

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on May 18, 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  
Aaron Jackson, Staff Attorney  
Vincent Mersich, Staff Attorney  
Meghan Zapata, Staff Services Manager  
Janis Jonas, Executive Secretary  
Dan Lucido, Chief Counsel, DOSH

**Minutes of May 4, 2023, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the May 4, 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: Dan Lucido announced the eAttorney system has been named Legend. The program is now in the testing phase.

2. Roundtable planning.

Action: Patty Hapgood updated the Board on the plans for the Roundtable event.

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

Action: Aaron updated the Board regarding cases to be added to the precedential index.

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

Action: No report.

**Legislation:**

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

Action: Jeff Mojcher 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 discussed further updates on meeting with the Fed OSHA representatives.

Mr. Lowry also reported that since requiring DOSH to supply the citation packet upon the employer initiating an Appeal, administrative dismissals have decrease significantly.

**Board Members Reports:**

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

Action: Marvin Kropke announced that he is scheduled to have a consultation conference call on June 2, 2023, with the Senate staff in preparation for his reappointment confirmation.

Judith Freyman discussed setting time aside to review the agenda and prep for the Roundtable discussion.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood reported discussing accessibility options with the IT department.

Preparations have begun to search for replacing Kevin Reedy's and Nichole Franco's positions. There will also be a search to fill a vacant Office Technician's position.

**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 and 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: Christopher Jessup discussed concerns regarding common mistakes made by employers when initiating their appeal through OASIS.

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.)*

1477159 Grimmway Enterprises, Inc.

Action: The Board discussed this decision.

**Petitions for Reconsideration:**

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

*(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.)*

1488312      The Indiana Finish Line, Inc.

Action:        The Board voted to take this submission under consideration.  
Motion: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

1610318      Employbridge Holding Company

Action:        The Board voted to reinstate this appeal and remand it to Hearing Operations.  
Motion: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

1600556      State of California Department of Transportation

Action:        The Board voted to issue a denial of this petition.  
Moved: Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0

**Orders Dismissing Appeal:**

1576162      Meadows in Bloom, LLC

Action:        The Board discussed this order.

1202966      Sungo Farms

Action:        The Board discussed this order.

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

1616893      LAUSD Hollywood HS

Action:        The Board discussed this order.

1580072      San Francisco Police Department

Action:        The Board discussed this order.

**Matters Pending Reconsideration:**

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

*(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<br><i>Whether the employer committed a foot protection violation as alleged.</i>                        |
| 1431672 | A. Teichert & Son, LLC<br><i>Whether the cited employer was in violation of lockout/tagout requirements.</i>                     |
| 1538332 | Albeco, Inc.<br><i>Whether denial of motion for late appeal was correct.</i>   |
| 1473644 | Amazon.com Services, LLC<br><i>Whether the employer's training program was in compliance with the applicable safety order.</i>   |
| 1360156 | CA Forestry and Fire Protection<br><i>Whether it was an error to assign a particular ALJ to the matter.</i>                      |
| 1564732 | Calvary Chapel of San Jose dba Calvary Chapel Academy<br><i>Whether the ALJ correctly excluded evidence from the inspection.</i> |
| 1490008 | Elite MD, Inc.<br><i>Whether the ALJ's denial of leave to file a late appeal was correct.</i>                                    |
| 1436480 | Interline Brands, Inc.<br><i>Whether the employer violated foot protection standards.</i>  |
| 1004280 | Key Energy Services, LLC<br><i>Matter remanded to the Board from the Court.</i>  |
| 1486257 | The Kroger Company   |

*Whether the cited employer adequately trained employees regarding workplace hazards.*

- 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)
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.)*

1575580	ABC Windows And More, LLC
1639069	AECOM Turner NBA Joint Venture
1495693	Amazon.Com Services, LLC
1623352	Aramark Services, Inc.
1605744	Arthurnmade Plastics, Inc.
1554282	Atlantic Solutions Group, Inc.
1536243	Bay View Rehabilitation Hospital, LLC
1570429	BLH Construction Company
1531369	Bore-Max Corp.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

1598116	Brandon Roy's Aquaman Enterprises, Inc.
1651506	Broward Builders, Inc.
1516755	Bryan Casey Marsh
1476164	CA General Services
1638540	Castle Tire Disposal, LLC
1588627	Champion Home Builders, Inc.
1506170	City of Los Angeles Police Department
1565318	CLW Foods, LLC
1486320	Coldwater Care Center LLC
1588525	D and T Hogan Incorporated
1595292	D.A. Bentley Construction, LLC
1300008	Diamond PEO, LLC
1506541	Dycora Transitional Health - San Jose LLC
1525743	Golden State FC, LLC
1509379	Green Farms California, LLC
1599703	Habitant Classique, Inc.
1513264	Hayward Healthcare & Wellness Center LLC
1606577	Humboldt Sawmill Company, LLC
1639629	Hunter Energy Solutions, Inc.
1539181	Imperial Care Center
1639212	J.A. Sutherland, Inc.
1563882	K&M Casinos, Inc.
1576632	Kiwi II Construction, Inc.
1617631	Level 5 Builders, Inc.
1632273	Local Service Pros, Inc.
1539566	Lopez and Sons Farms, Inc.
1449741	Los Angeles Unified School District Newman
1571212	Mladen Buntich Construction Co., Inc.
1630011	Morning Star Trucking Company LLC
1531158	Navarro Roofing Corporation
1635929	Nevarez Farm Labor, Inc.
1549596	NGB Construction Inc
1476402	Northridge Care Center, Inc.
1584297	Northwest Confections California, LLC
1456741	Nueva Castilla Iron Works, Inc.
1556468	Nulife Power Electric Services, LLC
1527916	O'neil Digital Solutions, LLC
1512806	Orange Restoration San Diego
1634178	Outfront Media, LLC
1630528	Platypus Painting Inc.
1542542	Porvene Doors, Inc.
1534130	Priority Business Services, Inc.
1595812	Production Framing, Inc.
1524908	Proframe, Inc.
1635402	Quality and Quick Auto Wreckers, Inc.
1580552	Reliance Engineering



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
May 4, 2023

1515208	Republic Services, Inc.
1560476	S.F.T., Inc.
1627091	Sacramento County Department of General
1331341	Sadler Roofing, Inc.
1350387	Sahara Scaffold
1491659	Studio City Rehabilitation Center
1586644	Studio City Rehabilitation Center
1633336	Sutter Basin Growers Co-Op
1472876	Sutter Valley Hospitals, A California Nonprofit
1550675	Tanimura & Antle Fresh Foods, Inc.
1516422	TE Connectivity
1616247	Tharaldson Hospitality Development, LLC
1574856	The Carpet Shoppe, Inc.
1535527	The Permanente Medical Group, Inc.
1555641	Timberworks Construction, Inc.
1405612	Toll Bros Inc.
1474267	TWE Enterprises
1421694	Valley Contractor Services, Inc.
1630386	Vega's Tree Services
1612830	Vieira Custom Chopping, Inc.
1523035	View Park Convalescent Hospital, Inc.
1576229	Vividus Venture Corporation
1606872	Walker Evans Enterprises
1376629	Walmart Inc.
1501542	WDS Construction, Inc.
1432006	Webcor Construction, LP
1491843	West Hills Health & Rehab Center
1548279	Western Convalescent Hospital
1514464	Whole Foods Market California, Inc.
1598441	Your Way Tree Service
1639732	Z And H Associates, 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 10:58 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 10:59 a.m.