State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on June 16, 2022
Sacramento, California
West Covina, California
Zoom Platform

Present:
Ed Lowry, Chair, Public Member. Chair
Judith Freyman, Management Member
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
Christopher Jessup, Administrative Law Judge
Kumani Armstrong, Special Counsel, Office of the Director
Jora Trang, Chief of Staff & Equity, Worksafe
Megan Shaked, Attorney, Conn Maciel Carey LLP
Linette Davis, Ethics Officer and Senior Editor, DIR Office of the Director
Matthew Lugo, DIR Analyst, DIR Office of Director
Jorge Otano, Deputy City Attorney, City of Los Angeles
Dan Lucido, Chief Counsel, DOSH
Rocio Reyes, Assistant Chief Counsel, DOSH
Clara Hill-Williams, Staff Counsel DOSH
Michelle Gastil, Staff Counsel, DOSH
Cynthia Perez, Staff Counsel, DOSH
Manuel Arambula, Staff Counsel, DOSH
Lisa Wong, Staff Counsel, DOSH
Mark Licker, Staff Counsel, DOSH
Minutes of June 2, 2022 Meeting:
(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the June 2, 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. Public meeting and comments on proposed regulatory amendments to California Code of Regulations, title 8, sections 372.6, 372.8, 376, and 376.8, as discussed in the “Notice of OSHAB Proposed Rulemaking Modifying Regulation Concerning Time and Place of Hearing.” The proposed amendments will, among other things, govern, address and permit the occurrence of Board hearings via videoconference, and cleanup small issues from prior rulemakings. Any person may present statements orally or in writing relating to the proposed action. The aforementioned notice and associated rulemaking documents may be found posted on the Board’s website.

Action: The Board heard public comments to the proposed amendments to California Code of Regulations, title 8, sections 372.6, 372.8, 376, and 376.8, as discussed in the “Notice of OSHAB Proposed Rulemaking Modifying Regulation Concerning Time and Place of Hearing.” The Board’s responses to the public comments will be submitted in writing at a later date.

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

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

Action: Sam Lucas updated the Board on progress regarding the pilot program for scheduling ALJ for hearings which will begin September 1, 2022.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: Chair Lowry reported on discussions regarding the interfacing between DOSH and OSHAB programs.

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 informed the Board that Mark Webb is the new Cal/OSHA Reporter Decision Editor.

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.

The Sacramento office conference room is being redesigned. The bookcases will be removed and a 65-inch monitor will be installed.

Code system to enter the Sacramento office will be changed to a key card system.

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.

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: No additional public comments were made. All comments were received during the discussion regarding amendments to the Regulations under New Business.

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.)

1321137 Michael Roberts Construction, Inc.
Action: This petition is being held for the July 7, 2022 Board meeting.

Orders Dismissing Appeal:

1404795 Cordoba Construction Corp.
Action: The Board reviewed this Order.

1369788 Homestead Pasta Company
Action: The Board reviewed this Order.

1466274 Sierra Transport LLC
Action: The Board reviewed this Order.

Orders Denying Leave To File Late Appeal:

1515486 AHMC San Gabriel Valley Medical Center, LP
Action: The Board reviewed this Order.

1483912 Emanate Health
Action: The Board reviewed this Order.

1532874 Golden State Construction & Framing, Inc.
Action: The Board reviewed this Order.
1537746  Tomas Guindon
Action:  Reinstated the appeal.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1553701  West Stanislaus County Fire Protection District
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.

1300984  General Dynamics NASSCO

1332867  Guy F. Atkinson Construction, LLC
Whether the Division proved the alleged violation.
Action:  The Board discussed this matter.

1410726  Hathaway Dinwiddie Construction Co.
Whether the Division proved the alleged violation.
Action:  The Board discussed this matter.

1291481  Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.

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.

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)
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)
15. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
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.

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.)

1411357  Acme Demo Corp.
1422013  Advanced Automatic Sprinkler, Inc.
1579130  Alpha & Omega Displays, Inc.
1547142  Approved Staffing, LLC
1522283  Architectural Renewal Services, Inc.
1551415  Arribavista Ranch, Inc.
1417470  ATL Logistics, Inc.
1537739  Brazil Quality Roofing, Inc.
1267450  BYD Coach & Bus, LLC
CA Corrections & Rehabilitation-California
CA Motor Vehicles
CA Motor Vehicles
California Waste Solutions, Inc.
Capital Logistics & Warehousing West, Inc.
Cardenas Market
Cass Enterprises, Inc.
CBG Building Company, LLC
CDS Cabinets, Inc.
CF Watsonville West, LLC
City of Davis
City of Santa Clarita-Santa Clarita Transit
Compass Group USA, Inc.
Cortech West Staffing, LLC
Crandall Roofing Inc.
Cream of the Crop AG Service, Inc.
Crestwood Behavioral Health, Inc.
Crownview Co-Occurring Institute Incorporated
Del Mar Food Products Corp.
Department of Motor Vehicles - DMV
Department of Motor Vehicles - Rancho
Dolores Borquez
DPCC
Ecoological LLC
General Dynamics Nassco
Gonsalves & Santucci, Inc.
Grocery Outlet #450
Hamel Contracting, Inc.
Hardy Window Company
Hart Brothers Construction, Inc.
Harvard Label, LLC
Interstate Management Company, LLC
J. H. Fitzmaurice, Inc.
JBR Management Company, LLC
JD Koi, LLC
La Vina Packing, Inc.
Langer Farms LLC
Le Belge Chocolatier
Lightway Industries
LMC Construction, LLC
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 11:23 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 11:24 a.m.