

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on October 5, 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 Office
Kerry Lewis, Presiding Administrative Law Judge
Aaron Jackson, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Ashley Ames, OSHAB Office Technician
Lisa Wong, Staff Attorney, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California
Steven Johnson, Associate of Roofing contractors
Denise Cardoso, Staff Attorney, DOSH
David Wiseman, Staff Counsel, CalFire
Lisa Baiocchi, Attorney, The Prince Firm
C Hadsell, public attendee
Bryan Little, Attorney, Farm Bureau Federation

Minutes of September 21, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the September 21, 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
October 5, 2023

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

Action: This discussion is being held over for the November 2, 2023 Board Meeting.

Note that Board DARs, Denials and ALJ Decisions are being posted on the OSHAB website again.

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

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. Discussion of precedential index.

Action: Jeff updated the board on the precedential index.

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.

Legislation:

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

Action: Jeff Mojcher 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 an article he read focusing on the seriousness of climate change related to heat illness and the effects on employee safety. It was suggested that heat illness has been an ongoing issue for years and employees are waiting for the Standards Board to write a regulation dealing with this matter.

Board Members Reports:

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

Action: Judith Freyman spoke to a Wall Street Journal article titled 'Who Is Most Likely to Get Hurt on the Job – You Might Be Surprised' reporting on the risk levels related to injury rates. The higher the risk the more focus the employee seems to have resulting in lower rate of injury.

Ms. Freyman opened a discussion around the regulation allowing employees to have an authorized representative be a part of an inspection.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood reported on attending an Administration Chiefs, meeting October 4, 2023. One topic was the contract negotiations and salary increases. An email memo is to be issued in the next day or so.

OSHAB has asked for two student employees, one for the legal unit and one for the support staff.

There are plans to post for the hiring of two ALJ positions in Sacramento.

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: Kerry Lewis 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.)

- 1409863 A-C Electric Company
Action: The Board discussed this decision.

- 1497263 Hamilton Iron Works, Inc.
Action: The Board discussed this decision.

- 1330829 Randstad North America, 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.)

- 1573866 Bodega Latina Corporation
Action: The Board voted to issue an order reinstating the appeal and remand to Hearing Operations.
Moved: Marvin Kropke
Second: Judith Freyman.
Vote: 3-0

- 1654666 S.J. Distributors, LLC
Action: The Board voted to issue an order reinstating the appeal of citation 3 and remand to Hearing Operations.
Moved: Marvin Kropke
Second: Judith Freyman.
Vote: 3-0

Orders Dismissing Appeal:

- | | |
|---------|--|
| 1625069 | ADP Totalsource Group, Inc.
Action: The Board discussed this order. |
| 1636475 | Luke Apparel Inc.
Action: The Board discussed this order. |
| 1639330 | Shamyat Restaurant, Inc.
Action: The Board discussed this order. |

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeal.

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> |
| 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.
<i>Whether Employer violated lock out/tag out requirements as alleged.</i> |
| 1564732 | Calvary Chapel of San Jose dba Calvary Chapel Academy
<i>Whether the ALJ correctly excluded evidence from the inspection.</i>
Action: The Board discussed this matter. |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
October 5, 2023

- 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.
- 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.
Action: The Board voted to issue the DAR as amended.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1291481 Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.
- 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
October 5, 2023

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.)

1499631	2949 Laurel Canyon Blvd
1655900	A & K Auto Repair & Towing Inc.
1587703	A&F Sheep Company, Inc.
1565342	A.P.A. Industries, Inc.
1605140	Air Vol Block, Inc.
1670690	Ajinomoto Foods North America, Inc.
1631191	Aliso Electric, Inc.
1624614	Allied Waste Systems, Inc.
1572631	Andonian Enterprises Inc.
1454590	Apollo Sheet Metal, Inc.
1629325	Apple Tree Broadway, Inc.
1629946	Arcadia Care Center, LLC
1689655	B & M Tear Off, Inc.
1535083	Bay Area Concrete Recycling
1586174	Bear Republic Brewing Company, Inc.
1505091	Borrmann Metal Center
1623112	Cedarlane Natural Foods, Inc.
1651053	Central Network Retail Group LLC
1625561	Clark Pest Control of Stockton, Inc.
1530024	Clean Earth Environmental Solutions, Inc.
1611264	Compass Senior Living LLC

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
October 5, 2023

1600956	Conrad Wood Co., Inc.
1602680	Contra Costa County Public Works Department
1611159	D.R.S. Stairs, Inc.
1605305	DCR Construction Services, Inc.
1613450	Dilmaya Laxme, LLC
1682778	Emerald Cascade Restaurant Systems, Inc.
1615666	Fairway Staffing Services
1614899	Fresno Concrete Construction, Inc.
1584481	Fumesmart
1651313	Guess? Retail, Inc.
1635695	Harbor Distributing Co.
1674016	Javier Echeverria, Ricardo Echeverria
1663535	Jesse J Hernandez
1584849	Kell Mechanical Heating and Air Conditioning, Inc.
1494208	La Veta Healthcare, Inc.
1640721	Labor Force Management Inc.
1633275	Largo Concrete Inc.
1640938	Louis Mello Ranch, LP
1633083	Medlin Ramps
1614956	MGM Labor Contracting, Inc.
1626314	Molen Services, Inc.
1486716	Oakhurst Industries, Inc.
1625119	Outsource Utility Contractor Corp.
1577873	Pacific Labor Supply, Inc.
1670755	Patriot Framing LLC
1576210	Pearl Crop, Inc.
1602458	Penney Intermediate Holdings, LLC
1550336	Portola Construction, Inc.
1628969	Pro Wall Lath & Plaster, Inc.
1607209	Ransom Concrete Construction, Inc.
1516400	Razavi Corporation
1617215	Relativity Space, Inc.
1670727	RGGC Inc.
1563810	Robert Sowers Construction
1653092	Ryan Matthew Labastida
1660890	Shinsuke Clifford Yamamoto Inc.
1427368	Silverado Materials Ripon, Inc.
1610041	Stanford Cold Storage, Inc.
1676252	STG Logistics, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
October 5, 2023

1633654	Straub Distributing Company, LTD.
1637211	Talley Oil Inc.
1517048	The Permanente Medical Group, Inc.
1575304	Touchstone Pistachio Company, LLC
1669418	Treesap Farms, LLC
1568618	Trinidad Benham Corporation
1672814	Valley AG Enterprise, Inc.
1532884	Verdugo Vista Operating Company, LP
1491480	Walmart, Inc.
1580074	Wheeler Zamaroni
1654540	Xclusive Wireless Resources, LLC

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 12:20 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 12:22 p.m.