

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on January 19, 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
Kevin Reedy, Supervising Administrative Law Judge
Rheeah Avelar, Administrative Law Judge
Aaron Jackson, Staff Attorney
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Janis Jonas, Executive Secretary
Bill Kroutil, Member of the Public

Minutes of January 5, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the January 5, 2023, 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: No report.

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

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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 reported that June 27, 2023, has been set as a tentative date to hold the Roundtable Seminar at the State Compensation Insurance Fund Vacaville Conference Center.

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 shared highlights from the DIR townhall meeting.

DIR awards ceremony has been scheduled and the Director's office is now accepting nominations.

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: The quarterly meeting with the Federal OSHA representative is scheduled for February 7, 2023. Reports for this meeting are due Wednesday, January 25, 2023.

Acting Executive Officer, Patricia Hapgood updated the Board on staffing positions in Sacramento and West Covina OSHAB offices.

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

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: Judge Kevin Reedy updated the Board on Video Hearings.

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: Aaron Jackson 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.

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.)

1473644 Amazon.Com Services, LLC
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.)

- 1541484 Empire Remodeling, Inc.
Action: The Board voted to issue a Denial for this petition.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1565022 Victorio Mufflers, Inc.
Action: The Board discussed this petition.

Orders Dismissing Appeal:

- 1502785 Arc Restoration & Waterproofing, Inc.
Action: The Board reviewed this order.
- 1531630 Frazier Industrial Co.
Action: The Board reviewed this order.
- 1431908 Ricardo Guzman Villanueva
Action: The Board reviewed this order.

Orders Denying Leave To File Late Appeal:

- 1490008 Elite MD, Inc.
Action: The Board voted to take this petition under submission by its own motion.
Moved: Ed Lowry
Seconded: Marvin Kropke
Vote: 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.

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- 1314092 99 Cents Only Store, LLC
Whether the employer committed a foot protection violation as alleged.
- 1380273 Bigge Crane & Rigging, Co.
Whether the employer committed the alleged violation.
- 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.
Action: The Board voted to issue the DAR for this matter.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 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.
- 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.

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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.

Action: The Board voted to issue denial on this matter.
Moved: Ed Lowry
Seconded: Marvin Kropke
Vote: 3-0

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)

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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)
6. BMC West LLC, 34-2020-80003459 (1399613)
7. Hampton Tedder Electric, 34-2020-80003549 (1233597)
8. Sierra Forest Products, VCU290996 (1291481)

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.)

1525431	Albini Hardwood Flooring
1601207	Arnold Farms, LP
1583125	Asacrete Inc.
1569388	Asacrete, Inc.
1549988	BMC West, LLC
1586624	C2R Engineering, Inc.
1596520	Chino Ford

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1396181	Citrus Pro, Inc.
1495388	City of Santa Rosa - Santa Rosa Water
1598290	Devcon Construction, Inc.
1550663	Dutch Dairy
1535840	EEL River Transportation and Salvage
1315593	FedEx Supply Chain
1285834	Fox Rent a Car, Inc.
1442055	General Dynamics Nassco
1540034	General Pump Company, Inc.
1566103	Glasswerks LA, Inc.
1567635	Hernandez Drywall, Inc.
1551171	Horizon Personnel Services
1507539	J&J Snack Foods
1523929	Jonathan D. Terry, Inc.
1491794	Joseph J. Albanese, Inc.
1472915	Kaiser Permanente Psychiatric Health Facility
1610637	Leslie Anshutz - an Individual
1362030	Los Angeles Department of Water And Power
1530539	Lovotti, Inc.
1583322	Maya Dairy
1559767	Milk Specialties Global
1488600	NGC Construction, Inc.
1568383	Nongshim America, Inc.
1489219	Pacific Gas & Electric
1505310	Paydar Properties, Inc.
1541272	Penhall Company
1523257	Randstad Inhouse Services, LLC
1545208	Riverside County Sheriff's Department
1577444	Sacramento Municipal Utility District
1431051	San Joaquin Steel Co., Inc.
1372409	Skyline Scaffold Inc.
1623547	Smith and Moen Construction, LLC
1504666	Sper Contracting Corporation
1527884	State of California - Department of
1551903	Tatung Company of America, Inc.
1594295	Transtar Builder, Incorporated
1496100	Tulare County
1560074	Tutor Perini Corporation
1488960	United Parcel Service, Inc.
1553040	Van's Paving & Grading Inc.

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1537848 Walmart, Inc.
1570673 Walmart, Inc.
1591872 Western Refining Retail, LLC

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 11:11 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 11:12 a.m.