

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on February 16, 2023**  
**Sacramento, California**  
**West Covina, California**  
**Zoom Platform**

**Present:**

Ed Lowry, Public Member, Chair  
Judith Freyman, Management Member  
Marvin Kropke, Labor Member  
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  
Dan Lucido, DOSH Chief Counsel

**Minutes of February 2, 2023, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the February 2, 2023, Board meeting.  
Moved: Judith Freyman  
Seconded: Ed Lowry  
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: The Board discussed the pilot program and agreed it was successful. There was consensus between the Board, OSHAB Judges and DOSH representative that there was no negative input resulting from the calendaring program. The Board agreed to use this calendaring system in the future when needed.

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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: No report.

4. Roundtable planning.

Action: The date and location for the Roundtable Seminar has been confirmed. It will be held June 27, 2023, 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: Ed Lowry reported on the meeting with Fed OSHA Tuesday, February 7, 2023.

**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 Sacramento Office Renovation project has started. Painting, carpeting and most electrical work in the two conference rooms are scheduled to be completed by March 1, 2023.

**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: No report.

2. Discuss status of Video Hearings. Aaron Jackson updated the Board on the process of reviewing the regulations.

Action: No report.

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

Action: No report.

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 comments made from the public.

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.)*

1474269 Circle M. Truck Repair, Inc.  
Action: The Board discussed this Decision.

1405107 S. C. Anderson, Inc.  
Action: The Board discussed this Decision.

1486257 The Kroger Company  
Action: The Board discussed 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.)*

- 1492543      Engine 53, Inc.  
Action:        The Board voted to issue a denial for this petition.  
Motion: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1555357      Quest Diagnostics Nichols Institute  
Action:        The Board voted to issue a denial for this petition.  
Motion: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1572962      Total Terminals International, LLC  
Action:        The Board voted to issue a denial for this petition.  
Motion: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

**Orders Dismissing Appeal:**

- 1495245      Barnmaster Supply  
Action:        The Board discussed this order.
- 1556728      D S Baxley, Inc.  
Action:        The Board discussed this order.
- 1500811      Viking Staffing, LLC  
Action:        The Board discussed this order.

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

There are no Orders Denying Leave to File Late Appeal.

**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*

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*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.*
- 1431672 A. Teichert & Son, LLC  
*Whether the cited employer was in violation of lockout/tagout requirements.*
- 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.*
- 1490008 Elite MD, Inc.  
*Whether the ALJ's denial of leave to file a late appeal was correct.*
- 1262720 General Dynamics NASSCO  
*Whether the employer followed proper procedures in rigging a load.*
- 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.*
- 1465354 Natural Alternatives International, Inc.  
*Whether the ALJ erred in dismissing the matter.*
- 1291481 Sierra Pacific Forest Products  
*Whether Employer was in compliance with the cited safety order.*

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1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals  
*Whether Employer violated section 3212(a)(2)(A) as alleged.*

**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)  
Action: The Board discussed this matter.
7. Hill Crane Service Inc., 34-2021-80003744 (1135350)
8. USA Waste of California, Inc., 34-2022-80003841 (1384029)
9. Ranch of the Golden Hawk, 22STCP02302 (1224802)
10. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)
11. American Fumigation Services, LLC, 22STCP04305 (1506586)

**Appellate Court:**

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. L & S Framing, Inc. S-CV-0046603 (1173183)
3. Granite Construction Company, 34-2021-80003634 (1235643)
4. MWL Solutions, C097353, 34-2020-80003549 (1436014)
5. BMC West LLC, 34-2020-80003459 (1399613)

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6. Hampton Tedder Electric, 34-2020-80003549 (1233597)
7. Sierra Forest Products, VCU290996 (1291481)
8. RND Contractors, Inc., CIVSB2119442 (1436785)

**Other Items:**

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

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.)*

1557586	20th Century Fox Television
1565902	531 Esplanade Association
1510147	ALOG Technology Logistics Us, Inc.
1438915	Amazon Fulfillment Center LGB8
1549208	Amera Enterprises, LLC
1490412	Antelope Valley Hospital
1508670	Arden Group, Inc.
1576354	Aspire Bakeries, LLC
1596183	Aspire Bakeries, LLC
1515892	Bartz-Altadonna Community Health Center
1575551	Bay Area Community Services, Inc.
1576663	Brightview Landscape Services, Inc.
1603931	C A Nevis Farms, Inc.

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1410103	CBRE, Inc.
1509082	Cintas Corporation
1634158	City of Lakeport
1608989	Columbia Candy Kitchen, Inc.
1588480	Coronado Cays Homeowners Association
1613646	Cortina Hulling & Shelling
1550454	DLR Logistic Inc.
1574731	Do Right Management, Inc.
1548592	Dominguez Landscape Services, Inc.
1504201	Engstrom and West, Inc.
1536325	Ferguson Enterprise, LLC
1499554	Food 4 Less Holdings, Inc.
1483880	Grand Park Convalescent Hospital
1512612	Green Valley Tree Care, Inc.
1544669	Healthcare Services Group, Inc.
1481792	HGST, Inc.
1479069	HMH Inc.
1429815	Home Box Office, Inc./Autonomy Productions, LLC
1549829	Industrial Water Service, Inc.
1520558	Inglewood Operating Company, LP
1580097	Kelly Tool & Manufacturing Co.
1580200	Kuubix Global, LLC.
1488568	Life Care Centers of America, Inc.
1491656	M Three Ranches, LLC
1553869	Mariani Packing Company
1267497	McMinn Equipment Rental & Leasing, Inc.
1602803	Olinda Alpha Landfill, OC Waste & Recycling
1535087	Orange County Superior Court
1560878	Prime Tech Cabinets, Inc.
1266510	S E C C Corporation
1572198	San Jose Department of Transportation
1609168	Semper Virens Bakery Food Cooperative, Inc.
1427761	Sierra Pacific Industries
1577697	Silva's Holsteins
1389056	Stanford Health Care
1549047	Storage Systems, Inc.
1468517	The Save Mart Companies, Inc.
1499586	Tractor Supply Company
1618426	Trader Joe's
1517717	True Organic Products, Inc.
1421952	Turner Construction Company
1510241	Tutor Perini Corporation
1602431	United States Pipe and Foundry Company, LLC
1597089	Velo3d, Inc.
1614628	Von Hoppen Ice Cream
1592473	Wacky Tacky 2



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1547419	West Harbor Healthcare, LLC
1496785	West Hills Hospital
1496511	Westland Contractors, Inc.
1530964	WRP Management
1417890	Yolo County Arborist
1479306	Yuba River Moulding & Mill Work, Inc.

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

**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session adjourned at 11:16 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 11:17 a.m.