

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session

Held on November 3, 2022

Sacramento, California

West Covina, California

Zoom Platform

Present:

Marvin Kropke, Labor Member

Judith Freyman, Management Member, Acting Chair

Patricia Hapgood, Acting Executive Officer

Jeff Mojcher, Chief Counsel

Kevin Reedy, Supervising Administrative Law Judge

Sam Lucas, Supervising Administrative Law Judge

Aaron Jackson, Staff Attorney

Elizabeth Clarke, Staff Attorney

Vincent Mersich, Staff Attorney

Meghan Zapata, Staff Services Manager

Janis Jonas, Executive Secretary

Christopher Jessup, Administrative Law Judge

Dale Raymond, Administrative Law Judge

Rocio Reyes, Assistant Chief Counsel, DOSH

Dan Lucido, Dan Lucido, Chief Counsel, DOSH

Matt Lugo, DIR Analyst, Office of the Director

Excused Absence: Ed Lowry, Chair

Minutes of October 6, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the October 20, 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.)

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: Judge Sam Lucas reported on the pilot scheduling program. The pilot program ends December 13, 2022. Currently, there have been no scheduling conflicts using this calendaring method.
2. Update of DOSH eAttorney system interfacing with OASIS.
Action: Dan Lucido notified the Board the anticipated start date for the eAttorney system is March 2023. The program has entered the testing phase.
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 updated the Board on status of Regulation changes.

Legislation:

(Review and discuss current legislation which may affect the appeals Board.)

Action: No report.

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: Judith Freyman reported attending the conference in Costa Mesa sponsored by Ogletree Deakins Law Firm.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood reported on meeting with the Federal OSHA representative. OSHAB's 5-year strategic plan is due March 2023.

Megan Zapata updated the Board on the remodel in the Sacramento office. There has been a delay. There is not a start date currently scheduled.

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 updated the Board on regulation proposals.

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 updated the Board on cases involving COVID related citations.

4. Litigation update:

Action: 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: The Board received public comments.

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.)

1314092 99 Cents Only Store, LLC

Action: The Board reviewed this Decision.

1336276 Rios Farming Company, LLC

Action: The Board took this petition under submission for reconsideration under its own motion.

Moved: Judith Freyman

Seconded: Marvin Kropke

Vote: 2-0

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.)

- 1506586 American Fumigation Services, LLC
Action: The Board voted to issue a denial for this petition.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 2-0
- 1465354 Natural Alternatives International, Inc.
Action: The Board voted to take this petition under submission.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 2-0
- 1437436 Par Electrical Contractors, Inc.
Action: The Board voted to issue the denial.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 2-0
- 1462745 Wonderful Citrus, LLC
Action: The Board discussed this petition.

Orders Dismissing Appeal:

- 1383344 County of Los Angeles Department of Parks
Action: The Board reviewed this Order.
- 1270089 Southland Commercial Interiors, Inc.
Action: The Board reviewed this Order.
- 1495976 Sullivan Solar Company
Action: The Board reviewed this Order.

Orders Denying Leave To File Late Appeal:

- 1573785 CJ Foods Manufacturing Beaumont Corp.
Action: The Board voted to remand this Appeal to the Appeals Initiation Unit.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 2-0

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.

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| 1360156 | CA Forestry and Fire Protection |
| 1564732 | Calvary Chapel of San Jose dba Calvary Chapel Academy
Action: The Board voted to issue an Order requesting further briefing.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 2-0 |
| 1300984 | General Dynamics NASSCO
<i>Whether Employer committed the violations alleged.</i> |
| 1004280 | Key Energy Services, LLC
<i>Matter remanded to the Board from the Court.</i> |
| 1340591 | Lennar Corporation
<i>Whether Employer committed the violations alleged.</i> |
| 313381584 | Modern Pro Builder |
| 1291481 | Sierra Pacific Forest Products
<i>Whether Employer was in compliance with the cited safety order.</i> |
| 1303461 | SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
<i>Whether Employer violated section 3212(a)(2)(A) as alleged.</i> |

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. Barnard Impregilo Healy, JV, CPF 17-515575 (317134021)
2. Ashley Furniture Industries, 34-2017-800002750 (1016514)
3. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
4. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
5. Davis Development Company, 34-2020-80003373 (1226084)
6. Southern California Edison, 34-2021-80003580 (1320327)
7. RND Contractors, Inc., CIV SB 2119442 (1436785)
8. Sunview Vineyards of California, Inc. RG21111733 (1153101)
9. Hill Crane Service Inc., 34-2021-80003744 (1135350)
10. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)
11. Sierra Forest Products, VCU290996 (1291481)
12. USA Waste of California, Inc., 34-2022-80003841 (1384029)
13. Ranch of the Golden Hawk, 22STCP02302 (1224802)
14. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)

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)
4. Granite Construction Company, 34-2021-80003634 (1235643)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.

Action: No report.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 3, 2022

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.)

1531393	Al Pak Labor, Inc.
1478329	All Electric Inc.
1572920	All Valley Packing, Inc.
1554805	Allied Painting, Inc.
1564040	Americold Logistics, LLC
1542529	Arete Custom Builds, LLC
1338182	Belmont Builders, Inc.
1576596	BP Drywall & Construction, Inc.
1529759	Build Group Construction Company, Inc.
1591808	Builders Firstsource - Atlantic Group, LLC
1553832	Bway Corporation
1560543	CA Corrections Corcoran State Prison
1559607	Calson Management, LLC
1468543	Citistaff Solutions, Inc.
1533031	CJ Foods Manufacturing Beaumont Corp.
1479081	Comfort Now, Inc.
1518321	Covenant Care California, LLC
1527044	Cream Of The Crop Ag Service, Inc.
1356929	De Coninck Vineyards, Inc.
1552666	Delta Elevator Co.
1500591	Dignity Health Woodland Memorial Hospital
1520227	E O Products, LLC
1575564	Endpak Packaging, Inc.
1471832	Fontenoy Engineering
1606961	Forest River, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 3, 2022

1541138	Giovanni Mendoza, an Individual
1541614	Golden Queen Mining Company LLC
1520061	Granite Construction Company
1532835	iStaffing, Inc.
1536820	Jackson Drywall, Inc.
1358458	Jayme R. Zemansky
1561237	Jeffco Painting & Coating, Inc.
1556149	Johnny Ray Canaris
1417206	JT2, Inc.
1509590	Kaiser Foundation Hospitals
1524597	Kinneloa Irrigation District
1376749	La City Attorney's Office
1567636	Les Schwab Group Holdings, LLC
1516461	Madera Agricultural Services, Inc.
1585958	Manning's Beef, LLC
1291397	Mccarthy Building Companies, Inc.
1596925	Mccarthy Building Companies, Inc.
1566431	MCM Labor Services, Inc.
1563575	Mohammad Yamin, An Individual
1558180	Nick Champi Enterprises, Inc.
1407788	Pacific Boring Incorporated
1504458	Pactiv LLC
1396304	Par Electrical Contractors, Inc.
1543714	Parsoda USA, Inc.
1528879	Paymun Building & Development Inc.
1512822	Pitman Farms
1504405	Ralph's Grocery Company #26
1543603	Redwood Hill Farm & Creamery, Inc.
1544328	Restoration Hardware, Inc.
1563658	Sacramento County Department of Airport
1492136	Salinas Valley Memorial Hospital
1524570	Sanger Unified School District
1468684	Santa Clara Valley Water District
1591903	Sean V. Doherty, an Individual
1517224	Setzer Forest Products, Inc.
1552414	Sihota Farms, Inc.
1382795	Skanska USA Civil West California District Inc.
1547581	Sonic.Net LLC
1562185	Sonny Nguyen, An Individual
1359529	Steve P. Rados, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 3, 2022

1496525	Superior Duct Fabrication, Inc.
1540323	Swinerton Builders
1555475	Tahoe City Lumber Co.
1583977	Taisuco America Corporation
1564184	Teamquest Staffing Services Inc.
1565230	The Veen Firm, P.C.
1601234	Thunderbolt Wood Treating Co., Inc.
1599157	Trico Painting
1553645	United Parcel Service Co.
1483399	United Parcel Service Inc.
1470461	US Foods, Inc.
1558421	Wagner Dairy, G.P.
1417245	Wallace & Smith Contractors, Inc.
1565956	Walmart, Inc.
1533267	Watson AG Chemicals, Inc.

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

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 11:14 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 11:15 a.m.