

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on October 19, 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  
Sam Lucas, Presiding Administrative Law Judge  
Aaron Jackson, Staff Attorney  
Vincent Mersich, Staff Attorney  
Elizabeth Clarke, Staff Attorney  
Meghan Zapata, Staff Services Manager  
Maria Rios, Legal Analyst  
Dan Lucado, Chief Counsel, DOSH  
Tuyet Tran, Staff Attorney, DOSH  
John Eric Pearce, Public Attendee  
Matthew Omoaholo, Public Attendee  
David Wiseman, Staff Counsel, CalFire  
Catherine Baldi, Public Attendee

**Minutes of October 5, 2023, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the October 5, 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.

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

Action: Board reviewed Patricia Hapgood's summary of issues presented. Board Member Freyman suggested consolidating duplicate issues presented between the two roundtable discussions.

Board categorized some items of concern as "Category 1" issues including third party involvement in settlement discussions and OASIS access for non-party individuals.

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: DOSH Chief Counsel Dan Lucado shared updates about the system performance and some areas of needed improvement.

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: No report.

### **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 she will attend the upcoming Fed-OSHA FAME Conference. The meeting will take place on November 14<sup>th</sup> and is meant to address improvements to the reporting process.

The Attorney III interviews will begin on Friday, October 20<sup>th</sup> and will span a period of two weeks.

The posting of the two ALJ positions in Sacramento is still pending HR approval.

**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: Kerry Lewis reported that there have been no issues related to 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.)*

1568252 Arana Residential and Commercial Painting, Inc.  
Action: The Board discussed this decision.

1233597 Hampton Tedder Electric  
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.)*

1398352 Anheuser-Busch, LLC  
Action: The Board voted to take the matter under submission.  
Moved: Marvin Kropke  
Second: Judith Freyman.  
Vote: 3-0

1609228 The Geo Group, Inc. dba Golden State Annex  
Action: The Board voted to take the matter under submission.  
Moved: Marvin Kropke  
Second: Judith Freyman.  
Vote: 3-0

**Orders Dismissing Appeal:**

1619414 Barry Shy, an Individual  
Action: The Board discussed this order.

1585354 Gotworx Staffing, Inc.  
Action: The Board discussed this order.

**Orders Denying Leave To File Late Appeal:**

1674336 Finishing Touch Moulding, Inc.  
Action: The Board voted to order reconsideration.  
Moved: Aaron Jackson  
Seconded: Ed Lowry  
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.*  
Action:            The Board discussed this matter.
- 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.*  
Action:            The Board voted to issue a DAR.  
                         Moved: Judith Freyman  
                         Seconded: Marvin Kropke  
                         Vote: 3-0
- 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.*

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- 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.*
- 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. Guy F. Atkinson Construction, LLC. 22STCP03019 (1332867)
8. American Fumigation Services, LLC, 22STCP04305 (1506586)

**Appellate Court:**

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. L & S Framing, Inc. S-CV-0046603 (1173183)  
Action: The Board discussed this matter.
3. Granite Construction Company, 34-2021-80003634 (1235643)  
Action: The Board discussed this matter.
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.)*

1601734	Ace Tree Enterprise, Inc.
1457911	Aerotek, Inc.
1594776	Aker International, Inc.
1599188	All Phase Land Clearing, Inc.
1519377	American Builders & Contractors Supply Co., Inc.
1610317	Angelus Block Co., Inc.
1657051	Ark Construction & Development, Inc.
1647453	Arnav Catering Inc.
1620029	ATSG
1592619	Bee Sweet Citrus, Inc.
1636631	Berkeley Bowl Produce, Inc.
1491197	BMC
1569723	Braga Fresh Foods
1634693	Brooks Construction, Incorporated
1658153	C3 Construction Group Inc.
1509860	Ca Corrections - Valley State Prison
1479497	California Department of Corrections
1546695	California Department of Corrections
1512456	California Department of Corrections
1489777	California Department of Corrections
1488604	California Department of Corrections
1568367	California Department of Corrections
1512952	California Dept. Of Corrections and Rehabilitation
1524780	Carroll Metal Works, Inc.
1654362	Cassko, Inc.
1575662	City of Glendale Fire Department
1653645	City of San Diego
1492143	Copper Harbor Company, Inc.
1637712	Cornell Roofing Company Inc
1624363	Crazy Go Nuts
1486315	Creative Assembly, Inc.
1593655	Dale Ranches, LLC
1599464	Direct Disposal
1628216	Douglas Fir Holdings, LLC
1638001	Doulos Construction Inc.



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1640900	Duran's Pallets Corporation
1604670	El Toro Export, LLC
1622288	Elizabeth Morris and Christina Milian
1660928	Empire International Food Corporation
1489495	Fed Ex Freight, Inc.
1577888	G.H. McCulloch, Inc.
1590358	G.I.C. Corporation
1631062	GHC of National City I, LLC
1552372	Gill's Onions, LLC
1492221	Globus Builder Inc.
1681026	Gruber Manufacturing
1648714	Hall Management Corp.
1592163	Hermsmeyer Painting Company, Incorporated
1669421	Hersha Hospitality Management LP
1658506	Hines Services, Inc
1581827	Ingomar Packing Company, LLC
1544994	J.L. Ray Company, Inc.
1513259	Kaiser Foundation Hospitals
1662148	KDC One
1633332	L.A. Pillow & Fiber, Inc.
1595775	Largo Concrete, Inc.
1669804	Lief Labs/Organics
1429648	Livingston Farmers Association
1574194	Los Angeles County Sheriff's Department
1525022	Lowe's Home Centers, LLC
1657675	LUNASIA Group
1625715	Managing Personnel Services, Inc.
1613790	Mariott Welding, Inc.
1586030	Martin Enriquez and Rocio Enriquez
1571524	Maruichi American Corporation
1280718	Milco Constructors, Inc.
1627918	MSI Structural Steel, LLC
1625632	Myron Schotanus and Jodi Schotanus, A General
1585324	Natrol, LLC
1610348	Neptune Fire Alarm, Inc.
1657473	NGW Auto Group LLC
1658489	OTTOGI America Inc.
1665735	Pacific Bell Telephone Company
1633310	Partners Personnel Management Services, LLC
1628507	Pena Plastering

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1554525	Phoenix Custom Packaging, LLC
1532892	Pinnacle Power Services
1608998	POWIN, LLC
1626876	Punch Press Products, Inc.
1608870	Raymond Handling Concepts Corporation
1648698	Rise Baking Company
1514168	Rolling Green, Inc.
1553715	SGD Enterprises
1622982	Sierra Pacific Industries
1606023	State of California Department of Corrections And
1489768	State of California, Dept. of Corrections - Avenal
1593353	Sun Date, LLC
1631103	TGH, Inc.
1605795	The Stucco Pros, Inc.
1495150	Troy Roofing, Inc.
1519010	Tutor Perini Corporation and O & G Industries, Inc.
1551060	UG2, LLC
1617233	Urata & Sons Concrete, LLC
1376598	Weiland Sliding Doors and Windows, Inc.
1652715	West Coast Iron, Inc.
1589347	West Valley Construction Company, 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 12:25 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 12:26 p.m.