

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on June 2, 2022
Sacramento, California
West Covina, California
Zoom Platform

Present:

Judith Freyman, Management Member, Acting Chair
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Supervising Judge
Sam Lucas, Supervising 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

Absent:

Ed Lowry, Chair, Public Member – excused.

Minutes of May 19, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the May 19, 2022 Board meeting.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 2-0

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 had a discussion on the process of assigning an Administrative Law Judge to preside over a hearing and the protocols for assigning a substitute judge when needed.

Old Business:

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

1. Update 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.

Action: The Public Meeting to accept comments on the changes to Regulation 376 is scheduled for June 16, 2022.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: Meghan Zapata reported a meeting is scheduled June 8, 2022 to meet with DOSH and discuss requests made by DOSH for implementing the interfacing system between DOSH's eAttorney and OSHAB's OASIS.

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: Patricia Hapgood reported on hiring staff for current open positions.

Meghan Zapata updated the Board on accessing WiFi in the West Covina Office.

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.

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2. Discuss status of Video Hearings.

Action: The process of parties calling in to the Board for Status Conferences has been well received and successful.

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

Action: The Board discussed the current list of appeals with COVID-19 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.)

There are no Decisions scheduled for review.

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.)

1549282 F C Landscape, Inc.

Action: The Board voted to remand this petition to hearing operations.

Moved: Marvin Kropke

Seconded: Judith Freyman

Voted: 2-0

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- 1300984 General Dynamics Nassco
Action: The Board voted to take this petition under
 submission.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Voted: 2-0
- 1311884 Santa Barbara Center for the Performing Arts, Inc.
Action: The Board voted to deny this petition.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Voted: 2-0
- 1321137 Michael Roberts Construction, Inc.
Action: The Board voted to issue an order extending time for
 this matter.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Voted: 2-0

Orders Dismissing Appeal:

- 1525570 A.S.S.E.T. Private Security.
Action: The Board reviewed this Order.
- 1418998 Deangelo Brothers LLC
Action: The Board reviewed this Order.
- 1430976 Precision Custom Conversion, Inc.
Action: The Board reviewed this Order.

Orders Denying Leave To File Late Appeal:

- 1557157 Dick Vanderham
Action: The Board reviewed this Order.
- 1417616 Robert E. Sutton Company, Inc.
Action: The Board reviewed this Order.
- 1525006 Sunnyside Roofing, Inc.
Action: The Board reviewed this Order.

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.

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|---------|---|
| 1332867 | Guy F. Atkinson Construction, LLC
<i>Whether the Division proved the alleged violation.</i> |
| 1410726 | Hathaway Dinwiddie Construction Co.
<i>Whether the Division proved the alleged violation.</i> |
| 1291481 | Sierra Pacific Forest Products
<i>Whether Employer was in compliance with the cited safety order.</i> |
| 1155042 | Signal Energy LLC
<i>Whether Employer appropriately oversaw the actions of the subcontractors.</i> |
| 1192534 | Shimmick Construction Company Inc.
<i>Whether the employer committed the violation alleged.</i> |
| 1303461 | SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
<i>Whether Employer violated section 3212(a)(2)(A) as alleged.</i> |
| 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)

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5. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
6. Process Cooling International, 34-2019-80003220 (1232555)
7. Davis Development Company, 34-2020-80003373 (1226084)
8. MWL Solutions, 34-2020-80003549 (1436014)
9. Hampton Tedder Electric, 34-2020-80003562 (1233597)
10. BMW West, LLC, 34-2021-80003574 (1399613)
11. Southern California Edison, 34-2021-80003580 (1320327)
12. L&S Framing, Inc., SCV-0046603 (1173183)
13. Granite Construction, 34-2021-80003634 (1235643)
14. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
15. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
16. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
17. RND Contractors, Inc., CIV SB 2119442 (1436785)
18. Sunview Vineyards of California, Inc. RG21111733 (1153101)
19. Hill Crane Service Inc., 34-2021-80003744 (1135350)
20. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)
21. Sierra Forest Products, VCU290996 (1291481)
22. USA Waste of California, Inc., 34-2022-80003841 (1384029)

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.

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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.

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.)

1554711	Accurate Home Services, Inc.
1521281	Advanced Framing Structures, Inc.
1564188	Aguilar Trucking, Inc.
1505282	All Points Manufacturing, LLC
1551893	Almendariz Consulting, Inc.
1469505	Alston Construction Company, Inc.
1348382	American Engineering Laboratories, Inc.
1488121	Apollo Wood Recovery, Inc.
1462238	Baker Electric, Inc.
1473418	Baker Electric, Inc.
1373325	Baltimore Aircoil Company, Inc.
1407153	Bartlett Care Center, LLC
1581649	Bonduelle Fresh Americas
1490935	Brick Barn Winery, LLC
1558629	Butler Box & Stake, Inc.
1483902	Ca Corrections and Rehabilitation, North Kern
1508365	California Children's Academy
1422164	California Department of Forestry and Fire
1329983	Citistaff Solutions, Inc.
1498141	Citistaff Solutions, Inc.
1504270	City Of Daly City
1493807	Coca-Cola Company
1486552	College Hospital Cerritos
1480565	Columbia Packaging Group
1543946	Corder Farms, Inc.

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1497962	Core-Mark International, Inc.
1534619	Costco Wholesale Corporation
1532532	Covina Valley Unified School District
1425620	CP Manufacturing, Inc.
1546481	Crane Rental Service, Inc.
1485233	D & D Cabinets - Savage Designs, Inc.
1557847	DecisionHR USA, Inc.
1456919	Doctors Medical Center, Inc.
1486771	Doctors Medical Center, Inc.
1477361	Dome Construction Corporation
1572351	Dupont Market, Inc.
1532890	Ecosmart, Inc.
1489371	Frontier-Kemper Constructors, Inc. and Tutor
1484165	Garfield Medical Center
1564745	General Produce Co.
1537251	Green Valley Ag Services, Inc.
1307108	Home Brew Mart, Inc.
1431573	Howard Roofing Company, Incorporated
1439644	HP Farms L.P.
1452199	JT2 Inc.
1491395	Kaiser Foundation Hospitals
1528195	Kaiser Foundation Hospitals
1508745	Kaiser Foundation Hospitals, Inc.
1493068	Kaiser Permanente
1488197	Kellogg Supply, Inc.
1568640	Kern Auto Parts Company DbA Napa Auto Parts
1554731	Lady M Confections, LTD
1355748	Lendlease (US) Construction, Inc.
1418659	Lopez and Sons Farms, Inc.
1532630	Los Angeles County Sheriff
1387456	Matchmaster Dyeing & Finishing, Inc.
1508580	MFIB CA, LLC
1489032	Michael Nicholas Designs, Inc.
1552776	Mountain Meadow Production Corporation
1480812	MSL Community Management, LLC
1491749	North Valley Builders, Inc.
1536239	Orange County Superior Court
1568450	Orora Packaging Solutions
1501005	Pacific Bend, Inc.
1514253	Pacific Coast Sightseeing Tours & Charters, Inc.

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1499047	Partners Personnel
1512736	Pearson Dental Supplies, Inc.
1527846	Prism Aerospace, Inc.
1529502	Ramcast Ornamental Supply Company, Inc.
1524758	Ramona Dairy LLC
1419752	Romac Supply Co., Inc.
1565724	Rose Meat Services Inc.
1359436	Rubio Electric, Inc.
1484539	Russo Granite & Marble, Inc.
1210877	RWC Building Products
1499279	Safeway, Inc.
1570002	Sage Vegan Bistro Echo Park, LLC
1550270	Samuel, Son & Co. (USA), Inc.
1501696	Satco, Inc.
1553994	Sb Hospitality Palm Springs, Inc.
1546303	Servco Inc.
1416486	Skillset Group
1493333	Slm Development Inc.
1556945	Spryscapes Construction, Inc.
1511794	Starn Farms
1463448	Sunbees Groups Inc.
1528491	Swinerton Builders
1561183	Sylvester Roofing Company, Inc.
1551645	Tanknology, Inc.
1512255	Total Terminals International
1309836	Trademark Construction Company, Inc.
1514052	Tree Pros, Inc.
1561195	UFP Riverside, LLC
1482782	Unique Building Group Inc.
1474216	Vintage Associates, Inc.
1570297	Virun, Inc.
1462361	Walgreen Co., Store #9048
1483129	Walmart Inc.
1568386	West Coast Drywall & Company, Inc.
1300468	Western Digital Technologies, Inc.
1497311	Westgate MFG, Inc.
1523525	Whitehouse Construction, Inc.
1565335	Winebow, Inc.

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

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Personnel:

(Issues regarding staff)

Action: No report.

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 meeting adjourned at 11:05 a.m.