

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on June 1, 2023
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
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
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Dan Lucido, Chief Counsel, DOSH
Andrew Dadasovich, Staff Attorney, DOSH
Cynthia L. Perez, Staff Attorney, DOSH
Deborah Bialosky, Staff Attorney, DOSH
Kathryn Woods, Staff Attorney, DOSH
Lauren Ocadiz, Staff Attorney, DOSH
Melissa Viramontes, Staff Attorney, DOSH
Tuyet Tran, Staff Attorney, DOSH
Lidia Marquez, Staff Attorney, DOSH
Jennifer Martin, Staff Attorney, DOSH

Minutes of May 18, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the May 18, 2023, Board meeting.
Moved: Marvin Kropke
Seconded: Ed Lowry
The vote was 2-0

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 LEGEND system interfacing with OASIS.

Action: No report.

2. Roundtable event June 27, 2023.

Action: Patty Hapgood updated the Board on the plans for the Roundtable event. An agenda will be distributed by June 14, 2023.

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: 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: The Chair reported that on Wednesday, June 7 he would present two Superior Accomplishment Awards to two of the Appeals Board staff, Elizabeth Clarke, and Mirna Lopez in Oakland.

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 reminded everyone that Superior Accomplishments Awards ceremony is June 7, 2023. It was also announced that a reminder for the Stakeholder Roundtable event was sent on June 1.

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: Comments were received from the public. New DOSH staff attorneys were introduced to the Board.

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.)

1113026 Angelus Block Co., Inc.
Action: The Board discussed this decision.

1361815 Thompson Pipe Group
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.)

1237935 D'Ybanag Construction Company
Action: The Board voted to issue an Order to rescind the Order Dismissing the Appeal.
Motion: Marvin Kropke
Seconded: Ed Lowry
Vote: 2-0

J.P. Carroll Coatings, Inc.
Action: The Board voted to reinstate this appeal and remand it to Hearing Operations.
Motion: Marvin Kropke
Seconded: Ed Lowry
Vote: 2-0

Orders Dismissing Appeal:

1587491 GM Business Services, Inc.
Action: The Board discussed this order.

1457427 Jon Pereira
Action: The Board discussed this order.

1571270 Partnership Staffing Solutions, LLC
Action: The Board discussed this order.

1270089 Southland Commercial Interiors, Inc.
Action: The Board discussed this order.

Orders Denying Leave To File Late Appeal:

1610348 Neptune Fire Protection, Inc.
Action: The Board voted to issue Order of Remand.
Moved: Ed Lowry
Seconded: Marvin Kropke
Voted: 2-0

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.

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| 1314092 | 99 Cents Only Store, LLC
<i>Whether the employer committed a foot protection violation as alleged.</i> |
| 1431672 | A. Teichert & Son, LLC
<i>Whether the cited employer was in violation of lockout/tagout requirements.</i> |
| 1538332 | Albeco, Inc.
<i>Whether denial of motion for late appeal was correct.</i> |
| 1473644 | Amazon.com Services, LLC
<i>Whether the employer's training program was in compliance with the applicable safety order.</i> |
| 1360156 | CA Forestry and Fire Protection
<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
<i>Whether the ALJ correctly excluded evidence from the inspection.</i>

Action: The Board discussed this matter. |
| 1490008 | Elite MD, Inc.
<i>Whether the ALJ's denial of leave to file a late appeal was correct.</i> |
| 1488312 | The Indiana Finish Line, Inc.
<i>Whether the cited employer established procedures adequate to protect employees from COVID-19.</i> |

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- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1004280 Key Energy Services, LLC
Matter remanded to the Board from the Court.
- 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)

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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.)

1629907	2804 Garvey, LLC
1658759	Above Board Construction & Roofing Inc.
1514745	Aerotek, Inc.

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1286477	Air Engineering Service
1576167	Arboristas Inc
1567177	Balfour Beatty Infrastructure
1496892	Baronhr, LLC
1491129	Biagi Bros., Inc.
1504240	Burlington Convalescent Hospital, Inc.
1541269	C M C Steel Fabricators, Inc.
1509331	CA Corrections and Rehabilitation, Wasco State
1486079	California Prison Industry Authority
1534907	California Wide Electric Services, Inc.
1559152	Calistoga Joint Unified School District
1566199	Champion Construction Consultants, Inc.
1620274	Civil Clothing, Inc.
1581946	Clarkwestern Dietrich Building Systems, LLC
1651124	Collier Hardware
1522637	Conam Management Corporation
1576234	Construction Equipment Co.
1578950	Corona Millworks Company
1340705	Cosco Fire Protection, Inc.
1619409	Cosway Company, Inc.
1333083	Creative Stone Mfg., Inc.
1614414	D.W. Johnston Construction, Inc.
1418370	Dashiell Corporation
1613413	Desert Framing Contractors, Inc.
1598374	Diego Buendia Concrete
1571629	Drill Tech Drilling & Shoring, Inc.
1575371	Environmental Service Partners, Inc.
1481026	Fabritec Structures, LLC
1611747	Falcon Farms, Inc.
1598150	Fisherman's Wharf Sourdough French Bread
1485223	Forrest Machining, Inc.
1485435	Healthcare Services - Encino Hospital, LLC
1631102	Henson's Cabinets
1620802	Jewell Investments, LLC
1611480	Kern Valleyidence Opco, LLC
1600814	King Taco Restaurant, Inc.
1592058	La Campana Market
1556425	La Furniture Warehouse, LLC DbA Global United
1578319	Maverick Abrasives Corporation

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1480606	Mclane Suneast, Inc.
1625628	Menifee Metals Manufacturing, LLC
1487715	Mericle Mechanical, Inc.
1617234	Merz Construction
1606687	Midstate Sheetmetal, Inc.
1637396	Mountain Roofing, Inc.
1533274	National Technical Systems, Inc.
1529243	Opera Patisserie
1555832	Pacific Contracting Group
1417696	Par Electrical Contractors, Inc.
1585982	Park Avenue Customs
1447196	Planet Stone, Inc.
1617459	Pridestaff, Inc.
1632299	Prime Source Floral Distributors, Inc.
1483165	Promise Energy Inc.
1630009	Quality Carriers, Inc.
1635740	Rafael Antonio Cordova Gonzalez
1415513	Realco Creations, Inc.
1641568	Ricardo Lopez Sr.
1588273	Robertson's Ready Mix, Ltd., A California Limited
1628950	RTI Management, LLC
1573861	S E Pipe Line Construction Co.
1617647	Sajahtera, Inc.
1648192	Sam, Inc.
1507804	SGV Healthcare, Inc.
1625547	Shasta Services, Inc.
1638683	Sierra Pacific Industries
1592349	Sri Tile & Marble, Inc.
1588972	Steeltech Reinforcing, Inc.
1560514	Summerset Assisted Living LLC
1559119	Superior Tree Service, Inc.
1546945	Symbia Logistics
1627224	Tesla, Inc.
1561605	Torres Farms, Inc.
1604297	Trader Joe's Company
1565632	UCLA Health Santa Clarita Women's Imaging Center
1508384	Utility Tree Service, LLC
1496682	Vallarta Supermarket #8
1626050	Vinyl Technology, Inc.
1575572	Walmart, Inc.
1451157	Wash Depot Holdings, Inc.
1652471	Wilson Utility Construction Co.
1257581	Wright Tree Service of The West, Inc.

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1631576 Wyndham Vacation Ownership Inc.
1611770 Yamasa Enterprises

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 11:27 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 11:28 a.m.