

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on July 6, 2023
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
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
Kerry Lewis, Administrative Law Judge
Ashley Ames, OSHAB Office Technician
Dave Wiseman, Staff Counsel, Cal/Fire
Dan Lucido, Chief Counsel, DOSH
Cynthia L. Perez, Staff Attorney, DOSH
Sesilya Saraydarian, Staff Attorney, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California
Rocio Reyes, Assistant Chief Counsel, DOSH

Minutes of June 1, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the June 15, 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: No report.

2. Roundtable event June 27, 2023.

Action: The Board discussed the Roundtable event and proposed the possibility of having another in Southern California in the future.

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

Action: No report.

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 on his contribution to the HR new employee orientation videos.

He also announced that there is a new state labor chief.

DOSH sent notice of the next advisory committee meeting.

Chair Lowry noted a conflict on the date scheduled.

It was suggested the possibility of changing our meetings to Wednesdays.

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 suggested that now that meetings are being held in person, possibly having a meeting held in West Covina.

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 updated the Board on the Appeals with COVID related citations.

4. Litigation update:

Action: Aaron Jackson 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: No public comments were made.

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 were no ALJ Decisions scheduled for review.

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.)

- | | |
|---------|--|
| 1113026 | Angelus Block Co., Inc.
Action: The Board voted to take this case under reconsideration.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |
| 1623556 | MP Manufacturer Corp.
Action: The Board voted to reinstate this appeal and remand it to Hearing Operations.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |
| 1594663 | Uber Technologies, Inc.
Action: The Board voted to take this case under reconsideration.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0 |

Orders Dismissing Appeal:

- | | |
|---------|--|
| 1546994 | DZ Ag Services, Inc.
Action: The Board discussed this order. |
| 1457427 | Jon Pereira
Action: The Board discussed this order. |
| 1473822 | Lonestar Construction, Inc.
Action: The Board discussed this order. |

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1581382 McWhirter Steel
Action: The Board discussed this order.

1421177 Swinerton Renewable Energy
Action: The Board discussed this order.

Orders Denying Leave To File Late Appeal:

1573508 RH Roofing, Inc.
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.

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.
Action: The Board discussed this matter.

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- 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.
- 1488312 The Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 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.

Action: The Board discussed this matter.
- 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.)

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Superior Court:

1. Ashley Furniture Industries, 34-2017-800002750 (1016514)
2. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
3. Davis Development Company, 34-2020-80003373 (1226084)
4. Southern California Edison, 34-2021-80003580 (1320327)
5. Hill Crane Service Inc., 34-2021-80003744 (1135350)
6. USA Waste of California, Inc., 34-2022-80003841 (1384029)
7. Ranch of the Golden Hawk, 22STCP02302 (1224802)
8. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)
9. 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.

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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.)

1597276	ABNY General Engineering, Inc.
1645901	Advanced Radiation Corporation
1570585	All-Truss, Inc.
1652856	Alliance Cooling Products and Construction, Inc.
1639812	Alpha Interior Systems, Inc.
1498865	American Beef Packers, Inc.
1604387	American Heat Processing, Inc.
1587581	Anning - Johnson Company
1554320	Approved Staffing Services, LLC
1580825	Aronson Industries, Inc.
1640729	Baldwin Gardens Nursing Center Corporation
1644809	BEJAC Corporation
1637059	Belt Drives Ltd
1638916	Blue Diamond Landscapes, Inc.
1588876	Brilliance Construction, LLC
1583098	Brodie McClain and Allison McClain
1651486	C&B Hospitality, Inc.
1489271	California Department of Corrections
1425264	California State University Channel Islands
1459002	Cell-Crete Corporation
1486711	Central California Women's Facility
1548442	County of Sonoma Sheriff's Office
1669383	Cox & Cox Construction, Inc.
1638725	Cromer Inc.
1615005	Cruz Concrete and Stone, Inc.
1322269	D.A. McCosker Construction Co.
1549321	Damascus Road Productions, Inc.
1605803	Dennie Manning Concrete, Inc.
1610023	Dippin Dots, LLC
1633992	Dream Creations
1593101	DRL Development Group, Inc.

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1503498	Eat Sweet Farms, LLC
1405429	Eli Industries, Inc.
1575937	Encore Glass, Inc.
1610158	Executive Design & Construction, Inc.
1558201	Factory OS, LLC
1522903	Fauson and Hancock Foods, LLC
1629749	Fred Matter Inc.
1652284	Frey Incorporated
1462989	G & Y General Contractors Inc.
1659347	Glendale Unified School District
1637088	Golden State Foods
1617537	Green Hills Memorial Park
1596764	Howard Roofing Company, Incorporated
1533873	Huston General Contracting, Inc.
1613337	Innerstave, LLC
1655498	J.M. Stitt Construction Inc.
1482807	John Foster Trucking Inc.
1565301	Karl Rex Brook
1637983	KC Landscape Development, Inc.
1593652	Kenneth Duerksen
1581377	Kenwalt Die Casting Corp.
1605230	Kirk Hyatt Construction, Inc.
1552150	Krieger Electric
1658523	Labor Resource Group, Inc.
1442660	Lake Tahoe Lodging Company
1639616	Lakeport Fire Protection District
1619650	Laymon Candy Co., Inc.
1537222	McClelland's Dairy
1574544	Mercury Air Cargo, Inc. Terminal 216
1526794	Milender White Construction
1491837	MV Transportation
1537088	Nappi Fabrication Design
1617451	Nick's Door Corporation
1483234	PLM Operations, LLC
1572639	Power Electronics USA, Inc.
1578960	Precision Framing Systems, Inc.
1644608	Pride Staff Inc.
1588803	Quality Farm Labor, Inc.
1589000	Radford Studio Center, LLC
1622988	Rancho Valencia Resort Partners, LLC

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1582140	Robert Smith
1649738	Ronan's Food Services LLC
1234467	Sachs Electric Company
1646904	Sacramento Valley Walnut Growers, LLC
1560036	Santa Clara County Elmwood Correctional
1581321	Service Champions, LLC
1597603	Sierra Padre Doors and Windows
1524594	Social Model Recovery Systems
1544637	State of California Department Of State Hospitals
1298203	State Roofing Systems, Inc
1604661	Steve P. Rados, Inc.
1636381	Sun Pacific Shippers, L.P.
1590204	SZR Rocklin Senior Living, LLC
1621898	The Crucible
1539996	The Honest Kitchen, Inc.
1515612	Thibiant International, Inc.
1621005	Titan Roofing & Decking Co., Inc.
1550749	Tubular Specialties Manufacturing, Incorporated
1555848	Universal Television LLC
1574436	Ups Customer Center-Petaluma
1562542	Vacaville Unified School District
1527621	Villalobos & Associates
1347201	West Coast Land and Development Inc.
1604377	Western Frame Co., Inc.
1618089	Woodland Wood Preservers, Ltd

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 12:18 p.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 12:20 p.m.