

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on July 27, 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
Jeff Mojcher, Chief Counsel
Aaron Jackson, Staff Attorney
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Christopher Jessup, Administrative Law Judge
Meghan Zapata, Staff Services Manager
Maria Rios, Legal Analyst
Anne Marie Plasencia, Senior Legal Typist
Marlene Harris, OSHAB Office Technician
Dan Lucido, Chief Counsel, DOSH
Deborah Bialosky, Staff Attorney, DOSH
Lidia Marquez, Staff Attorney, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California

Minutes of July 6, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the July 6, 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: DOSH Chief Counsel, Dan Lucido, reported that the system will go live on August 22, 2023.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 27, 2023

2. Discussion of precedential index.

Action: No report.

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

Action: Analysis of A.I. processes is still ongoing. Meghan Zapata to provide an update at the next meeting.

4. Discussion of points and issues raised by stakeholders at the roundtable discussion on June 27, 2023. (Board members received a transcript of meeting.)

Action: The Board discussed the Roundtable event. Patty Hapgood to share list of points to discuss related to suggestions made at the roundtable discussion.

Legislation:

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

Action: Elizabeth Clarke reported that the majority of SB 735 has been signed into law. SB 735 relates to firearm safety on a movie sets.

Chairperson's Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

Action: Chair Lowry reported on his meeting with Katie Hagen

Presiding Administrative Law Judge, Kevin Reedy's retirement.

Possible change to the Appeals Board meeting days from Thursdays to Wednesdays after first of the New Year

Document remediation efforts.

Board Members Reports:

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

Action: Marvin Kropke offered congratulations to Administrative Law Judge Kevin Reedy regarding his retirement.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: October 19, 2023 Board Meeting will be held in West Covina, California.

Senior Legal Typist interviews will begin next week.

Presiding Administrative Law Judge interviews will be held on August 17, 2023.

Procurement State budget passed. Staff can submit supply orders to Amy Lara.

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: 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: Dan Lucido offered congratulations to Administrative Law Judge Kevin Reedy regarding his retirement.

Marlene Harris proposed adding discussion item to the next agenda regarding process for purging documents from OASIS system consistent with the Board's retention program.

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.)

1569933 L & S Building Materials, Inc.
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.)

There are no Petitions for Reconsideration

Orders Dismissing Appeal:

1607872 City of Ontario – Police Department
Action: The Board discussed this order.

1560633 Rebel AG Service
Action: The Board discussed this order.

1288181 United Clean Trucks, Inc.
Action: The Board discussed this order.

Orders Denying Leave To File Late Appeal:

1652414 See's Candies, Inc.
Action: The Board voted to take this matter under
reconsideration on its own motion.
Motion: Marvin Kropke
Seconded: Judith Freyman
Vote: 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
<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>

Action: The Board discussed this matter. |
| 1473644 | Amazon.com Services, LLC
<i>Whether the employer's training program was in compliance with the applicable safety order.</i> |
| 1113026 | Angelus Block Co., Inc. |
| 1360156 | CA Forestry and Fire Protection
<i>Whether it was an error to assign a particular ALJ to the matter.</i>

Action: The Board voted to issue the DAR for this matter.
Motion: Judith Freyman
Seconded: Marvin Kropke
Vote: 3-0 |
| 1564732 | Calvary Chapel of San Jose dba Calvary Chapel Academy
<i>Whether the ALJ correctly excluded evidence from the inspection.</i> |
| 1490008 | Elite MD, Inc.
<i>Whether the ALJ's denial of leave to file a late appeal was correct.</i> |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 27, 2023

- 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.
- Action: The Board discussed this matter.
- 1594663 Uber Technologies, Inc.
Whether Employer committed the alleged violations.
- Action: The Board discussed this matter.

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. Ashley Furniture Industries, 34-2017-800002750 (1016514)
2. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 27, 2023

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.
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.)

1640269	A & A Ready Mixed Concrete, Inc.
1578564	AAHS Enterprises, Inc.
1629708	Acampo Machine Works
1584002	Adobe Soil & Structures Engineering Contractors
1308968	AEG Management Oakland, LLC.
1585687	AI Industries, LLC
1597163	Amazon.com Services, LLC
1670462	AMPARO PEREZ LANDSCAPING SERVICES
1486307	Arthex California, Inc.
1648577	Autobahn Automotive, Inc.
1535511	Badger Rentals, Inc.
1623990	Bay Cities Tin Shop, Inc.
1604616	BCMP North, LLC
1646910	Big Horn Park, LLC
1610922	Blue Wave Car Wash, LLC
1637248	Boba Time Inc.
1505655	California Department of Corrections and Rehabilitation
1615907	Capra Environmental Services, Corp.
1559858	Century 26 Construction, Inc.
1571688	Cepheid
1549084	CES Cleaning Contractors, LLC
1592636	City of Anaheim, Anaheim Convention Center
1652044	City of Los Angeles, Department of Public Works
1602436	City of Pasadena – Water and Power
1592180	Closet World, Inc.
1614693	Complete Drywall Interiors, Inc.
1643369	Coombs Service Group
1537056	Cotti Foods Corporation
1600875	County of San Bernardino Fire Protection
1632136	Cream Co. LLC
1605319	Cutting Edge Modular, Inc.
1649782	CW Electrical, Inc.
1540912	D C R Construction, Inc.
1639332	Dale Canfield Construction, Inc.
1551186	DBC Printing, Incorporated
1598299	Del Sol Harvesting, LLC.
1610323	Delta Star, Inc.
1601822	DH Liu Construction
1478848	Dole Fresh Vegetables, Inc.
1646627	Dr. Well, Water Well Services, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 27, 2023

1644829	Eckert Cold Storage Company
1616949	Elson Electric Holdings, Inc.
1549282	F C Landscape, Inc.
1620872	FBR Designs, Inc.
1646905	Fierro's Distributor Food Service, Inc.
1639194	Forno Bravo, LLC
1358493	FRC, Inc.
1637310	Glendale Unified School District
1486548	Gruma Corporation
1515484	Hanson Iron, Inc.
1595700	Staff Solutions, Inc.
1614675	Jimenez Mexican Foods, Inc.
1478167	KEI-AI Los Angeles Healthcare
1600016	Kellermeyer Bergensons Services, LLC
1527115	La Mar Industries, Inc.
1530022	LF Staffing Services, Inc.
1639307	Lopez 214, Inc.
1447088	Mova Stone, Inc.
1610003	Mui Chang Chac dba Mui Chang Farm
1647333	National Auto Parts-Oakland, LLC
1602653	Nereo Farms
1605610	Neri Insurance Agency
1513951	New Hope Elementary School District
1599715	Northgate Gonzalez, LLC
1546289	Northrop Grumman Systems Corporation
1515500	O.F.R., Inc.
1521037	Pacific Farm Management, Inc.
1517632	Pacific States Industries, Inc.
1565103	Pacifica Hospital of the Valley Corporation
1606338	Phillips 66 Company
1582384	PIH Health Whittier Hospital
1610045	Pitman Enterprise USA, LLC
1502192	Pridestaff, Inc.
1654359	Quality Naturally! Foods, Inc. 1476202 RALPHS #222
1519623	Rancho Custom Builders
1581909	Real Signs/Sign Factory, LLC
1610259	Regency Plumbing & Piping, Inc.
1598696	Rika Corporation
1522196	Ronpak, Inc.
1592829	Royal Plywood Company, LLC
1616926	Safelite Fulfillment, Inc.
1621610	San Jose Fire Department
1581032	Saticoy Lemon Association
1496686	Seafood City Supermarket – North Hills
1648719	SGH, Inc.
1580337	Simon Vander Woude, an Individual and Christine Vander

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 27, 2023

1625245	Standard Southern Corporation
1661749	Starwest Botanicals, LLC
1624844	Sutter Buttes Manufacturing, LLC
1505783	Target Constructors, Inc.
1520595	Target Corporation
1541487	Taylor Farms Retail, Inc.
1425171	TENCO Poultry Systems, LLC
1324643	Tesla, Inc.
1476813	Tesla, Inc.
1465440	Tesoro Refining & Marketing Company, LLC
1486713	The Habit Restaurants, Inc.
1500171	The Permanente Medical Group
1578495	The Santa Lucia Preserve Company
1596011	Thiel's Tire, LLC
1498955	Timberworks Construction, Inc.
1640597	Tirehub, LLC
1586616	Top It Off Bottling, LLC
1604980	Total Paper and Packaging, Inc.
1540377	Turner Construction Company
1641080	United Pavement Maintenance, Inc.
1577365	Universal Television, LLC
1472702	US Foods, Inc.
1639539	Valdez Painting, Incorporated
1503534	Wickman Development & Construction
1624866	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 11:58 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 12:00 p.m.