

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**

**Held on April 20, 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

Sam E. Lucas, Presiding Administrative Law Judge

Aaron Jackson, 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 April 6, 2023, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the April 6, 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

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 20, 2023

telephone or videoconference, including consideration of proposed amendments to Board regulation 376, and consideration of public comments received.

Action: The Board approved two non-substantial and/or non-regulatory changes to section 376, subdivision (i). First, where section 376, subdivision (i), referred to the Board's "rules of practice and procedure," the Board approved a modification so that it refers to the Board's rules "set forth in Chapter 3.3," which is where the Board's rules of practice and procedure are located. The Board also approved removal of a portion of a sentence that states, the Appeals Board "shall maintain exemplars of the required disclosures on its website,..."

3. Roundtable planning.

Action: Patty Hapgood reported to the Board on the planning of the Roundtable event June 27, 2023. Invitations will be sent within the next two weeks.

4. Discussion of precedential index and whether to add any cases to the index.

Action: This item is held over to next meeting.

5. Discuss creation of an appeals advisor for cited employers to help them avoid dismissals on technicalities.

Action: There was a discussion regarding ways of helping the public file an appeal. The possibility of creating a position for someone with the focus on answering questions and assisting employers filing an appeal. Dan Lucido will ask the DOSH Consultation unit to what extent they advise employers on filing an appeal.

**Legislation:**

*(Review and discuss current legislation which may affect the appeals Board.)*

Action: No report.

**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: No report.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood notified the Board of a meeting scheduled with Katie Hagan, DIR Director on April 27, 2023. May 2, 2023, there is a meeting scheduled with the Federal OSHA representative. Drivers' training classes are being reinstated by DIR HR. New telework agreements will issue on May 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.

Action: Sam Lucas updated the Board on video hearings.

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

Action: Sam Lucas updated the Board on the Appeals with COVID related citations.

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 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.)*

There are no Decisions scheduled for this meeting.

**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.)*

- |         |                               |         |   |
|---------|-------------------------------|---------|---|
| 1580817 | Cameron Sparks, an Individual | Action: | The Board discussed this matter.  |
| 1486257 | The Kroger Company            | Action: | The Board voted to take this petition under submission.<br>Motion: Judith Freyman<br>Seconded: Marvin Kropke<br>Vote: 3-0 |

**Orders Dismissing Appeal:**

- |         |                                  |         |                                 |
|---------|----------------------------------|---------|---------------------------------|
| 1570564 | Horizon Personnel Services, Inc. | Action: | The Board discussed this order. |
| 1453051 | Rojo Green, Inc.                 | Action: | The Board discussed this order. |

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

- |         |  |         |                                 |
|---------|--|---------|---------------------------------|
| 1600556 | State of Calif. Department of Transportation | 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*

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 20, 2023

*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.*  
  
Action: The Board voted to issue a DAR for this matter.  
Moved: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0
- 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.*
- 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.*

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 20, 2023

- 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.*
- 1405107 S.C. Anderson, Inc.  
*Whether employer committed the alleged violations.*
- 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)

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 20, 2023

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.

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.)*

1476883	AG Monrovia, LLC
1504268	All Service Builders, Inc.
1578889	American Custom Coils, Inc.
1574305	Antonio Enrique Arango, an Individual

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 20, 2023

1522739	Art Deck, Inc.
1600344	Asen Construction
1493778	Aurora Las Encinas, LLC
1545661	BAPKO Metal, Inc.
1617045	Bell Brothers Plumbing Heating & Air
1624867	C & L Refrigeration
1487771	Canoga Park SH, LLC
1296881	CCC Steel, Inc.
1630699	CHM Hotels
1513047	City of Healdsburg
1570563	Comcast Cable Communications, LLC
1570244	Commercial Machineworx Co., LLC
1547200	Contra Costa County Public Works Department
1567890	County of Kern Probation Department
1498140	Diversified Utility Services, Inc.
1552833	Duran's Paving Rentals, Inc.
1547230	Encina Wastewater Authority
1623394	Encore Textile Services LLC
1557081	Expert Staffing West, Inc.
1401005	Fenix Marine Services LTD
1508912	Food 4 Less Holdings, Inc.
1555726	Frontier Auto Sales
1562485	Frontier-Kemper Constructors, Inc.
1620986	Gary Johnson, Individual
1449746	Ghanooni Construction, Inc.
1564738	Golden West Veg, Inc.
1591324	Housing Authority of The City Of Los Angeles
1544103	HP Hood LLC
1620710	Ideal Restoration, Inc.
1632828	Infinity Metals Inc
1570117	Irbis HVAC, Inc.
1494634	Istairs, Inc.
1581949	J. Reliable Construction Cleanup, LLC
1585153	Jack E. Seiler and Ryan R. Seiler
1536572	JC Farming LLC
1639066	Jerry's Pallets, Inc.
1599473	JMB Construction, Inc.
1603601	John Kautz Farms
1336041	Johnson Controls, Inc.
1609143	Juan Andalon Garden Service



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 20, 2023

1530638	KCM Technical, Inc.
1615242	King Door Company, Inc.
1605631	Kiss Cattle, LLC
1588293	Kiss That Frog, Inc.
1596913	Konoike-Pacific California, Inc.
1627752	Larson Custom Woodworks
1605739	Lee Austin Construction, Inc.
1635951	Lennar Homes Of California, LLC
1608950	Magic Laundry Services, Inc.
1607746	Manish Ishwarlal Drona
1642058	Mark Danis
1532864	Midstate Construction Corporation
1615524	Midstate Sheetmetal, Inc
1555973	Minim Productions Inc.
1578563	Nasatka Barrier Incorporated
1568720	Nextcrop, Inc.
1625342	North Coast Cooperative, Inc.
1515776	Pacific Bell Telephone Company
1490501	Pacific West Builders, Inc.
1588642	Partners Personnel - Management Services, LLC
1644328	Pathway Vet Alliance LLC
1520328	Penny Lane Centers
1504562	Premier Custom Builders, Inc.
1554346	Raymond Handling Solutions, Inc.
1621621	Richard Bohrbough
1627567	Royal Food Production, Inc.
1571935	S&W Roof Tear-Off
1570987	Sansum Clinic
1374066	Schuff Steel Company
1598329	Seventh Tree Farm, Inc.
1515218	Shasta Linen Supply, Inc.
1536555	Sierra Pacific Industries
1582135	Signal Restoration West, LLC
1630529	South East Employee Leasing Services
1556507	Stewart Engineering Inc.
1624013	Trinity Framing & Construction, Inc.
1571302	Tungsten Strawberry Lodge, LLC
1501471	Turn Around Communications, Inc.
1450865	Tutor Perini Corporation
1618100	U-Haul Corporation of California

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
April 20, 2023

1597285	UKA's Big Saver Foods, Inc.
1614978	Valley AG Enterprise, Inc.
1512248	Walmart, Inc.
1533954	Walmart, Inc.
1620699	Wayne Lugo and Eddie Lugo, A General Partnership
1500426	WB Powell Inc
1623366	Wellington Foods, 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 11:03 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 11:04 a.m.