

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on June 15, 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  
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  
Kathryn Woods, Staff Attorney, DOSH  
Melissa Viramontes, Staff Attorney, DOSH  
Keith Mackenzie, Staff Attorney, DOSH  
Lisa Friedman, Staff Attorney, DOSH  
Sesilya Saraydarian, Staff Attorney, DOSH  
Tuyet Tran, Staff Attorney, DOSH

**Minutes of June 1, 2023, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the June 1, 2023, Board meeting.

Moved: Marvin Kropke

Seconded: Judith Freyman

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 LEGEND system interfacing with OASIS.

Action: Testing of the DOSH LEGEND system will begin next week.

2. Roundtable event June 27, 2023.

Action: Patricia Hapgood updated the Board on the plans for the Roundtable event. An agenda for the event was distributed and posted.

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: Chair Lowry reported that on Wednesday, June 7 he presented two Superior Accomplishment Awards in Oakland to two of the Appeals Board's staff members, Elizabeth Clarke, and Mirna Lopez.

**Board Members Reports:**

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

Action: Marvin Kropke reported on his conference call with the Senate Rules Committee in preparation for his Confirmation Hearing on June 28, 2023.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood gave further updates on the Roundtable event. It was also mentioned that Human Resources had posted job bulletins for the Sacramento Senior Legal Typist and the Supervising Administrative Law Judge positions.

Human Resources is considering entering into a contract which will provide the Appeals Board another option in hiring students.

**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.)*

1442233      L & S Framing  
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.)*

1575113      Sun America Fruit & Vegetable  
Action:        The Board voted to issue an order to extend time.  
Motion: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

1643995      Briles Aerospace, LLC  
Action:        The Board voted to reinstate this appeal and remand it to Hearing Operations.  
Motion: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

**Orders Dismissing Appeal:**

1570123      Viramontes Express, Inc.  
Action:        The Board discussed this order.

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

1656900      Heritage-Crystal Clean  
Action:        The Board voted to reinstate this appeal and remand it to Hearing Operations.  
Moved: Ed Lowry  
Seconded: Marvin Kropke  
Voted: 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<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><br><br>Action:       The Board discussed this matter. |
| 1490008 | Elite MD, Inc.<br><i>Whether the ALJ's denial of leave to file a late appeal was correct.</i>  |
| 1488312 | The Indiana Finish Line, Inc.<br><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.)*

1593090	Alameda Construction Services, Inc.
1492108	Alameda County Public Works Agency
1424771	Amazon.Com Services, LLC dba SMF5

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1544472	Andrade FLC, Inc.
1490319	Archuleta Concrete Construction Co.
1559232	Back Meadow LLC
1641416	Belmar Villa Assisted Living
1339825	Brady SoCal, Inc.
1599371	Brickstone Group, Inc.
1572321	C3M, Clark, Cupertino a Joint Venture
1482022	CA Corrections and Rehabilitation - California
1602447	CA Transportation - Highways
1605299	California Concrete Pumping, Inc.
1576429	California Department of Transportation
1653862	CalMex Wholesale Growers & Shippers Inc
1580817	Cameron Sparks, an Individual
1488513	Children's Hospital Los Angeles
1580055	CLW Foods, LLC
1639611	Coffey Mfg., LLC
1658520	Colorado Structures, Inc.
1354723	Condon-Johnson and Associates, Inc.
1564181	County of Los Angeles Department of Public Works
1580583	Courtney Turpen
1637077	D Vaca Hotel LLC
1491342	D&L Farms, Inc.
1633989	Daniel Mendoza USI
1638743	Dennis Edward Enochs
1654545	Druchik Handyman
1635409	DSC Construction, Inc.
1576107	Ebiwash, Inc.
1555655	Full Coverage Company
1621307	Golden State Ag Services, Inc.
1405952	Green Smile Energy and Electric Age and DIA Teck
1617641	Hall's Safe Company
1459588	Hamilton Metalcraft, Inc.
1641659	Han Frye Corp.
1641661	Han Frye Corp.
1551888	Jalilie Electric
1635261	Jones Lang & Lasalle Securities LLC
1603429	JSE Roofing, Inc.
1503702	Kaiser Foundation Hospitals
1604118	L.A. City Public Works Street Services Urban
1555391	Lehigh Cement West, Inc.



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1589157	Lindsay-Strathmore Irrigation District
1589472	Lockheed Martin Aeronautics Company
1445395	Lowe's Home Centers, LLC. #228
1607210	M&C Investment Group, LLC
1538404	Masonry Concepts, Inc.
1545633	Moreno Trenching
1643287	Moss Landing Harbor District
1629357	Mother's Market & Kitchen, Inc.
1601343	Nextcrop, Inc.
1614995	Oakland Hospitality, LLC
1553719	Oldcastle Infrastructure, Inc.
1570255	Orange County Erectors, Inc.
1504936	Pacific West Builders, Inc.
1622935	Phibro-Tech, Inc.
1633977	Pittsburg Automotive, Inc.
1597804	Qualitek, Inc.
1585384	R B R Meat Company, Inc.
1535747	Radford Studio Center
1443771	Radiant Services Corp.
1537283	Rakar, Inc.
1567576	Randstad North America, Inc.
1524340	Ranger Pipelines, Inc.
1524384	RFL, Inc.
1532204	Rogo Consulting, Inc.
1558660	Ron Gonen
1601541	Roofing Standards, Inc.
1592086	Ruben's Pipeline, Inc.
1643729	Sagemont - Loma Linda
1413905	Save Mart Supermarkets
1458972	Shooters Paradise of Oxnard, Inc.
1580281	Smart and Final Stores, LLC
1535420	The Permanente Medical Group, Inc.
1637064	The Save Mart Companies, Inc.
1628477	Thompson Builders Corporation
1607217	Timberworks Construction, Inc.
1631101	Tope's Tree Service, Inc.
1611568	UC Davis
1499505	USS Posco Industries
1583690	Walmart Supercenter
1567687	XPO Logistics Freight, Inc.

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1524596 YMCA of San Diego County  
1587065 Yoda Painting, 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 11:07 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 11:08 a.m.