

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on July 7, 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, 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
Michelle Bethge, Staff Attorney, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California
Linette Davis, Ethics Officer and Senior Editor, DIR Office of the Director
Matthew Lugo, DIR Analyst, DIR Office of Director
Dan Lucido, Chief Counsel, DOSH

Minutes of June 16, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the June 16, 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.)

Action: No report.

Old Business:

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

1. Discussion of hearing schedules and ALJ availability for the 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: Patricia Hapgood updated the Board on the progress working with DOSH and Journal Technologies establishing the eAttorney program.

3. Discussion and update concerning 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, and consideration of public comments received.

Action: Aaron Jackson presented a memo updating the Board regarding the comments received from the public in reference to the amendments to the Board regulation 376.

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 announced a Celebration of Life for Robert Peterson is scheduled for Saturday, July 9, 2022.

The Cal/OSHA Advisory Committee meeting is scheduled for July 14, 2022. This meeting is being held over Zoom.

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.

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: Aaron Jackson is in the process of reviewing the Regulations.

2. Discuss status of Video Hearings.

Action: No report.

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

Action: Judge Kevin Reedy reported that there are currently 13 Hearings being held 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: Bruce Wick thanked Aaron Jackson for reviewing the Regulations and working on updating language and procedural protocols. Mr. Wick also stated he is looking forward to Decisions regarding COVID cases. Another comment made by Mr. Wick was to encourage open dialogue between the Appeals Board, Standards Board and DOSH, as the enforcement agency.

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.)

1455641 Amswede Recycling
Action: The Board reviewed 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.)

1483912 Emanate Health
Action: The Board voted to remand this case to Hearing Operations.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1340561 Lennar Corporation
Action: The Board voted to take this petition under submission.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1321137 Michael Roberts Construction, Inc.
Action: The Board voted to deny this petition.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1515466 PCC Aerostructures ADI
Action: The Board voted to remand this petition to Hearing Operations.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

Orders Dismissing Appeal:

1515891 Brentwood Home LLC
Action: The Board reviewed this Order.

1376788 KE Transport, Inc.
Action: The Board reviewed this Order.

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1410194 Natural Pack, Inc.
Action: The Board reviewed this Order.

1350082 Western States Inc.
Action: The Board reviewed this Order.

Orders Denying Leave To File Late Appeal:

1495691 California Department of Corrections
Action: The Board reviewed this Order.

1590024 Community Research Foundation
Action: The Board reviewed this Order.

1534871 Deacon Construction, LLC
Action: The Board reviewed this Order.

1542525 Silicon Valley Group, Inc.
Action: The Board voted to reinstate this appeal.
Moved: Marvin Kropke
Seconded: Judith Freyman
Voted: 3-0

1517235 Type 7 Manufacturing, Inc.
Action: The Board voted to take this matter under submission
on their own motion.
Moved: Marvin Kropke
Seconded: Judith Freyman
Voted: 3-0

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
Whether Employer committed the violations alleged.

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- 1332867 Guy F. Atkinson Construction, LLC
Whether the Division proved the alleged violation.
Action: Voted to issue DAR.
Moved: Marvin Kropke
Seconded: Judith Freyman
Voted: 3-0
- 1410726 Hathaway Dinwiddie Construction Co.
Whether the Division proved the alleged violation.
Action: Voted to issue DAR.
Moved: Marvin Kropke
Seconded: Judith Freyman
Voted: 3-0
- 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)
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. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
13. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
14. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
15. RND Contractors, Inc., CIV SB 2119442 (1436785)
16. Sunview Vineyards of California, Inc. RG21111733 (1153101)
17. Hill Crane Service Inc., 34-2021-80003744 (1135350)
18. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)
19. Sierra Forest Products, VCU290996 (1291481)
20. USA Waste of California, Inc., 34-2022-80003841 (1384029)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. Golden State FC, LLC, STK-CV-UWM-2021-004380 (1310525)
3. L & S Framing, Inc. S-CV-0046603 (1173183)

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.)

1474323	A Oseguera Company, Inc.
1345163	Accurate Comfort Systems, Inc.
1476065	Ag Redlands, LLC
1496786	Agricultural Computerized Technology, Inc.
1406753	Alta Bates Summit Medical Center
1481023	Alta Hospital Systems LLC
1412637	Altair Paramount, LLC
1355890	Always on Top Roofing
1587140	Amycel, Inc.
1520519	Atlas Bay City Company, Inc.
1568369	B&L Equipment Rentals, Inc.
1557480	Batory Foods, Inc.
1579254	Bay Area News Group East Bay, LLC
1459964	Baymarr Construction, Inc.
1474832	Baymarr Constructors Inc.
1470008	Baymarr Constructors, Inc.
1474051	Baymarr Constructors, Inc.
1533105	Baymarr Constructors, Inc.
1482287	Bob Baker Automotive
1358086	C & K Form Fabrication, Inc.
1509781	Ca Motor Vehicles
1511801	Ca Motor Vehicles
1512937	Ca Motor Vehicles
1530558	Ca Motor Vehicles
1340039	Calex Engineering Company

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1573279	California Professional Pest Control
1548281	Canal Farms Partnership
1555469	Cencal Foods
1548576	Central Valley Stone Restoration Inc.
1563679	Chingon's Roof Removal
1477773	Citistaff Solutions, Inc.
1542185	Classic, Inc.
1483049	Coachella Valley Mosquito and Vector Control
1371285	Coppa Woodworking, Inc.
1508435	County of Imperial - Betty Jo McNeese Receiving
1531781	County of San Diego, Department of Parks
1493399	County of San Luis Obispo, Public Works
1516627	Creative Stone Manufacturing, Inc.
1560071	Crimsafe North America LLC
1517913	Custom Alloy Scrap Sales, Incorporated
1495880	D.G. Granade, Inc.
1452942	Dana Gentry and Jack Woolstencroft
1511788	DAOU Vineyards, LLC
1533969	DCC General Engineering
1515442	Delphon Industries, LLC
1491555	Department Of Motor Vehicles; Site - Rancho
1519865	Devil Mountain Wholesale Nursery
1462942	Diablo Country Club
1505650	DPDW, Inc.
1550533	DPI, Inc.
1530898	Evans Hotels, LLC
1505661	Express Employment Professionals
1568760	Fallen Leaf Tree, LLC
1485593	Fantasy Cookie Corp.
1568243	FC Bickert Company, Inc.
1538366	Ford Logging, Inc.
1536558	Framing Associates
1543271	Frings Ranch, LP
1539782	Gigi's Bakery, Inc.
1531918	Glendale CV Operating Company, LLC
1496670	Gold Wing Trading, Inc.
1486259	Golden State Foods Corp.
1579405	Granite Rock Company
1558179	Grove Contracting, Inc.
1463351	Guess Cattle Co. LLC

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1507730	Gul Food Management, Inc.
1513835	Guy F. Atkinson Construction, LLC
1510380	Hayward Sisters Hospital
1289091	Herman Weissker, Inc.
1515021	Hollins Management Group, Inc.
1567470	Hum Made, Inc.
1520807	Humboldt Sawmill Company, LLC
1525775	Humboldt Sawmill Company, LLC
1526507	Humboldt Sawmill Company, LLC
1575333	Huntington Pools, Inc.
1322706	Insurance Auto Auctions
1468124	Inter-Sky Inc.
1526491	Interior Exterior Designs, Inc.
1547128	James R. Lewis Orchards, Inc.
1534698	Jose Guadalupe Carranza
1508068	Jr Plumbing & Rooter Inc.
1522770	Kuni SDA, LLC
1540248	L. D. Strobel Co., Inc.
1467005	L.C. Paving & Sealing, Inc.
1578507	La Belle Associates, Inc.
1511853	Lido Auto Care, Inc.
1481326	Los Angeles County Hubert Humphrey
1547919	Los Toros Market #2
1562578	Mark III Construction, Inc.
1540357	Mark Tanner Construction Inc.
1413641	Marten Transport Services, LTD
1346650	Mesa Engineering
1506379	Metropolitan Area Advisory Committee on Anti
1583575	Mill-Wood Designs, LLC
1514835	Minsley, Inc.
1559488	Mission Ace, Inc.
1546984	Mooney Farms, Inc.
1496706	Morada Produce Company, LLC
1550295	Neal Electric Corp
1542942	Never Give Up Logging, Inc.
1491553	Northgate Gonzalez, LLC
1567467	Old World Classics, Inc.
1565721	One Stop Employment Services, Inc.
1552415	Pacifica Personnel Inc.
1482596	Parkview Operating Company, LP

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1502170	Partners Personnel - Management Services, LLC
1572901	Peak Power, LLC
1549851	Perdue Farms, Inc.
1552147	Providence Health System - Southern California
1564848	Prudential Overall Supply
1558923	Purcell Painting and Coatings Southwest, Inc.
1539421	Pyramid Construction and Aggregates, Inc.
1519557	Ralph's Grocery Company
1545779	Reinier Brenes
1531857	Reliable Wholesale Lumber
1586785	Rock Creek Construction, Inc.
1482354	Roebbelen Contracting, Inc.
1504968	Rush Truck Centers of California, Inc.
1372069	Safeway, Inc.
1489488	San Diego Convention Center Corporation, Inc.
1510882	Santa Clara Valley Transportation Authority
1510897	Santa Clara Valley Transportation Authority
1563111	Scott Anderson
1511653	Scully Packing Company LLC
1560070	See's Candies, Inc.
1505378	Semifreddi's, Inc.
1563560	Sensient Technologies Corporation
1557776	Shadepro Inc.
1529804	Staff Force Personnel Services, Inc.
1497606	Stanek Constructors
1521599	State Of California Department Of Motor Vehicles
1301760	Suffolk Construction Company, Inc.
1513050	Sunbelt Controls, Inc.
1522929	Tarzana Medical Center, LLC
1426261	Terranova Ranch, Inc.
1545411	Tesoro Refining & Marketing Company, LLC
1417322	The Bank of Hemet
1452965	The Lewis Family Corp.
1435939	The Pep Boys Manny Moe & Jack of California
1507956	The Permanente Medical Group, Inc.
1572087	The Vintage Wood Floor Company, Inc.
1564144	Thomas Burns Plastering, Inc.
1565676	Timberline Wall Systems
1540539	Triple Crown Equestrian Center, Inc.
1403750	Turner Mining Group, LLC

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1563633	Twin Post Painting
1561945	United Rentals
1547789	USA Zhongheng Corp.
1485770	Vanderlans & Sons Inc.
1510090	VCSD, Inc.
1537078	Vista Verde Labor, Inc.
1558808	VMP Concrete, Inc.
1571280	Western Meat Processing, Inc.
1549600	Westside Ag II, Inc.
1549265	Whit's Painting, Inc.
1518523	William S. Hart Union High School District
1517044	Windsor Oakridge Healthcare Center, LP
1505331	Windsor the Ridge Rehabilitation Center, LLC
1560615	Zephyr Industries, 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 11:56 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 11:57 a.m.