

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on January 24, 2024
Sacramento, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
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
Karen Halbo, Staff Attorney
Janis Jonas, Executive Secretary
Dave Wiseman, Staff Counsel, CalFire
Scott Pease, member of the public
David Rodriguez, DOSH
Kevin Bland, Attorney, Ogletree Deakins
Catherine Baldi, Employer, Arana Residential and Commercial Painting, Inc.
Fred Walter, Attorney, Conn Maciel Carey LLP
Rocio Reyes, Assistant Chief Counsel, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California

Minutes of January 10, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the January 10, 2024,
Board meeting.
Moved: Judith Freyman
Seconded: Ed Lowry
The vote was 3-0

New Business:

(The Appeals Board hears and discusses new reports presented by staff.)

Action: No report.

Old Business:

(The appeals Board hears and/or discusses matters on a follow-up basis.)

1. Discussion of precedential index.

Action: No report.

2. Discuss process for purging of files in OASIS.

Action: No report.

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3. Discussion regarding prehearing conference practices and procedures, including identification of issues at prehearing conference.

Report: No report.

4. Reminder: the February 7, 2024, Board meeting will be held in West Covina and on the Zoom video platform.

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: SSM1 interviews took place this week. ALJ applications are being reviewed.

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. Litigation update:

Action: Vincent Mersich 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.)

1466722 Bragg Investment Company Inc.

Action: The Board discussed this matter.

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.)

1686944 Busters Express Car Wash

Action: The Board voted to approve the Order Extending
Time for the Petition for Reconsideration.

Moved: Marvin Kropke

Seconded: Judith Freyman

Vote: 3-0

Orders Dismissing Appeal:

1621230 Chartwell Staffing Services, Inc.

Action: The Board discussed this matter.

1625466 Jensen Meat Company

Action: The Board discussed this matter.

1636748 Sam Hakim 139 Beverly LLC

Action: The Board discussed this matter.

1624593 Webcor Craft LP

Action: The Board discussed this matter.

Orders Denying Leave To File Late Appeal:

1580101 Francisco Soliz, an Individual

Action: The Board discussed this matter.

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1584815 RJP Framing, Inc.
Action: The Board voted to remand this matter to hearing operations.
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 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.

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.

1398352 Anheuser-Busch, LLC
Whether the evidence supports the holding that employer violated lockout/tagout requirements.

1568252 Arana Residential and Commercial Painting, Inc.
Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.

1490008 Elite MD, Inc.
Whether the ALJ's denial of leave to file a late appeal was correct.

1674336 Finishing Touch Moulding, Inc.
Whether employer established good cause for its late appeal.

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- 1497263 Hamilton Iron Works, Inc.
section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) be reduced.
- 1233597 Hampton Tedder Electric (DOSH)
Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.
- 1436480 Interline Brands, Inc.
Whether the employer violated foot protection standards.
- 1465354 Natural Alternatives International, Inc.
Whether the ALJ erred in dismissing the matter.
- 1405107 S.C. Anderson, Inc.
Whether employer committed the alleged violations.
Action: The Board voted to issue the DAR.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 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)
6. USA Waste of California, Inc., 34-2022-80003841 (1384029)
7. American Fumigation Services, LLC, 22STCP04305 (1506586)
8. General Dynamics NASSCO, 37-2023-00024521 (1300984)

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. 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.

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.)

1605822	Adam Bros. Farming, Inc.
1702893	Airworthy, Inc.
1596773	Amazon.Com Services, LLC
1206858	AMR Corporation
1651672	Anthony California, Inc.
1662700	Anthony F. Cubre Jr.
1621246	Baseline Fitness, LLC.
1693437	BC Tree Service, Inc.
1695004	Bloemhof Farm Management, Inc.
1461796	Bodega Latina Corporation
1619406	Builder Services Group, Inc.
1677650	Caplugs Inc.
1693998	CCRC Marina LLC
1688900	CIMC Intermodal Equipment LLC
1620200	Cintas Corporation No. 2
1647073	City of Kingsburg
1596601	City of San Diego Police Department - Firing Range
1628505	Cocopah Nurseries of Arizona, Inc.
1589381	Crosstown Electrical & Data, Inc.
1492738	Dan Marcus
1602323	Davey Tree Surgery Company
1640521	Dragados USA, Inc.
1538449	Drill Tech Drilling & Shoring, Inc.
1650723	EndPak Packaging, Inc.
1640911	Everest Hotel, Inc.
1652483	Fairway Staffing Services, Inc.
1668075	Forever Green Landscape Construction
1598447	Frontier-Kemper Constructors, Inc.
1651674	Gilton Resource Recovery/Transfer Facility, Inc.
1693653	GKP Corporation
1682110	Green Diamond Resource Company
1653657	Ground Hog Inc
1635717	Harmony Foods, LLC
1435920	Hydra Distribution and Rail Services, Inc.
1692031	I Hsin Orchids, Inc.
1493744	Inlog Inc.
1672820	Intren, LLC
1646148	Jemcor Construction Partners Inc.
1554358	Jeronimo Logistics, LLC
1639586	Jesus Ramirez, An Individual

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1692033	John H Kautz, Individual
1566200	John Muir Health
1548530	KML Services, Inc.
1672417	Largo Concrete Inc.
1682123	Latino Theater Company
1657646	Lee Patten Construction
1644169	Lincoln Chan Farms, LLC
1684466	Liquid Luv Co, Inc.
1627348	Lopez Tree Service, Inc.
1600501	Martini Ranch, Inc.
1581602	Mission Plastics
1546018	MK Roofing, Inc.
1683203	Moose Metal, Inc.
1676317	Morgado Building and Renovation, Inc.
1684237	Mountain Cleaning Services, Inc.
1656093	Myers & Sons Construction LLC
1675572	Myers & Sons Construction, LLC
1620019	Nextcrop, Inc.
1505648	Oakrheem Inc.
1537584	Pacific Gas and Electric Co.
1671497	QLM, Inc.
1664837	Quality Pest Services, Inc.
1644007	Qycell Corporation
1673194	R H Framing, Inc
1658377	Raajaraajaaya Investments LLC
1613181	Real Time Staffing Services, LLC/Employbridge, LLC
1323737	Reliance Steel & Aluminum Co.
1666242	Riolo Plastic and Reconstructive Surgery, Inc.
1635256	Route 66 Shooting Sports Park
1664671	Sandals Church
1688779	Save Mart Supermarkets, LLC #76
1550292	Seaworld LLC
1641787	See's Candies, Inc.
1656167	Sergio's Plastering Corp.
1661982	Shimmick Construction Company, Inc
1677655	Silgan Containers LLC
1394045	Silicon Valley Landscaping Services, Inc.
1545973	Solar 360 Building Services, Inc.
1619617	Soule Enterprises
1588180	SP Plus Corporation
1514047	Tahereh Dahyek
1633782	The Original Mowbray's Tree Service Inc.
1610754	Thrive Construction Group, Inc.
1450979	Total Tires, Inc.
1657648	Trilogy Construction Services, Inc.
1615860	Trio Equipment Co Inc.

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1647310	Twenty4seven Hotels Corporation; T4s Management
1589772	West Coast Dry Wall & Paint
1601524	Worldwide Flight Services, Inc.
1635041	Yusen Logistics (Americas) 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 11:18 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 11:20 a.m.