

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on March 16, 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
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
Matt Lugo, DIR Analyst, Office of Director, Legislation and Regulations
Dan Lucido, Chief Counsel, DOSH

Minutes of March 2, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the March 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. Update of DOSH eAttorney system interfacing with OASIS.

Action: No report.

2. 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 Office of Finance approved the regulatory packet and it will now go to the Office of Administrative Law.

3. Roundtable planning.

Action: Patty Hapgood reported that the Roundtable event has been approved by the Media Office and the Director's Office. The seminar is scheduled for 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 reminded the Board that the DOSH Advisory Committee meeting is scheduled for March 23, 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: Patty Hapgood reported that the remodeling in the Sacramento office is near completion. Out of State travel requests are due March 17, 2023. All supply orders are due April 28, 2023. Audio systems are being evaluated for the Conference rooms. Annual performance reports are due at the end of this month.

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: 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.)

There are no Decisions scheduled for this meeting.

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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 take this matter under submission.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |
| 1493190 | BDS Construction | Action: The Board discussed this matter. |
| 1604280 | Edventure More | Action: The Board voted to issue a Denial.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |
| 1562245 | Fabretti & Dedini, A Partnership | Action: The Board voted to issue a Denial.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |
| 1593084 | Precise Personnel, LLC | Action: The Board voted to issue an order extending time for this matter.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |
| 1405107 | S.C. Anderson, Inc. | Action: The Board voted to take this matter under submission.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |

Orders Dismissing Appeal:

- | | | |
|---------|---|---|
| 1041493 | 1180 W. 36 Place Holdings, LLC and or John Fowler | Action: The Board discussed this order. |
| 1557081 | Expert Staffing West, Inc. | Action: The Board discussed this order. |

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- 1516630 Les Schwab Tire Centers, Inc.
Action: The Board discussed this order.
- 1489025 Los Angeles Apparel, Inc.
Action: The Board discussed this order.
- 1466429 Low Cost Interlock, Inc.
Action: The Board discussed this order.
- 1541818 The Meadowglade, LLC
Action: The Board discussed this order.

Orders Denying Leave To File Late Appeal:

- 1538332 Albeco, Inc.
Action: The Board voted to take this matter under consideration on their own motion.
Motion: Marvin Kropke
Seconded: Judith Freyman
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.

- 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.
- 1473644 Amazon.com Services, LLC
Whether the employer's training program was in compliance with the applicable safety order.

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- 1380273 Bigge Crane & Rigging, Co.
Whether the employer committed the alleged violation.
Action: The Board discussed this matter.
- 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.
- 1004280 Key Energy Services, LLC
Matter remanded to the Board from the Court.
Action: The Board discussed this matter.
- 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. 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.

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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.)

1484281	152 Transport Inc.
1614702	A & A Stepping Stone Manufacturing, Inc.
1562293	A & P Smog
1606966	Accurate Electric, Inc.
1605131	Ace Hardware, Corp.
1578120	AJK Construction, Inc.
1547773	Alvarez Harvesting, Inc.
1610019	American Pavement Systems, Inc.
1600291	Azusa Police Dept.
1476868	Bastone Builders
1599463	Big Daddy's Antiques, Inc.
1592694	Bland A/C & Heating, Inc.
1422051	Boulay Construction
1368068	Builder Services Group, Inc.
1532221	Builder Services Group, Inc.
1579443	CA Victim Compensation Board
1613321	California Nut Company, LLC
1273067	Cambron Roofing and Waterproofing, Inc.
1530164	Central Aire, Heating & Air Conditioning Service
1553165	City of Whittier Department of Public Works
1546275	Community Tree Service, Inc.
1424024	COSO Operating Company, LLC
1595780	Costco Wholesale Corporation
1580827	County of San Diego - Probation Department East
1580824	CP Kelco Us, Inc.
1455928	Crux Subsurface, Inc.
1572145	CSI Electrical Contractors, Inc.
1595261	Cypress Manufacturing Company

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1596173	Day-Lee Foods, Inc.
1473165	Deacon Construction, LLC
1488578	Deacon Construction, LLC
1547733	Deskmakers
1530054	Devonshire Healthcare, Inc.
1614107	Durabag Company, Inc.
1583406	E & A / Emunahahavah Corporation
1596765	Eagle Asphalt Paving, Inc.
1637194	Emerald Farms LLC
1596293	Express Services, Inc.
1617863	Express Services, Inc.
1476243	Fadelli Concrete Pumping Inc.
1544710	Famarock, Inc.
1566976	Flux Power, Inc.
1640273	Fulcrum Construction, Inc.
1568622	G&H Supply Company, LLC
1426728	Gerlinger Foundry and Machine Works, Inc.
1551646	Goldbaum's Air Conditioning & Heating
1491024	Grimmway Enterprises, Inc.
1618260	H Mart Lakewood, LLC
1601815	Hangtown Range, LLC
1358578	Harbor Foods #3, Inc.
1613053	Heritage Plastering, Inc.
1533477	Hernandez Contracting, Inc.
1584237	HVL Construction, Inc.
1615685	Hydra Distribution & Rail Services, Inc.
1614408	Infinitus Pacific, Inc.
1542272	Interstate Grading & Paving
1562307	Iron Sights Shooting Range Inc.
1227066	Kana Pipeline, Inc.
1555846	Karoun Dairies, LLC
1562289	Kearny Mesa A & H, Inc.
1588298	Kern Oil & Refining Co.
1567147	Kittrich Corporation
1608423	Lakeside Organic Gardens, LLC
1612164	Lamanuzzi & Pantaleo, LLC
1633386	Lamon Construction Company, Inc.
1557158	LAUSD - Vista Del Valle Dual Language Academy
1560359	Lief Organics, LLC
1605158	Lowe's Home Centers, LLC

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1585486	Lowpensky Moulding
1531377	Lusardi Construction Co.
1556092	Madriaga Construction Service, Inc.
1580093	Mark Wilson Construction, Inc.
1502798	Matich Corporation
1618244	MCH Electric, Inc.
1524336	Millennium Reinforcing, Inc.
1586567	Mountain F. Enterprises, Inc.
1613730	New Bangluck Corporation
1580089	Nissin Foods (U.S.A.) Company, Inc.
1516434	Norway Maple Holdings, LLC
1539702	Nutrien AG Solutions, Inc.
1595397	Omega Extruding Corp of California
1572747	Owens Premier, Inc./NZG Specialties, Inc.
1428985	Park West Arbor Care, Inc.
1280430	PCC Rollmet, Inc.
1461679	PRC-Desoto International, Inc.
1627088	Pre/Plastics, Inc.
313647646	Prime Wheel Corporation
1555443	Producers Meat & Provisions, Inc.
1499327	Prospect Medical Holdings, Inc.
1499341	Prospect Medical Holdings, Inc.
1595414	R. Young Enterprises, Inc.
1631141	S&N Ventures, Inc.
1578116	S.C. Anderson, Inc.
1559628	San Diego Air & Space Museum
1564839	Santa Maria Joint Union High School District
1617495	Schaupp Farms
1564991	Schreiber Framing, Inc.
1601736	Seeley Brothers
1574543	Shalom Produce, Inc.
1581225	Sorrento Berry Farms, LLC
1581248	Sorrento Berry Farms, LLC
1578351	Southern California Edison Company
1595427	Southern California Healthcare System, Inc.
1566640	Stearns Conrad and Schmidt Consulting Engineers,
1504397	Sunbridge Shandin Hills Rehabilitation Center, LLC
1593638	T.K.O. Painting Co., Inc.
1580095	Ta Fong Corporation
1603628	Tesoro Refining and Marketing Company LLC

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1487202	The Vons Companies, Inc.
1559877	Timberworks Construction, Inc.
1582961	TMC General Construction Inc.
1640966	Tricorp Group, Inc.
1588631	True North Constructors, Inc.
1411794	TTX
1402002	Turn Key Facility Services, Inc.
1342260	United Parcel Service
1569789	V. Sangiacomo & Sons
1358844	VAHE Benlian/Benlian Bros Construction, Inc.
1579439	YHB Corporation
1623678	Zara Construction, Inc.

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

Personnel:

(Issues regarding staff)

Action: The Board discussed staff issues.

The Closed Session adjourned at 11:36 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 12:10 p.m.