

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on January 5, 2023**  
**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  
Bruce Wick, Risk Management Director, Housing Contractors of California  
Bill Kroutil, Member of the Public

**Minutes of December 15, 2022 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the December 15, 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: Judge Sam Lucas updated the Board and summarized the report on the results of the pilot program.

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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.

4. Roundtable planning.

Action: Patricia Hapgood updated the Board on planning a Roundtable Seminar. The Board submitted ideas for dates for the event to be held.

**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 that Stewart Knox was appointed Secretary of the California Labor & Workforce Development Agency.

**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: Acting Executive Officer, Patricia Hapgood updated the Board on staffing open positions in Sacramento and Sacramento.

Ms. Hapgood also informed the Board of plans to update the Library and Hearing rooms in the Sacramento office.

There is a DIR Town Hall meeting scheduled for January 12, 2023, at 10:00 a.m. All are encouraged to attend.

**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: Public comments were received. Bill Kroutil, from the public, introduced himself.

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.)*

1431672 A. Teichert & Son, Inc.  
Action: The Board reviewed this decision.

1285791 Original Sixteen to One Mine, Inc.  
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.)*

- 1380273      Bigge Crane & Rigging, Co.  
Action:        The Board voted to grant this petition.  
Motion: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1541484      Empire Remodeling, Inc.  
Action:        The Board discussed this petition.

**Orders Dismissing Appeal:**

- 1550108      Niche Builders Group Incore LLC  
Action:        The Board reviewed this order.
- 1556741      Rancho West Landscape, Inc.  
Action:        The Board reviewed this order.
- 1431908      Ricardo Guzman Villanueva  
Action:        The Board reviewed this order.

**Orders Denying Leave To File Late Appeal:**

- 1572962      Total Terminals International, LLC  
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.*

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- 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.*
- 1300984 General Dynamics NASSCO  
*Whether Employer committed the violations alleged.*
- 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 voted to issue DAR.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Voted: 3-0
- 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.*  
Action: The Board discussed this matter.
- 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.*
- 1203336 Three-D Services Co. Inc.  
*Whether the records establishes that the violation involved in Citation 3 (survey of structure prior to demolition) was serious.*

**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. USA Waste of California, Inc., 34-2022-80003841 (1384029)
10. Ranch of the Golden Hawk, 22STCP02302 (1224802)
11. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)
12. American Fumigation Services, LLC, 22STCP04305 (1506586)

**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)

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**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.)*

1510550	A-1 Rehab & Recruitment Services, Inc.
1525570	A.S.S.E.T. Private Security
1606249	Ace Insulation
1575954	Advance Beverage Co., Inc.
1545992	Aerotek, Inc.
1568412	Alameda County Social Services Agency
1577880	Allied West Paper Corp
1511820	American Automobile Association of Northern
1539568	American Crane Rental, Inc.
1576921	Angeles Fulfillment Services, Inc.
1539581	Bei Construction, Inc.
1570442	Brush Masters
1560607	California Department of Transportation
1571614	Carwash Operators, LLC
1607983	Cell Crete Corp., Inc.
1526595	CI Coatings Inc.
1483916	Core Contracting, Inc.
1494060	Decker Ford, Inc. Db a Future Ford of Clovis
1562269	DH Blattner & Sons, Inc.

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1509613	Dignity Health
1551574	Earth Tech Engineering Inc.
1520101	EGX, Inc.
1483912	Emanate Health
1597202	Enza Zaden Research USA, Inc.
1494046	Everlast Roofing and Co. Inc.
1536944	Express Employment Professionals
1574473	Fairway Staffing Services, Inc.
1627103	Foothill Sierra Tree Service
1521293	Freddie's Transmissions
1587438	Gal Construction, Inc.
1556493	Gill's Onions
1555055	Gourmet Sweets Bakeries, Inc.
1541260	Granite Construction Company
1462748	Granite Petroleum, Inc.
1584787	Hakes Sash & Door
1576180	Herron Construction, Inc.
1529791	Hi-Temp Insulation, Inc.
1529838	Hobie Cat Company II, LLC
1397159	Imagine Tree Service, Inc.
1583405	J.B. Hunt Transport Inc.
1532538	K&J Ag Services, Inc.
1498479	Kaiser Foundation Hospitals
1555953	Luis Roberto Soto
1598658	Magic Laundry Services, Inc.
1553233	Material Supply, Inc.
1494517	Mb Builders, Inc.
1334776	Mesa Harvesting Company
1570246	Modern Painting
1479799	Mondiale Construction LLC
1540804	NBC Universal Theme Park
1556334	NorCal Heating and Cooling, Inc.
1369499	Optimum, Inc.
1553855	Pacific Coast Producers
1519854	Pacific States Industries, Inc.
1559784	Pitman Family Farms
1517042	Prime Harvest Contracting
1575437	Pro-Tech Painting, Inc.
1591383	Professional Painting
1474603	Quest Diagnostics, Inc.



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1481558	Reliable Wholesale Lumber, Inc.
1553425	Rigo's Tree Service
1455800	Roc Construction
1534219	Rosas Corporation
1376246	Safeway, Inc
1551184	Safeway, Inc.
1602928	Sierra Pacific Home & Comfort, Inc.
1559519	Southern California Edison Company
1564189	Stanley Black & Decker
1504280	Superior Court of California, In and For the County
1536534	Superior Court of California, In and For the County
1582554	Sycamore Labor, Inc.
1485460	The Geo Group, Inc.
1598615	Top Notch Calf Ranch
1558849	Town and Country Event Rentals, Inc.
1604651	Turbo Wholesale Tires, Inc.
1403076	Turner Construction Company
1518535	Twentieth Century Fox Film Corporation / 9-1-1:
1463099	United Natural Foods Inc.
1324760	United Production Framing
1505525	Vallarta Super Market #33
1549131	W Farms, LLC
1568436	Walmart, Inc.
1617859	Ward's Concrete, Inc.
1598811	Waste Management Collection And Recycling, Inc.
1577421	WCW, Inc.
1351029	West Coast Iron, Inc.
1579540	Wheel & Tire Club, 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 11:28 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 11:29 a.m.