

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on September 21, 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
Sam Lucas, Presiding Administrative Law Judge
Kerry Lewis, Presiding Administrative Law Judge
Aaron Jackson, Staff Attorney
Vincent Mersich, Staff Attorney
Elizabeth Clarke, Staff Attorney
Janis Jonas, Executive Secretary
Marlene Harris, OSHAB Office Technician
Sesilya Saraydarian, Staff Attorney, DOSH
David Wiseman, Staff Counsel, CalFire
Simone Sumeshwar, EHS Specialist, City of Sacramento
Rachel Brill, Staff Attorney DOSH
Lidia Marquez, Staff Attorney, DOSH
Lauren Ocadiz, Staff Attorney, DOSH
Jennifer Martin, Staff Attorney, DOSH

Minutes of September 7, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the September 7, 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: No report.

2. West Covina Board Meeting Discussion.

Action: This will be rescheduled.

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

Action: This is being held over for the next meeting, October 5, 2023.

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

Action: Jeff Mojcher updated the Board on the research being done on this request.

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 in the testing phase.

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: Jeff Mojcher updated the Board on the process of developing this position. Meghan Zapata updated the Board that the Appeals Initiation Unit is working on changing the appeal process to help employers avoid such technicalities. Forms are being updated and the Board is working with JTI.

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: Ed Lowry reported on hiring status at the Board.

Mr. Lowry reported that he and several members of the Appeal Board's Legal team attended the Granite Construction Company hearing at the Appellate Court.

Board Members Reports:

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

Action: Judith Freyman spoke to noticing the mental health of employees becoming a topic of importance with regards to employee safety.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: No report.

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: The Board had a brief discussion regarding the video hearings.

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.)

1437389 EZ Mix, 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.)

1420923 Drill Tech Drilling & Shoring, Inc.
Action: The Board voted to take the petition for
reconsideration under submission.
Moved: Judith Freyman.
Second: Ed Lowry.
Vote: 3-0

Orders Dismissing Appeal:

1619367 Brett Kelly, an Individual
Action: The Board discussed this order.

1580543 Byrd Harvest, Inc.
Action: The Board discussed this order.

1586264 R&R Roofing & Waterproofing, Inc.
Action: The Board discussed this order.

Orders Denying Leave To File Late Appeal:

1548762 Stay Green, Inc.
Action: The Board voted to reinstate this appeal.
Moved: Judith Freyman.
Second: Marvin Kropke.
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

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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.
- 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.
- 1340561 Lennar Corporation
Whether Employer committed the violations alleged.
Action: The Board voted to issue the DAR.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

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- 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.
Action: The Board discussed this matter.
- 1465119 Sun Belt Rentals
Whether certain information accepted into evidence was inadmissible hearsay, and whether the evidence supports a finding that Employer violated sections 3203 and 3328, as alleged.
- 1594663 Uber Technologies, Inc.
How Proposition 22 interacts with the Board's statutes and operative regulations.

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. Stakeholders' comments from June 27, 2023 Roundtable Discussion.
Action: No report.
2. Discuss Cal/OSHA Reporter's requests for access to OASIS.
Action: No report.
3. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
Action: No report.
4. Categorizing the Board's DARs and Denials on the DIR website.
Action: No report.
5. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.
Action: No report.
6. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.
Action: No report.
7. Discussion regarding Board communications with stakeholders.
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.)

1554479	A. A. A. Fence Company, Inc.
1610280	Alameda County Social Services Agency
1601696	Allied West Paper Corp.
1595915	Allied West Paper Corp.
1556344	American Beef Packers, Inc.
1644613	American Incorporated
1647258	American Incorporated
1607095	Anderson Pacific Engineering Construction, Inc.
1496693	Ararat Home of Los Angeles, Inc.
1638529	Associated Plumbing, Inc.
1545500	ATI Restoration, LLC
1637503	B & V Enterprises, Inc.
1657875	Bear River Mortgage Company Incorporated
1644646	Bristol Farms
1505643	CA Prison Industrial Authority
1494002	California Department of Corrections
1576362	California Department of State Hospitals
1491393	California Department of State Hospitals
1604087	Capital Ready Mix, Inc.
1537749	Chavez Farm Labor Contractor, Inc.
1576780	City of Fowler
1596005	Closets by Design
1650965	Coachella Valley Water District
1586157	Cosco Diversified Finishes, Inc.
1620763	Crown Valley Car Wash - H&S Energy Products, LLC
1555057	Del Valle Farm Labor Services, Inc.
1588462	DHL Global Mail
1646055	Dick Vanderham

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1638753	Donsuemor, Inc.
1580204	Eagle Lath & Plaster, Inc.
1534499	Eat Don't Talk Productions Inc.
1665834	Energy Savings California
1480125	Gates Concrete Construction, Inc.
1670982	Gill Ranch Company, LLC
1561648	Gonzalez Landscaping, Inc.
1661959	Inner Gardens, Inc.
1614619	Jobbers Meat Packing Co., LLC
1480992	Joseph Crown Construction and Development Inc.
1396619	K & M Press, Inc.
1421992	Kie-Con, Inc.
1578376	King Meat Service, Inc.
1667742	Largo Concrete, Inc.
1681734	Levi Flores Gallegos
1513230	Los Angeles Superior Court
1623093	Los Angeles Unified School District
1571254	Los Angeles Unified School District-Maintenance
1565063	Maadarani's Auto Sales, Inc.
1541169	Mendota Police Department
1624626	Metropolitan Water District of Southern
1322082	N. N. Jaeschke, Inc.
1654543	NBH 99 LLC
1595099	NGC Construction, Inc.
1596201	Oak Tree Ag Management, Inc.
1666093	Ocean Group Holdings LLC
1590653	Pancoast Construction, Inc.
1619894	Park West Landscape Maintenance, Inc.
1633699	Pinnpack Capital Holdings, LLC
1586648	Prime Communications of California, LLC
1616457	Prime Converting Corporation
1474250	Ralphs Grocery Company

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1527791 Redwood Electric Group, Inc.
1594305 Rika Corporation
1610241 Roseville Glass, Inc.
1629777 Sacramento County Department of Human
1619711 Salazar Construction Co., Inc.
1615189 Sanders Candy Factory, Inc.
1339097 Shimmick / Con-Quest JV
1543608 Shoreline Construction
1625248 Solarm, Inc.
1610593 South Coast Commercial Electric, Inc.
1222098 Southland Paving, Inc.
1624645 Suburban Water Systems
1511595 Superior Court of California
1526002 The Martin-Brower Company, LLC
1664522 The Mcalear Group, Inc.
1473356 The Regents of The University Of California, Los
1558662 Trademark Construction Co. Inc.
1554917 Vista Verde Labor, Inc.
1555062 W. M. Lyles Co.
1647758 Walmart, Inc.
1556745 Walters & Wolf Glass Company
1541360 West Coast Cranes, Inc.
1614993 West Coast Harvesting, Inc.
1630171 Wilcox Machine Company

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 12:01 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 12:03 p.m.