March 28, 2024

Board Members Reports:

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

Action: Board Member Judith Freyman reported on an article in the Sacramento Bee regarding the State employee staffing shortages.

Ms. Freyman also shared information from a newspaper article regarding work safety and recommended two British Medical Journal articles, one on the Impacts of Covid on the 2024 Presidential Election and the other on US Workers during the pandemic.

Board Member Marvin Kropke apologized for the need to cancel the February 7, 2024, Board meeting due to the severe storms in Southern California. He is looking forward to rescheduling the Board meeting to be held in the West Covina office.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Acting Executive Officer Patricia Hapgood welcomed Scott Pease, the Board's new Staff Services Manager, and updated the Board on the status of hiring two Administrative Law Judges for the Sacramento office. Interviews concluded yesterday. Interviews for a Senior Legal Typist are underway.

A draft of the FAME report was distributed and proved to be favorable to the Appeals Board.

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: Karen Halbo reported on the progress of reviewing the current regulations.

2. Litigation update:

Action: Jeff Mojcher 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: Denise Cardosa spoke to the heat illness bill and stated the regulation relates to all outdoor workers. 3395A1

The Board revisited the inquiry from the prior meeting about another round table and agreed to discuss dates at the next meeting.

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.)

1399613 BMC West, LLC
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.

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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> |
| 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> |
| 1420923 | Drill Tech Drilling & Shoring, Inc.
<i>Whether the Employer failed to enforce its IIPP as required.
Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.</i> |
| 1497263 | Hamilton Iron Works, Inc.
<i>section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) should be reduced.</i> |

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- 1233597 Hampton Tedder Electric (DOSH)
Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1465354 Natural Alternatives International, Inc.
Whether the ALJ erred in dismissing the matter.
- 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.
- 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.

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)

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4. Hill Crane Service Inc., 34-2021-80003744 (1135350)
5. USA Waste of California, Inc., 34-2022-80003841 (1384029)
6. American Fumigation Services, LLC, 22STCP04305 (1506586)
7. 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.
3. Superior Court cases that also involve or relate to appeals pending before the Board.
Lyft, Inc., 30-2023-01368387-CU-MC-CXC (1594664)
Uber Technologies, Inc., 30-2023-01330884-CU-JR-CXC (1594663)

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.)

1473477	A Vidovich Construction, Inc.
1687272	ABM
1669375	ACEMI Nursery, Inc.
1466230	Alberto Godoy

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1552409	All Ready Farm Labor, Inc.
1697731	B&M Builders Inc.
1685165	Berkman Enterprises, Inc.
1632616	Blue Line Foodservice Distribution, Inc.
1702384	Brentwood Embroidery & Sewing, Inc.
1694618	Byers Enterprises, Inc.
1710706	California Department of Parks And Recreation
1649895	Carl Becker Construction, Inc.
1696665	Cedar Valley Manufacturing, Inc.
1681829	Circle Pizza LLC
1560079	Costco Wholesale Corporation
1573154	Costco Wholesale Corporation
1399221	CSI Electrical Contractors, Inc.
1600330	Designed II, LLC
1633366	DGA Services, Inc.
1691864	Don Vito Ozuna Food Corp.
1656879	Earthtone Construction, Inc.
1694032	Etchandy Farms, LLC
1678678	Everett Graphics, Inc.
1651496	Fashion Avenue, LLC
1628922	Foothill Unlimited Carwash Plans
1686936	Gemstone Jewelers
1661988	Grassi & Associates
1687113	Home Cooking Inc
1685621	Humason II Inc
1499025	Hundal Farms, Inc.
1649064	Huong Ho
1590711	Jensen Landscape & Construction Company, LLC
1626829	Jesus Izarraraz Alejo Db a Landco Roofing
1617230	John D. & Jean L. Varni, Limited Partnership
1691836	Kirk Allen Pearson
1700476	Kormodiv Inc.
1684222	La County Fire Dept.
1699769	La Jolla Beach and Tennis Club Inc.
1555863	Lennar Homes of California, Inc.
1631644	LV Construction, LLC
1692043	Lyons Security Service, Inc.
1581563	M K Adams Painting
1681837	Managing Personnel Services
1619916	Market Demand Corp.
1683529	Marquez and Son Plumbing, Inc.
1708408	Marriott International, Inc.
1722168	McHale Sign Co Inc.
1596963	Midstate Construction Corporation
1665588	Montelongo, Inc.
1579547	National Ready Mix Concrete Company, Inc.

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1673874	Oliveira Enterprises, Inc.
1672659	Platypus Painting Inc.
1647145	Posada SI LLC
1686887	Prieto's Roofing Removal Inc.
1651657	Priority Business Services Inc.
1699568	R. Tistic Painting
1507582	Ralph's Grocery Co.
1680275	Ramar Foods International Corporation
1667194	Restaurant Opportunities, LLC
1629997	Rival Well Services Incorporated
1588243	Rpm Transportation, Inc.
1701963	Sam's West, Inc.
1640356	Searles Valley Minerals, Inc.
1629750	Sergio Gomez Vasquez, An Individual
1615014	SGL Technic, LLC
1710403	Starbucks Corporation
1507958	Stater Bros. Markets #145
1689656	Sterling Environmental Corporation
1686891	Sun Valley Raisins, Inc., A California Corporation
1652853	Sunrun, Inc.
1483915	Sutter Bay Hospitals
1668752	The Lawson Roofing Co., Inc.
1688985	Tidal Foods, Inc.
1685100	Tri Star Foods, LLC
1706186	Trinity Perfect Construction, Inc.
1654826	U-Haul Co Of California
1566326	USS-UPI, LLC
1595321	Vacuum Process Engineering, Inc.
1686008	Vagthol's Residential Care
1670180	Valley Properties
1171510	Wm. Bolthouse Farms, Inc.

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

Personnel:

(Issues regarding staff)

Chair Ed Lowry will be absent for the April 10, 2024, Board meeting and designated Judith Freyman to act as Chair for this meeting.

The Closed Session adjourned at 11:04 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 11:06 a.m.