

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on March 2, 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
Rheeah Avelar, Acting 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
Bruce Wick, Risk Management Director, Housing Contractors of California
Samuel Rose, Attorney, Conn Maciel Carey LLP

Minutes of February 16, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the February 16, 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: This program has been completed and can be removed from the Board's meeting agenda until further notice.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: No report.

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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 regarding the regulatory amendments. The amendments are still with the Department of Finance.

4. Roundtable planning.

Action: The Roundtable event will be held June 27, 2023, at the State Compensation Insurance Fund Vacaville Conference Center. Once approved by the media group, a 'save the date' notice will be sent to the stakeholders.

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 spoke about President Joe Biden nominating Julie Su for Secretary of the Department of Labor.

Board Members Reports:

(Hear reports from Board members on activities and issues affecting the Appeals Board.)

Action: Judith Freyman spoke of updates regarding the Federal OSHA program.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: The Sacramento Office Renovation project has started. Card Key Entry Pads are being installed.
Admin has put out new travel instructions and the use of VCNs, (Virtual Card Numbers).

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.

Action: No report.

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

Action: Kevin Reedy updated the Board on the Appeals with COVID related citations.

4. Litigation update:

Action: Jeff Mojcher and Vincent Mersich 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.)

1451264 Trademark Construction Company, Inc.

Action: The Board discussed this Decision.

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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.)

- | | | | |
|---------|----------------------------------|---------|---|
| 1570353 | Adept Process Services, Inc. | Action: | The Board voted to issue an Order Extending Time for Reconsideration.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |
| 1473644 | Amazon.com Services, LLC | Action: | The Board voted to take this petition under submission.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |
| 1604280 | Edventure More | Action: | The Board discussed this petition. |
| 1604670 | El Toro Export, LLC | Action: | The Board voted to remand this matter.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |
| 1562245 | Fabretti & Dedini, A Partnership | Action: | The Board discussed this petition. |

Orders Dismissing Appeal:

- | | | | |
|---------|--|---------|---------------------------------|
| 1237935 | D'ybanag Construction Company | Action: | The Board discussed this order. |
| 1491642 | Madrigal Farm Labor, LLC (Failure to Appear) | Action: | The Board discussed this order. |
| 1491642 | Madrigal Farm Labor, LLC (After Employer's objection filed, No Good Cause to Reinstate). | Action: | The Board discussed this order. |
| 1575113 | Sun America Fruit & Vegetable Corporation | Action: | The Board discussed this order. |

Orders Denying Leave To File Late Appeal:

1570557 Ly Brothers Corporation
Action: The Board discussed 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.
- 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.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.

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- 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.
- 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)
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)
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 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.)

1597307	A.M.F. Supplies, Inc.
1476835	Aberle Concrete Excavating & Grading, Inc.
1514420	ABM Industries, Inc.

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1588777	Accelerated Construction & Metal, LLC
1386405	Advanced Construction Southwest of California,
1554102	Alaskan Copper Companies, Inc.
1573277	Allied Propane Service, Inc.
1570570	Almanac Beer Company, LLC
1628897	Ameri-Kleen, Inc.
1520602	Americold Logistics, LLC
1628103	Anderson Brothers Corporation
1597585	Antelope Valley Recycling & Disposal Facility, Inc.
1574498	Barrier Specialty Roofing & Coatings, Inc.
1554016	Bay Cities Tin Shop, Inc.
1567654	Bay Cities Tin Shop, Inc.
1605807	Bill & Dave's Landscape Maintenance
1576435	Bill Hamilton Roofing, Inc.
1604975	Bon Appetit Danish, Inc.
1495504	BRCO Constructors Inc.
1619463	Bullert Industrial Electric, Inc.
1508321	CA Corrections and Rehabilitation, California
1571613	Church of The Open Door
1566637	Classical Progression
1531920	Coastal PVA Technology Inc
1549610	Contra Costa County's Sheriff's Office
1506773	Core Tree Care, Inc.
1556939	Cynet Health, Inc.
1602396	Donald Van Dam, Frances Van Dam, Glen Van Dam,
1594289	Employee Force Provider
1617086	Environmental Materials, LLC
1605602	Epsilon Plastics, Inc.
1375559	Essey Construction Company, Inc.
1527755	Evans Woodworking Incorporated
1508306	Food 4 Less Holdings, Inc.

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1511877	Foster Farms
1417334	Foster Poultry Farms
1475974	Gabilan Oaks, LLC
1504393	Gelson's Markets
1580030	General Restaurant Equipment Co.
1491632	Grimmway Enterprises, Inc.
1589437	Hansen Steel Services, LLC
1525769	Harbor Distributing, LLC
1614985	Hart Andrew Ronstadt
1585430	Heritage Construction, Concrete & Masonry, Inc.
1617888	Hilfiker Pipe Company
1555646	Hunter Landscape, Inc.
1577333	J. Harris Industrial Water Treatment, Inc.
1401311	Jackson Family Wines, Inc.
1617867	JC Ford Company
1544504	Jensen Landscape Services, LLC
1540055	Jim Carr General Contracting
1542296	JM Roofing Co. Inc.
1605157	Johns Manville
1540049	La Verne Nursery, Inc.
1504234	LAPD - Devonshire Division
1541865	LAUSD / Riverside Avenue Elementary School
1575359	Lightwave Construction, Inc.
1476218	Lincoln James Construction, Inc
1523246	LMC Construction, LLC
1559229	Lockheed Martin Aeronautics Company
1581044	M & T Fashion, LLC
1432024	Marques Pipeline, Inc.
1437448	Marques Pipeline, Inc.
1570982	Metropolitan Water District of Southern
1498144	Morena Welding, Inc.

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1563068	Nationwide Shotcrete, Inc.
1610185	Nongshim America, Inc.
1556360	Northcentral Pizza, LLC
1590394	Oakhurst Industries, Inc.
1429267	Oldcastle APG West, Inc.
1612453	One Contracting and Remodeling Limited
1536514	Pacific States Industries, Inc.
1527589	Peopleready, Inc.
1594306	Pinner Construction
1569373	R & R Demo and Grading Corp.
1588559	Rancho California Landscaping, Inc.
1521588	Ready Home Energy, Inc.
1601457	Repet, Inc.
1519226	Restoration Hardware, Inc.
1402746	Rick Miller
1465047	RJP Framing, Inc.
1499635	Rokstad Power Inc.
1580278	Rplanet Earth Los Angeles, LLC
1606578	Saga Kapital Group, Inc.
1524515	Seaside Waterproofing
1566999	Sid Ceballos Construction, Inc.
1320785	Stay Green Inc.
1539242	Steven T. Blaze, Individually
1523263	Sun Pacific Shippers, L.P.
1622166	Tabel, Inc.
1539014	Taylor Farms Retail, Inc.
1594303	TC Restaurant Group
1614981	Thatcher Company Of California, Inc.
1570703	Thomas Home Center, Inc.
1628415	Timberworks Construction, LLC
1588990	Toste Construction, Inc.

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1627329	Trophysmack, Inc.
1592346	UC Framing Corp.
1565727	Ultimate Internet Access, Inc.
1486978	Valley Produce Harvesting, Inc.
1558354	VCSD Inc.
1215216	VPET USA Inc
1550254	Willie Earl Page
1567213	Wright Equities, Inc.
1551401	Xus, Lp
1595410	Zuckerman Family Farms, 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 11:49 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 11:50 a.m.