

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on August 10, 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
Jennie Culjat, Acting Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Ashley Ames, OSHAB Office Technician
J Dale Debber, Publisher of Cal/OSHA Reporter
Kevin Thompson, Cal/OSHA Reporter
Cynthia Perez, Staff Attorney, DOSH
Keith Mackenzie, Staff Attorney, DOSH
Sesilya Saraydarian, Staff Attorney, DOSH

Minutes of July 27, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the July 27, 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.)

1. Discuss process for purging of files in OASIS.

Action: This item is held over for the next meeting.

2. West Covina Board Meeting Discussion.

Action: The Board will hold its October 19, 2023 meeting at the West Covina office.

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. 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: Meghan Zapata updated the Board on meetings being held to update the Appeals Initiation Unit's procedures and documents. Also plans on updating the OSHAB website with additional information to help employers file appeals.

The A.I. manual will be updated as well, along with the phone script used by OSHAB staff when helping employers.

Once completed, the changes and new documents will be presented to the Board with a demonstration of the updated procedures.

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: No report.

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 reported that the Attorney III position was reposted.

The Sacramento Senior Legal Typist position has also been reposted.

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: Jennie Culjat 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: J Dale Debber complimented the Board on being accessible and responsive to the Cal/OSHA Reporters' requests and questions.

Mr. Debber asked about obtaining access to OASIS for all cases. He suggested meeting to have discussions about how that can be achieved while respecting privacy issues within each case.

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.)

1420923 Drill Tech Drilling & Shoring, Inc.
Action: The Board discussed this decision.

1465119 Sun Belt Rentals
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.)

1600527 ACS Staffing, Inc.
Action: The Board voted to issue a denial in this matter.
Moved: Marvin Kropke.
Second: Judith Freyman.
Vote: 3-0

Orders Dismissing Appeal:

1527616 Burlington Stores, Inc.
Action: The Board discussed this order.

1565033 T & R Automotive Repair
Action: The Board discussed this order.

1510739 The Original Mowbray's Tree Service, Inc.
Action: The Board discussed this order.

Orders Denying Leave To File Late Appeal:

1630280 CalEnergy
Action: The Board discussed this matter.

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

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
August 10, 2023

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.
Action: The Board voted to issue the DAR in this matter.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0
- 1473644 Amazon.com Services, LLC
Whether the employer's training program was in compliance with the applicable safety order.
- 1113026 Angelus Block Co., Inc.
Whether Employer violated lock out/tag out requirements as alleged.
- 1016514 Ashley Furniture Industries
This matter was remanded to the Board from the Court to reconsider the serious classification.
Action: The Board voted to remand this matter to Hearing Operations.
Moved: Marvin Kropke
Second: Judith Freyman
Voted: 3-0
- 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
August 10, 2023

- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1004280 Key Energy Services, LLC
Matter remanded to the Board from the Court.
Action: The Board voted to issue the Decision after Remand.
Moved: Marvin Kropke
Seconded: Judith Freyman
Voted: 3-0
- 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.
- 1652414 See's Candies, Inc.
Whether Employer established good cause for the late appeal.
- 1291481 Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.
- 1320327 Southern California Edison
This matter was remanded to the Board from the Court to set aside the DAR consistent with the Court's ruling.
Action: The Board voted to issue the Decision after Remand.
Moved: Marvin Kropke.
Seconded: Judith Freyman.
Voted: 3-0
- 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.
How Proposition 22 interacts with the Board's statutes and operative regulations
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)
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.)

1598872	2637-45 Main, LLC
1621243	4PX Express USA
1564392	Adler Tank Rentals, LLC
1556501	Agrima Farm Labor
1640707	Alexander Labor, Inc.
1497078	Amazon.com Services, LLC
1648590	Andrew Simi and Nick Simi, Individually and
1660664	B & V Enterprises, Inc.
1647421	B.F. Steel, Inc.
1601691	Bay Area Solar Solutions, Inc.
1550098	Best Contracting Services, Inc.
1610013	Bigfoot Recycling, Inc.
1569390	Bradford Steel, Inc.
1574295	CA Department of General Services
1514257	CA State Lottery
1596951	California Metal-X (CMX)
1315679	Canyon Springs Enterprises dba RSH Construction
1612125	Cardenas Markets, LLC

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
August 10, 2023

1566699	Chando's Enterprises, Inc.
1515852	Ciminocare
1640941	Compass Group USA, Inc.
1545620	Contra Costa County
1540935	Creekview HC, LLC
1610047	Crown Poly, Inc.
1561212	Darah Roofing
1565273	Delta Air Lines, Inc.
1612648	Dvele Omega Corporation
1546994	DZ Ag Services, Inc.
1637403	Elk Grove Unified School District
1602937	Erickson Framing CA, LLC
1505580	Estiframe Technologies, Inc.
1643539	F.M.G. Inc
1482017	Food 4 Less Holdings Inc.
1563661	GKN Aerospace Chem-Tronics, Inc.
1581211	Harbor Motel, Inc.
1586323	Hongene Biotech Corporation
1621283	Impak Corporation
1559262	Independent AG, Inc.
1635952	Infratech, LLC
1565039	Irvine Management Company
1626305	J.P. Carroll Coatings, Inc.
1461156	K. J. Woods Construction, Inc.
1483000	Kaiser Foundation Hospital Woodland Hills
1491759	Kaiser Foundation Hospitals
1618651	Kern Energy
1573548	Kwan Wo Ironworks, Inc.
1481067	Laurel Avenue, LLC
1492345	M. A Street, Inc.
1512516	Mag Instruments, Inc.
1521637	Majestic Masonry Inc.
1585448	Michael Roberts Construction, Inc.
1605792	Michael Shearing
1585158	Northpark Christian Academy, Inc.
1545618	Northwest Confections California, LLC
1587690	NRI USA, LLC
1575651	Oak Tree AG Mgt., Inc.
1647847	Oakmont Country Club
1644630	Owl Venice LLC

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
August 10, 2023

1555937	Pacific Coast Masonry, Inc.
1657252	Pacific Hotel Management LLC
1530044	Penguin Natural Foods, Inc.
1504250	Petrelli Electric Co.
1476839	PIH Health Good Samaritan Hospital
1664292	Pocino Foods Company
1653020	PRC-Desoto international, Inc. dba PPG Aerospace
1649043	Pureco USA LLC
1655953	R.A. Atmore & Sons, Inc.
1547807	Reyes Coca-Cola Bottling, LLC
1596955	Robert A. Bothman, Inc.
1553512	Rodrigo Mata Gurrola
1673192	RTA Construction Inc
1574831	Safeway, Inc.
1409563	San Francisco Police Department
1592982	Securitas Security Services USA, Inc.
1611471	Shree Hotels Corporation
1607519	Sierra Pacific Industries
1195419	Skyline Steel, Inc.
1643722	Sprouts Farmers Market LLC
1656672	Square Signs LLC
1568467	Standard Lumber Company, Inc. dba United
1512385	Steven Label Corporation
1569064	Sunshine Raisin Corporation
1670363	Target Corporation
1599675	The Vons Companies, Inc.
1580563	The Whitting Turner Contracting Company
1592980	Tolar Manufacturing Company Incorporated
1590883	Trinidad Benham Corporation
1523523	Twentieth Century Fox Film Corporation/9-1-1:
1629629	Visionary Labor Company, LLC
1649744	Wakhan Corp
1485188	Walmart Automated Consolidation Center
1641601	Wiretech, Inc.
1632892	WKF Frosty Corp.
1509121	Wonderful Citrus, LLC
1477960	ZD Inspection LLC

Action: The Board discussed the Settlement Orders issued by the Administrative Law Judges.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
August 10, 2023

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 11:30 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 11:35 a.m.