

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on September 7, 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
Sam Lucas, Presiding Administrative Law Judge
Kerry Lewis, Presiding Administrative Law Judge
Aaron Jackson, Staff Attorney
Vincent Mersich, Staff Attorney
Christopher Jessup, Administrative Law Judge
Janis Jonas, Executive Secretary
Ashley Ames, OSHAB Office Technician
Sesilya Saraydarian, Staff Attorney, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California
David Wiseman, Staff Counsel, CalFire

Minutes of August 24, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the August 24, 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: There was a brief discussion regarding purging timeline. This matter will continue at the next meeting.

2. West Covina Board Meeting Discussion.

Action: Ed Lowry, Chair of OSHAB, will conduct the October 19, 2023, Board meeting from the West Covina office.

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3. Review stakeholder comments from June 27, 2023, roundtable discussion.

Action: The Board discussed the memo regarding the stakeholder's roundtable discussion. The Board would like to have further discussions on the topics.

4. Discuss Cal/OSHA Reporter's request for OASIS access for all cases.

Action: The Board discussed the topic of access to OASIS.

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: Dan Lucido reported that LEGEND is being testing.

2. Discussion of precedential index.

Action: The Board briefly discussed the precedential list.

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

Action: Jeff Mojcher updated the Board on the process of developing this position. The Appeals Initiation Unit is working on changing the appeal process to help employers avoid such technicalities.

Legislation:

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

Action: No report.

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 the following items:

The office received a notice from the Cal/OSHA Reporter that it is renewal time.

Kerry Lewis accepted the Supervising Administrative Judge position.

The Sacramento office will be filling two Administrative Law Judge positions.

Interviews for a Senior Legal Typist in the Sacramento office will be held Friday, September 15, 2023.

Ms. Hapgood attended a DIR strategic planning meeting September 6, 2023 which was led by Katie Hagen.

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: 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: Public comments were received.

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.)

1398352 Anheuser-Busch, LLC.
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.)

1614318 Abdul R. Patel, Individual
Action: The Board voted to reinstate this appeal.
Moved: Judith Freyman.
Second: Ed Lowry.
Vote: 3-0

1420923 Drill Tech Drilling & Shoring, Inc.
Action: This petition was held over for the next Board meeting.

1465119 Sun Belt Rentals
Action: The Board voted to take this petition under submission for reconsideration.
Moved: Marvin Kropke.
Second: Judith Freyman.
Vote: 3-0

Orders Dismissing Appeal:

1616014 Garcia Plastic Molding, Inc.
Action: The Board discussed this order.

Orders Denying Leave To File Late Appeal:

1641078 Premium Wood Stakes, Inc.
Action: The Board voted to reinstate this appeal.
Moved: 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
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.

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.
Action: The Board discussed this matter.

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.

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- 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.
- 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.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
Action: The Board voted to issue a DAR.
Moved: Marvin Kropke
Seconded: Judith Freyman
Voted: 3-0
- 1594663 Uber Technologies, Inc.
How Proposition 22 interacts with the Board's statutes and operative regulations
Action: The Board voted to issue an Order rescinding the Order taking this matter under submission for reconsideration.
Moved: Marvin Kropke.
Seconded: Judith Freyman
Vote: 3-0

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.)

1656928	12-Gauge Electric, Inc.
1377617	Advanced Construction Southwest of California,
1658831	Alliance Environmental Group, LLC
1661954	Alliance Environmental Group, LLC
1673901	Alpha Architectural Signs & Lighting Inc
1603457	American International Industries GP
1458985	Arbor West Tree Surgeons
1593272	Atlantic Concrete Washout, Inc.
1654624	Atlas Sheet Metal Inc.
1650733	B & B Surplus, Inc.
1601235	Benavidez Tree Pro
1623998	C&P Construction Development, Inc.
1501024	CA Corrections and Rehabilitation
1491739	California Department of Corrections
1570822	California Department of State Hospitals
1509586	California Department of State Hospitals
1607711	Caro Nut Company, Inc.
1632166	Classic Shades Painting Company Inc.

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1663047	Clovis Country Junction, Inc.
1351592	Crain Walnut Shelling, Inc.
1621880	Custom Commercial Dry Cleaners, LLC
1606875	David Wilson Claremont Toyota
1660887	Diamond Bar Village Apartments
1671732	Don C. George, Inc.
1623389	Eibach, Inc.
1649843	Epidemic Ales LLC
1653102	EW Corporation Industrial Fabricators
1621875	Excellent Group, Inc.
1610033	Floyd Mize Drywall, Inc.
1482387	Ford Spraying, Inc.
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1642427	Fresh Air Environmental Services, Inc.
1546850	Gerard Daniel Worldwide, Inc.
1575435	Golden Gate Electric Service Partnership
1653975	Huhtamaki, Inc.
1670772	Indo-European Foods Inc.
1603954	Kalanisi, Inc.
1363484	Leonard Roofing, Inc.
1650046	LNL Industries LLC
1490798	Michael Roberts Construction, Inc.
1575537	Mission Paving and Sealing, Inc.
1545119	Modesto Junk Company, Inc.
1612879	Monterey Bay Builders, Inc.
1579278	Nitin Patel, an Individual
1601461	O'Tasty Foods, Inc.
1510328	Perez & Ramirez Farm Labor Contractor
1611149	Peter Masih Pagany
1669771	Redding Tree Growers Corporation
1412195	Richard Baltas Racing Stables LLC
1632658	Riverbed Dairy
1658794	Sacramento Car Wash
1571477	Save Mart Supermarkets
1617637	Sid Ceballos Construction, Inc.
1500788	Southland Industries, Inc.
1649847	Specialized Graphics, Inc.
1489879	State of California Department of State Hospitals
1646914	SW Ingredients Holdings LLC
1627916	Tesla, Inc.

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1640722	The Sun Valley Group, Inc.
1651463	Theodore Fischer an Individual
1605810	Towers Electric Service, Inc.
1637992	Trader Joe's Company
1496935	TRC Companies, Inc.
1600517	Tube-Tainer Inc.
1676605	Tugwell Roofing Co.
1611586	Twin Pines Minerals, LLC
1473396	United Production Framing
1574534	Universal Technical Institute, Inc.
1524960	Wayne E. Swisher Cement Contractor
1646983	WinCo Foods, LLC
1592389	Xtreme Ironworks, 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 12:08 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 12:10 p.m.