

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on April 6, 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
Patricia Hapgood, Acting Executive Officer
Kevin Reedy, Presiding Administrative Law Judge
Sam E. Lucas, Presiding Administrative Law Judge
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Rocio Garcia-Reyes, Assistant Chief Counsel, DOSH

Minutes of March 16, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the March 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. 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 telephone or videoconference, including consideration of proposed amendments to Board regulation 376, and consideration of public comments received.

Action: No report.

3. Roundtable planning.

Action: Patty Hapgood reported to the Board that plans are moving forward with the June 27, 2023 event.

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: No report.

Board Members Reports:

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

Action: Judith Freyman discussed a case out of the State of Washington vs. Amazon.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood announced Nicole Franco is retiring from State service.
The Appeals Board meeting with the Federal OSHA representative is scheduled for May 2, 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.

Action: Sam Lucas updated the Board on video hearings.

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 updated the Board on current court cases.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 6, 2023

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 comments will be entertained during discussion of each agenda item of the open meeting.)

Action: There were no public comments made during this meeting.

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.)

1273311 Classic Residence Management, LLC
Action: The Board discussed this decision.

1488312 The Indiana Finish Line, Inc.
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.)

1493190 BDS Construction
Action: The Board voted to deny this petition.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1593084 Precise Personnel, LLC
Action: The Board voted to deny this petition.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1486257 The Kroger Company
Action: The Board voted to issue an order extending time in this matter.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

Orders Dismissing Appeal:

1540788 Northern Truck Repair LLC
Action: The Board discussed this order.

Orders Denying Leave To File Late Appeal:

1603459 Octavio Valdez
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.

1570353 Adept Process Services, Inc.
Whether employer's motion to stay administrative proceedings should be denied.

1538332 Albeco, Inc.
Whether denial of motion for late appeal was correct.

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

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 6, 2023

- 1380273 Bigge Crane & Rigging, Co.
Whether the employer committed the alleged violation.
Action: The Board voted to issue a DAR in this matter.
Motion: Judith Freyman
Seconded: Marvin Kropke
- 1360156 CA Forestry and Fire Protection
Whether it was an error to assign a particular ALJ to the matter.
Action: The Board discussed this 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.
- 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 6, 2023

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.)

1574030	A & E Auto Body, Inc.
1627303	A1 Sun, Inc.
1582943	Acosta Landscaping
1587267	Advanced Roof Design Inc.
1617367	Air Tight
1543405	American Incorporated
1626224	American Wrecking, Inc.
1531561	Andrzej Krol
1633355	Approved Staffing Services, Inc./ Approved HR, Inc.
1526241	AT&T, Inc.
1631432	ATD Holdings
1596295	Automation West Inc.
1611293	Baney Corporation
1640354	Beursken Enterprises, Inc.
1621025	Blue Triton Brands, Inc.
1555949	Brunk Industries
1549581	Ca Corrections and Rehabilitation
1558574	Ca Corrections and Rehabilitation, California
1491210	Ca DDS Porterville Developmental Center
1487725	Ca Prison Industry Authority
1478754	California Department of Corrections
1502687	California Department of Corrections
1580073	California Enterprises Employment, Inc.
1507239	California Premier Roofscapes, Inc.
1543403	Cancor Inc.
1525468	Carmel Development Company
1567203	Cascade Drilling, L.P.
1587923	Catherine S. Gurney
1560498	CB Manufacturing Company, Inc.
1558658	CBC Framing, Inc.
1617176	Celoseal Roofing, Inc.
1447929	Centerstone Marble Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 6, 2023

1610748	Classic Tow, LLC
1547971	Commercial Seating Specialists, Inc.
1530193	Coolport Management, LLC
1590678	Costco Wholesale Corporation
1580578	Country Builders Construction, Inc.
1613667	County of Yolo
1648014	Croxton Lath & Plaster
1580078	DAJ Distribution, Inc.
1585131	Daryl W. Jessen
1623717	Devon Self Storage Holdings
1616854	DHSO, Inc.
1503937	Dignity Health
1531396	Dignity Health
1463402	DPR Construction
1626503	Dynamic Iron Works, Inc.
1529253	E&B Natural Resources Management Corporation
1614684	Eaglelift, Inc.
1640052	Easton Painting, Inc.
1612134	Electritel Services, Inc.
1628981	EMV Crane Services, LLC
1611573	Ernesto Sexton
1602435	Evanart
1585403	Fairway Staffing Services, Inc.
1539057	Foothill Care Center, Inc.
1543667	Fresh Harvest, Inc.
1590719	G Kaplanis Construction
1507009	Gambriel Development, Inc.
1570211	Golden Fresh Egg Ranch, Inc.
1597471	Gordon Laboratories, Inc.
1590032	Gosal Dehydrator, Inc.
1627016	Green Perspectives
1310514	Greengo Farms
1640309	Gussie Steel, Inc.
1556100	H & H Manufacturing & Metal Spinning, Inc.
1600326	Haim Bahari
1552803	Harris Ranch Beef Company
1504096	Hillsides
1511217	HPT Motors, LLC
1625705	Ideal Restoration, Inc.
1487494	Intermountain Employment Services, Inc.
1601833	J. Torres Co., Inc.
1583171	James E. Roberts - Obayashi Corp.
1622688	Juan Landeros, an Individual
1614313	Kaptive Construction & Preservation
1565317	Kehe Enterprises, LLC
1600012	Kenneth Development, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 6, 2023

1339878	Kohl's Department Stores Inc.
1522266	Kurt Bianchi
1482711	LAPD Custody Service Division
1599353	Lee Wilson Electric Co.
1638506	LIDCO, Inc.
1514174	Life Care Centers of America, Inc.
1398493	Lionakis
1571298	Los Angeles County Metropolitan Transportation
1608450	Los Angeles County Museum of Natural History
1491994	Lowe's Home Centers, LLC
1592972	Marinovich Cooling and Storage, LLC
1624574	Matteoli Brothers
1595106	Mattingly's Concrete
1625227	Miguel Angel De La Rosa Nunez
1630010	Minim Productions, Inc.
1624041	Mission Linen Supply
1629916	Mt. Baldy R&M Investments, Inc.
1583313	National Clean S&R, Inc.
1616868	Nehemiah Rebar Services, Inc.
1610175	Netflix, Inc.
1528975	New Vision Tree Service
1568181	Newhouse Construction Services, Inc.
1623656	Ontario Cemetery Association
1620979	Orlando Family, LLC
1642882	Pace Analytical Services, LLC
1599291	Pacon, Inc.
1590877	Pan Cal Corporation
1411015	Par Electrical Contractors, Inc.
1629925	Pearring Malone, Inc.
1537093	PIH Health, Inc.
1488302	Pomona Valley Hospital
1568282	PRL Aluminum, Inc.
1585371	Pro-A Motors, Inc.
1594154	Propak Logistics, Inc.
1574043	Prospec, Inc.
1574493	Punjab Tent House Inc.
1610337	R & M Bro's Construction, Inc.
1612876	RCM Electric Company, Inc.
1631178	Reyes Fleet Management, LLC
1555721	Rio Vista Development Company
1623590	Rosendin Electric, Inc.
1596941	Ross F. Carroll, Inc.
1603735	Ross F. Carroll, Inc.
1642946	Rush Personnel Services, Inc.
1571514	San Fernando Motor Company
1524566	Schuff Steel Company

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 6, 2023

1448664	SECC Corporation
1611572	Shalom in Home, LLC
1571920	Sierra Pacific Industries
1619461	Span Construction & Engineering, Inc.
1535185	State of California - Dept. Of Corrections - Avenal
1503792	State of California Department Of Corrections And
1527587	State Roofing Systems, Inc.
1607685	Stokes Ladders, Inc.
1612533	Stonelake Masonry, Inc.
1628144	Terracon Consultants, Inc.
1623290	The Merchant of Tennis, Inc.
1501700	The Vons Companies Inc., #2214
1596281	Thompson Builders Corporation
1631043	Trinity Timber, Inc.
1485867	Tutor Perini Corporation
1569688	Tyrrell Resources, Inc.
1467749	University of California San Diego
1414273	Utility Tree Service, LLC
1511876	Valdez Painting, Inc.
1481236	VF Outdoor, LLC
1560977	Villalpando Ag Inc.
1493368	Vivint Solar Developer, LLC
1598901	Walmart, Inc.
1617746	Xxaler, 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 11:29 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 Board meeting was adjourned at 11:30 a.m.