

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on April 21, 2022**  
**Sacramento, California**  
**West Covina, California**  
**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  
Rheeah Yoo Avelar, Administrative Law Judge

**Minutes of April 7, 2022 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the April 7, 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.)*

1. Discussion of hearing schedules and ALJ availability pilot program.

Action: The Board discussed developing a pilot program to schedule hearings more efficiently and create less dead time on the calendar. The discussion was to create a control group to compare with the pilot program.

**Old Business:**

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

1. Update on 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.

Action: The regulatory amendments have been approved and the Public Meeting is scheduled for June 16, 2022.

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

Action: A meeting is scheduled with DOSH for next week to review progress.

**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: Chair Lowry discussed article in the Cal/OSHA Reporter.

**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: Patricia Hapgood reported on the new classifications for the Administrative Law Judge positions. Ms. Hapgood also updated the Board on new postings for positions at the Appeals Board.

**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: Current hearings held remotely were updated.

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

Action: Sam updated the Board on current cases involving COVID related citations.

4. Litigation update:

Action: Chief Counsel, 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 comment will be entertained during discussion of each agenda item of the open meeting.)*

Action: There were no public comments at this 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.)*

1360169 Ca Forestry and Fire Protection dba Cal/Fire

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.)*

- 1498721      KND Development 54, LLC dba Kindred Hospital Riverside  
Action:        The Board remanded the case to hearings operations.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1425896      Wright Tree Service of the West, Inc.  
Action:        The Board denied the Petition for Reconsideration.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

**Orders Dismissing Appeal:**

- 1424602      East Los Angeles Hand Car Wash  
Action: The Board reviewed this Order.
- 1549282      F C Landscape, Inc.  
Action: The Board reviewed this Order.
- 1493172      J.F. Prieto Engineering Construction, Inc.  
Action: The Board reviewed this Order.
- 1320037      MG Luna  
Action: The Board reviewed this Order.

**Orders Denying Leave To File Late Appeal:**

There are no Orders Denying Leave to File Late Appeal to review.

**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*

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*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)  
*Whether adult film performers are employees or independent contractors.*
- Action: The Board issued Order Dismissing Appeal.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1141604 Boy Racer Inc. DBA Burning Angel  
(DOSH Petition)  
*Whether adult film performers are employees or independent contractors.*
- Action: The Board issued Order Dismissing Appeal.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 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.*
- Action: The Board voted to issue DAR.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1224802 Ranch of the Golden Hawk  
*Whether the household domestic service exception applies to the tree trimming involved in this matter.*
- 1291481 Sierra Pacific Forest Products  
*Whether Employer was in compliance with the cited safety order.*

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- 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.*
- 1461476 Walmart, Inc.  
*Whether Walmart was an employer citable for the alleged violation.*
- 1416143 Webcor Builders, Inc.  
Whether the ALJ properly granted Employer's appeal due to the Division's failure to timely comply with a prehearing conference order.
- Action: The Board voted to issue DAR.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

**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)

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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)
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)
23. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)

**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: No report.

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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.)*

1473212	3d Land & Cattle Company, LLC
1487094	A L L H Construction
1387185	AAA Roofing By Gene, Inc.
1385872	Alegria Remodel and Construction, Inc.
1488512	Amvets Department of California Service
1524605	Amware Pallet Services, LLC
1502823	Anco Iron and Construction, Inc.
1360963	Annette D Mendoza Tabora
1385036	ASM Investments, Inc.
1483218	Baronhr West, Inc.
1552265	BBBB Bonding Corporation
1463474	C.A. Rasmussen, Inc.
1555718	California Custom Fruits and Flavors, Inc.
1355805	California Department of Forestry and Fire
1491155	California Royale, LLC
1517732	California Waste Solutions, Inc.
1452091	CCL Tube, Inc.
1549133	Centerline Drivers, LLC
1491824	Commodity Forwarders
1495407	D'arrigo Bros. Co. of California
1522767	D.A. Wood Construction, Inc.
1546050	Eldorado Care Center
1492680	Empres Healthcare Management, LLC
1534648	Energy Recovery, Inc.



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1452851	GE Precision Healthcare LLC
1500176	Granite Construction Company
1505542	Heritage Plastering
1529219	Illume Agriculture, LLC
1399889	JH Thompson & Sons, Inc.
1486133	Kaiser Foundation Hospitals
1483996	Kamran Staffing, Inc.
1515495	Kraft Heinz Company
1550124	Lemoore Foods, Inc.
1314714	Leong-Kuba Sea Products, Inc.
1487671	Los Angeles County Parks And Recreation
1469484	M3 HVAC
1412146	Mark Beamish Waterproofing, Inc.
1552127	Market Demand Corp.
1528095	Mohamed-Ali Alamsi, an Individual
1557139	New Dimension Sofa Mfg., Inc.
1545238	Nordstrom Fulfillment Center
1514043	Orange Coast Auto Group, LLC
1564518	Owner/Builders; Gagan Batta, Aman Batta
1544761	Paul Builders
1344245	Personnel Staffing Solutions Group, Inc.
1533748	Prime Ag Labor Source, Inc.
1536535	Protective Shield Security
1466945	PWC California Builders, Inc.
1552665	R.E. Maher, Inc.
1519305	Rancho Foods, Inc.
1566654	Ray Tech Professional Painting
1448745	Royal Laundry
1514033	Santa Clara Valley Transportation Authority
1559081	Schreiner's Fine Sausages, Inc.
1510700	Sharp Industries, Inc.

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1502249	Skidrow Housing Trust
1537570	Smart & Final Stores LLC
1472716	Sutter Bay Hospitals DbA California Pacific Medical
1373915	Tanimura & Antle, Inc.
1480573	Tenet California, Inc.
1517035	United Airlines
1464690	Vita-Pakt Citrus Product Co.
1518172	Warren Construction & Roofing, Inc.
1533732	Waterproof Experts 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 11:32 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 11:33 a.m.