

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on November 16, 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 Office
Jeff Mojcher, Chief Counsel
Kerry Lewis, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Vincent Mersich, Staff Attorney
Elizabeth Clarke, Staff Attorney
Janis Jonas, Executive Secretary
Chris Jessup, Presiding Administrative Law Judge
Dan Lucido, Chief Counsel, DOSH
David Wiseman, Staff Counsel, CalFire
Samuel Rose, Attorney, Conn Maciel Carey LLP
Denise Cardosa, Staff Attorney, DOSH
Cyrus Moshiri, Attorney, Fisher Phillips

Minutes of November 2, 2023, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the November 2, 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: The Board decided to hold the February 7, 2024, Board meeting in West Covina and on the Zoom video platform.

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

Action: No report.

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: Denise Cardoso reported that LEGEND is working well.

2. Discussion of precedential index.

Action: Jeff Mojcher 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 progress on changes made to assist employers in filing appeals.

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 on attending the Federal OSHA Conference.

The 2022 and 2023 Administrative Law Decisions are now posted on the OSHAB website.

SSM1 is posted. ALJ duty statement is ready. SLT position will be posted for Sacramento or West Covina. The Atty 3 position paperwork ready for HR.

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: Vince Mersich reported that a list of proposed changes is being created to present to the Board.

2. Discuss status of Video Hearings.

Action: Sam Lucas reported that there is an in-person hearing scheduled for the West Covina office.

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.

Sam Lucas, Kerry Lewis, and Chris Jessup spoke to the pattern of the length of hearings consistently becoming longer.

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.)

There are no Decisions scheduled for review.

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.)

1674336 Finishing Touch Moulding, Inc.
Action: The Board voted to issue order of Remand.
 Moved: Marvin Kropke
 Second: Judith Freyman.
 Vote: 3-0

1638013 G N L Development Inc.
Action: The Board voted to issue order of Remand.
 Moved: Marvin Kropke
 Second: Judith Freyman.
 Vote: 3-0

Orders Dismissing Appeal:

1550325 25/8 Acquisition And Development, LLC
Action: The Board discussed this matter.

1620470 Catalina Car Wash Inc.
Action: The Board discussed this matter.

1552671 Circulating Air, Inc.
Action: The Board discussed this matter.

1649308 Elite Rooter San Diego
Action: The Board discussed this matter.

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeal scheduled for review.

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 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.

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| 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> |
| 1398352 | Anheuser-Busch, LLC <i>Whether the evidence supports the holding that employer violated lockout/tagout requirements.</i> |
| 1490008 | Elite MD, Inc. <i>Whether the ALJ's denial of leave to file a late appeal was correct.</i> |
| 1674336 | Finishing Touch Moulding, Inc. <i>Whether employer established good cause for its late appeal.</i> |
| 1497263 | Hamilton Iron Works, Inc. <i>Whether the evidence supports a finding that employer violated section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) be reduced.</i> |
| 1436480 | Interline Brands, Inc. <i>Whether the employer violated foot protection standards.</i> |
| 1465354 | Natural Alternatives International, Inc. <i>Whether the ALJ erred in dismissing the matter.</i> |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 16, 2023

- 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.
- 1475491 Sutter Bay Medical Foundation
Whether the employer failed to comply with COVID protections as alleged.
- 1609228 The Geo Group, Inc. dba Golden State Annex (3RD PTY PFR)
Whether the motion for third party status was properly denied.
- 1488312 The Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 1486257 The Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 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)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 16, 2023

6. USA Waste of California, Inc., 34-2022-80003841 (1384029)
7. American Fumigation Services, LLC, 22STCP04305 (1506586)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. Granite Construction Company, 34-2021-80003634 (1235643)
3. MWL Solutions, C097353, 34-2020-80003549 (1436014)
4. BMC West LLC, 34-2020-80003459 (1399613)
5. Hampton Tedder Electric, 34-2020-80003549 (1233597)
6. 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.)

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| 1652707 | Able Auto and Truck Repair LLC |
| 1570353 | Adept Process Services, Inc. |
| 1625710 | Advantage Painting Solutions, Inc. |
| 1524797 | Alten Construction, Inc. |
| 1562590 | Base Framing, Inc. |
| 1573505 | CA Corrections and Rehabilitation, Kern Valley |
| 1489492 | CA Corrections and Rehabilitation, North Kern |
| 1589796 | California Environmental Systems, Inc. |
| 1642637 | Coast Cooling, Inc. |
| 1659067 | Cremi Mex, Inc. |
| 1483236 | Davis Ranch LLC |
| 1592342 | DDCM Incorporated |
| 1605960 | Din Tai Fung (Glendale) Restaurant, LLC |
| 1666035 | Durabag Company Inc. |
| 1652840 | Foundation Building Materials |
| 1684940 | Galag Securities Inc. |
| 1652300 | Galleria Petroleum LLC |
| 1683205 | Golden Farms Express Inc |
| 1658784 | Grasmick Construction LLC |
| 1662341 | Gutierrez & Sons Tree Service & Landscaping Inc |
| 1684978 | Harbert Roofing Inc. |
| 1602031 | Harbor Distributing, LLC |
| 1608433 | Headstart Nursery, Inc. |
| 1588992 | Infinity Structures, Inc. |
| 1554283 | Inspire Brands, LLC |
| 1653661 | Lee's Pottery Inc. |
| 1561961 | Lennar Multifamily Builders, LLC |
| 1576810 | Los Angeles County Sheriff's Department |
| 1391951 | M.W. Reid Welding, Inc. |
| 1575438 | Macpherson Oil Company, LLC |
| 1621247 | Mariani Packing Co., Inc. |
| 1632666 | Maruhachi Ceramics of America, Inc. |
| 1596282 | Mcdonald's |
| 1579549 | MCK Enterprises |
| 1652315 | Milanco Building Group |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 16, 2023

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| 1572172 | National Retail Transportation, Inc. |
| 1663170 | Neighbors OTC, LLC |
| 1297348 | NH Environmental |
| 1644986 | Nieves Landscape, Inc. |
| 1475100 | Pacific West Builders, Inc. |
| 1681929 | Residential Elevators, LLC |
| 1658511 | Skyline Solar LLC |
| 1518448 | Southern California Permanente Medical Group |
| 1614650 | Southern Minnesota Beet Sugar Cooperative |
| 1583387 | Spreckels Sugar Company, Inc. |
| 1663947 | State of California - Department Of Veterans |
| 1630408 | Style-Line Construction, Inc. |
| 1351840 | Suffolk Construction Company, Inc. |
| 1457846 | Sundt Construction, Inc. |
| 1606680 | Swann Roofing |
| 1574058 | The Save Mart Companies |
| 1611281 | The Vons Company, Inc. |
| 1655715 | Timothy Paul Alvarado, David Paul Alvarado |
| 1640550 | Titan Roofing & Decking Co Inc. |
| 1598691 | True Blue Company |
| 1655531 | Tutor Perini Corporation |
| 1603301 | Villara Corporation |
| 1594770 | Westturf Landscape Management, 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 11:26 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 11:26 a.m.