

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on February 17, 2022
on the Zoom platform

Present:

Ed Lowry, Chair, Public Member
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Kerry Lewis, Administrative Law Judge
Les Murad, Administrative Law Judge

Minutes of February 3, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the February 3, 2022 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.)

No report.

Old Business:

(The appeals Board hears and/or discusses matters on a follow-up basis.)

1. Update on of 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.

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Action: Aaron Jackson updated the Board on progress of writing the notice and the regulatory amendments to the Board regulation 376.

2. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: The Board continued discussions on the topic of the DOSH eAttorney system interfacing with OSHAB's OASIS program.

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: No report.

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: Acting Executive Officer Patricia Hapgood updated the Board on new COVID protocols and mask mandates. Also, the Department is working on a plan for employees to transition back to working in the office, possibly two days a week.

Staff Reports:

(Reports from the presiding 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 existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: No report.

2. Discuss status of Video Hearings.

Action: No report.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: No report.

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4. Litigation update:

Action: Chief Counsel Jeff Mojcher reported 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: Comments regarding proposed changes to Regulation 376, submitted by Manuel Melgoza of Donnell, Melgoza and Scates, were noted for the record.

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.)

1233763 ACCO Engineered Systems

Action: The Board discussed this Decision.

1437252 JT2 Inc.

Action: The Board discussed this Decision.

1454339 Wicks Roofing, Inc.

Action: The Board discussed this Decision.

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.)

1291481 Sierra Forest Products

Action: The Board voted to issue Order Denying Stay of Abatement.

Moved: Marvin Kropke

Seconded: Judith Freyman

Vote: 3-0

Petitions for Reconsideration (Second Review):

None

Orders Dismissing Appeal:

- | | |
|---------|---|
| 1448740 | BGM Installation, Inc.
Action: The Board discussed this Order. |
| 1393455 | Contract Builders Corp.
Action: The Board discussed this Order. |
| 1481917 | Doris Haysalina Bravo Farnez
Action: The Board discussed this Order. |

Order Denying Leave To File Late Appeal:

None

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.

- | | |
|---------|---|
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
<i>Whether adult film performers are employees or independent contractors.</i>
Action: The Board discussed this matter. |
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Dosh's Petition)
<i>Whether adult film performers are employees or independent contractors.</i>
Action: The Board discussed this matter. |

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- 1246527 Cemex
Whether the settlement in this matter was procured by fraud.
Action: The Board voted to issue Remand.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1494822 Ciasom, LLC dba Advoque Safeguard
Whether Employer operated an industrial truck within appropriate limits.
- 1332867 Guy F. Atkinson Construction, LLC
Whether the Division proved the alleged violation.
- 1410726 Hathaway Dinwiddie Construction Co.
Whether the Division proved the alleged violation.
- 1290766 Millennium Reinforcing
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients
Whether the Employer committed the alleged violations.
Action: The Board voted to issue DAR.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1327187 Ontario Refrigeration Service, Inc.
Whether the Division proved the "serious" classification.
- 1224802 Ranch of the Golden Hawk
Whether the household domestic service exception applies to the tree trimming involved in this matter.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1192534 Shimmick Construction Company Inc.
Whether the employer committed the violation alleged.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.

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1509967 United Pumping Service, Inc.
Whether the citations were issued timely.

Action: The Board discussed this matter.

1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.

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. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, CPF 17-515575, (317134021)
3. Ashley Furniture Industries, 34-2017-800002750 (1016514)
4. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
5. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
6. Process Cooling International, 34-2019-80003220 (1232555)
7. Prestige Painting, 37-2019-00066143 (1367265)
8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)
11. BMW West, LLC, 34-2021-80003574 (1399613)
12. Southern California Edison, 34-2021-80003580 (1320327)
13. L&S Framing, Inc., SCV-0046603 (1173183)
14. Granite Construction, 34-2021-80003634 (1235643)
15. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
16. Golden State FC, LLC dba Amazon Fulfillment, STK-CV-UWM-2021-0004380 (1310525)

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17. USA Waste of California, Inc. dba Blue Barrel Disposal Services, 21STCP01729 (1384029)
18. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
19. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
20. RND Contractors, Inc., CIV SB 2119442 (1436785)
21. Sunview Vineyards of California, Inc. RG21111733 (1153101)
22. Hill Crane Service Inc., 34-2021-80003744 (1135350)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)

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: Cases with citations related to COVID-19 were discussed.
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.)

1503283	Ace Asphalt, LLC
1540576	Best Snacks & More, Inc.
1390647	BMC West, LLC
1370416	Bodega Latina Corporation
1449731	Bryan Starn Construction

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1482373	Catalyst Family Inc.
1492185	Century Commercial Service
1362103	Charter Communications, LLC
1311050	Circle M Contractors, Inc.
1499625	Desiree Dewbre
1458999	Dinwiddie-Hines Construction, Inc.
1475470	DPR Construction, Inc.
1427089	Eco Mac Electric, Inc.
1495242	Fulgent Genetics, Inc.
1508086	GFF, Inc.
1512712	Gillette Citrus Inc.
1277542	GXO Logistics Supply Chain, Inc. Erroneously Cited
1475494	Hi Point Construction
1322666	Inter-Con Security Systems, Inc.
1480304	J & B Materials
1424934	Jump
1422921	Lineage Logistics
1414048	Los Angeles Unified School District - Valerio Street
1551636	Lowery Pena Construction
1452863	Manheim Remarketing, Inc.
1481476	Marin Resource Recovery Center
1549038	Michael Borrelli Design, Inc.
1285450	Petersen-Dean, Inc.
1334685	Poolman 2000, LLC
1555145	Rachma Contracting, Inc.
1324731	Sinthal, Inc.
1516095	Solaris Paper, Inc.
1505907	SRS Coatings, LLC
1444686	Suffolk Construction Company, Inc.
1422160	Superior Tree Service, Inc.
1486314	Teunissen Ranch, Inc.
1507441	Thrifty Payless, Inc.
1372743	Tri-Valley Vegetable Harvesting, Inc.
1473036	United Parcel Service, Inc.
1465672	Universal Protection Service, LP
1242240	Valle Chico Inc.
1428508	Vertex Coatings, Inc.
1517682	Veterans Towing, LLC
1425251	Walmart, Inc.
1332532	Warren's Water Truck Service

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1505617 Watermark Livermore, LLC
1516385 Weather-Tech Roofing Inc.

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

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 11:38 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 11:39 a.m.