

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on December 15, 2022
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
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
Denise Cardoso, Assistant Chief Counsel, DOSH
Dan Lucido, Chief Counsel, DOSH
Sean Ahearn, DIR Legislation and Regulatory Affairs
Ray Abregana, Member of the Public
Iman Leong, Member of the Public
John Schwan, Member of the Public
Virginia Young, Member of the Public
Toni Kennedy, Member of the Public

Minutes of December 1, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the December 1, 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. Roundtable planning.

Action: The Board discussed holding a roundtable meeting with stakeholders in 2023.

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: Results are being evaluated and a memo will be prepared for the Board.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: No report.

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 reported that the Regulatory package is with the Department of Finance.

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 that a new Office Technician has been hired for the Appeals Initiation Unit.

Also, an attorney position is in the process of being posted.

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 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 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: There were no public comments made at today's 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 were no Decisions 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.)

1203336 Three-D Services Co. Inc.
Action: The Board voted to issue an order extending time for this petition.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

Orders Dismissing Appeal:

There were no Orders Dismissing Appeal for review.

Orders Denying Leave To File Late Appeal:

1565022 Victorio Mufflers, 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.

1314092 99 Cents Only Store, LLC
Whether the employer committed a foot protection violation as alleged.

1360156 CA Forestry and Fire Protection
Whether it was an error to assign a particular ALJ to the matter.

1564732 Calvary Chapel of San Jose dba Calvary Chapel Academy
Whether the ALJ correctly excluded evidence from the inspection.

1262720 General Dynamics NASSCO
Whether the employer followed proper procedures in rigging a load.

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- 1300984 General Dynamics NASSCO
Whether Employer committed the violations alleged.
Action: The Board discussed this matter.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1004280 Key Energy Services, LLC
Matter remanded to the Board from the Court.
- 1340591 Lennar Corporation
Whether Employer committed the violations alleged.
- 313381584 Modern Pro Builder
Whether the ALJ's granting of a late appeal was appropriate under the circumstances.
Action: The Board discussed this matter.
- 1465354 Natural Alternatives International, Inc.
Whether the ALJ erred in dismissing the matter.
- 1336276 Rios Farming Company, LLC
Whether the ALJ's decision was correct.
- 1291481 Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1573605 XL Concrete Masonry, LLC
Whether the employer's appeal was timely.
Action: The Notice of Untimely appeal has been vacated and the appeal will be remanded to the Appeals Initiation Unit for further review for meeting required qualifications for perfecting the appeal.

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. Hill Crane Service Inc., 34-2021-80003744 (1135350)
9. Sierra Forest Products, VCU290996 (1291481)
10. USA Waste of California, Inc., 34-2022-80003841 (1384029)
11. Ranch of the Golden Hawk, 22STCP02302 (1224802)
12. 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)
5. MWL Solutions, C097353, 34-2020-80003549 (1436014)

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.

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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.)

1466971	Albertsons Companies Inc.
1532567	Ameri-Kleen
1487101	American Medical Response West
1553404	Amswede Corporation
1474528	Andrew M. Jordan, Inc.
1573271	Asap Distribution, Inc.
1556075	AT&T Communications America & AIO Wireless, LLC
1563352	Brinker International
1516818	BYD Coach and Bus, LLC
1589480	Cameiro Heifer Ranch
1555960	City of Chino Hills
1494600	City of San Diego - Environmental Services
1607730	Crothall Laundry Services
1221729	Dewey Pest Control
1462752	Discovery Hydrovac, LLC
1532631	Five Crowns, Inc.
1543320	George C. Hopkins Construction Co., Inc.
1576124	Gill Transport, LLC
1530052	Glenbrook HC, LLC
1513325	Henkels & McCoy Inc.
1612531	Holiday Inn Express & Suites Redding
1560517	Individuals Steve Chankra; Avtar Sing Sian; DNA
1594905	J.R.C Group, Inc.
1564536	Lakeside Golf Club
1578049	Lamonicas Pizza Dough Company, Inc.
1335212	Leonard Roofing, Inc.
1588892	Mclane Foodservice Distribution Inc.
1435029	Mountain F Enterprises, Inc.

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1580348	Muehlan Certified Coatings, Inc.
1522263	Nevell-Standard JV, LLC
1506744	Norcal Painters Incorporated
1552990	Oak Knoll Farming Corporation
1610171	Orora Packaging Solutions
1545271	Partners Personnel - Management Services, LLC
1600331	Peters Drilling and Pump Service, Inc.
1593612	Phibro-Tech, Inc.
1603134	Posh Bakery
1487768	Prime Healthcare Services-Sherman Oaks, LLC
1459374	Raylyn Farms, Inc.
1587673	Ross Dress For Less, Inc. #122
1560015	Safeway Stores 28, Inc.
1558806	Safeway, Inc.
1560541	Safeway, Inc.
1524789	Sheehan Construction
1609934	Singing Tree Gardens
1506240	Smithfield Foods, Inc. / Smithfield Distribution, LLC
1574035	Solstice Senior Living, LLC
1596968	State of California Department of Transportation
1592775	Sun Pacific Shippers, L.P.
1556511	Thomas Benzler dba Benzler Farms
1605980	Tree Max, Inc.
1603129	Trulite Glass & Aluminum Solutions
1622732	Uniblue Corporation
1606844	Valley Guard Pest Control, Inc.
1491830	Valley Village
1476072	Windsor Vallejo Care Center, LLC
1578106	Wm Bolthouse Farms, Inc.
1566460	Yutsi M. Garcia and Jaime A. Garcia Ibarra
1615302	Zachary Chase

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 11:32 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.