

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on May 22, 2024
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 Officer
Kerry Lewis, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Aaron Jackson, Staff Counsel
Karen Halbo, Staff Counsel
Scott Pease, Staff Services Manager
Janis Jonas, Executive Secretary
Christopher Jessup, Administrative Law Judge
Leticia Tanner, Administrative Law Judge
Kevin Reedy, Administrative Law Judge
Marlene Harris, Office Technician, OSHAB
Dan Lucido, Chief Counsel, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
Lisa Brokaw, Staff Counsel, DOSH
Rocio Reyes, Staff Counsel, DOSH
David Wiseman, Staff Counsel, Cal Fire
Karin Umfrey, Staff Counsel, WorkSafe
Kevin Bland, Attorney, Ogletree Deakins

Request remote attendance: Member Marvin Kropke is attending this meeting remotely which was approved at the May 8, 2024, Board meeting in accordance with Government Code 11123.2, subdivision (j)(2)(A).

Minutes of May 8, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the May 8, 2024, Board meeting.
Moved by Marvin Kropke.
Seconded by Ed Lowry.
The vote was 2-0.

New Business:

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

Action: There was no new business.

Old Business:

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

1. Discuss scheduling future Round Table Discussions.
Action: This topic is being held for future planning.
2. Discuss rescheduling a future Board meeting to be held at the West Covina Appeal Board's office.
Action: This topic is being held for future planning.
3. Discuss process for purging of files in OASIS.
Action: Scott Pease updated the Board on progress with creating a protocol for purging files in OASIS. Meetings are being conducted to assist in formulating a plan of action.
4. Discussion regarding ideas to improve the efficiency and effectiveness of the Board's prehearing and hearing practices and procedures, including the Board's appeals initiation and prehearing conference processes.

Action: Aaron Jackson and the Appeals Initiation Unit led by Marlene Harris, are working on a project in which suggestions will be submitted to DOSH requesting changes to the Appeals Rights section and to the instructions to file an appeal found in the Citation Packet issued when DOSH serves citations. Board Member Judith Freyman suggested using more directive language to help guide the layperson in filing an appeal with the Board.

Legislation:

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

- Action: Jeff Mojcher updated the Board on pending legislation and shared that there are no new bills directly affecting the Board.

Chairperson's Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

- Action: Chair Lowry reported on attending the Advisory Committee meeting. The Advisory Committee discussed using virtual hearings and agreed they are acceptable and becoming a preferred form of holding hearings.

Board Members' Reports:

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

Action: Marvin discussed the efforts of the Supreme Court considering workers being classes as employees versus a non-employee.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Acting Executive Officer Patricia Hapgood also reported attending the Advisory Committee meeting and shared about the update given on hiring within the department.

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: Karen Halbo reported on proposed amendments on regulations. The AI unit and the Legal unit have met and are discussing the differences between OSHAB forms, OASIS and the regulations. They are determining which source and what changes can be made to create consistency between the three sources.

2. Litigation update:

Action: Jeff Mojcher reported that the Board prevailed in the RND case.

Mr. Mojcher also reported on General Dynamics NASSCO, for which Aaron Jackson was to cover what was understood by both parties as a status conference, but which the court had scheduled as a hearing and had issued a tentative ruling granting the Employer's writ. Aaron got the tentative ruling vacated and the matter will be set for hearing in the next 120 days.

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: Dan Lucido thanked the Board and the members of DOSH for the meeting.

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 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.)

1564732 Calvary Chapel of San Jose
Action: This matter is being held for the next Board meeting.

1486176 Tutor Perini Corporation and O&G Industries, Inc.
Action: The Board voted to take this matter under submission for reconsideration.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

Orders Dismissing Appeal:

1650683 Piero Construction, Inc.
Action: The Board discussed this matter.

1597822 Roger Fitzgerald
Action: The Board discussed this matter.

1661802 Zood Transport
Action: The Board discussed this matter.

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeal 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> |
| 1398352 | Anheuser-Busch, LLC
<i>Whether the evidence supports the holding that employer violated lockout/tagout requirements.</i> |
| 1568252 | Arana Residential and Commercial Painting, Inc.
<i>Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.</i> |
| 1399613 | BMC West, LLC
<i>Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.</i> |
| 1466722 | Bragg Investment Company, Inc.
<i>Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.</i> |
| 1420923 | Drill Tech Drilling & Shoring, Inc.
<i>Whether the Employer failed to enforce its IIPP as required.
Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.</i> |
| 1497263 | Hamilton Iron Works, Inc.
<i>section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) should be reduced.</i> |

Action: The Board discussed this matter.

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- 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.
- 1371294 KPRS Construction Services, Inc.
Whether the employer violated section 1632 as alleged? Whether the ALJ's ruling that the Division did not meet its burden of proof regarding the employer's IIPP was correct.
- 1415736 Los Angeles County Probation Dept.
Whether the ALJ erred in reclassifying one citation from serious to general.
- 1465354 Natural Alternatives International, Inc.
Whether the ALJ erred in dismissing the matter.
- 1355061 Republic Electric West, Inc.
Whether fall protection requirements apply to the work. Whether the IEAD was established. Whether penalties were duplicative. Whether the Employer exercised reasonable diligence. Whether it was an error to reduce the classification of the violations and reduce the penalties.
- 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.

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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. United Parcel Service, Inc. dba UPS, 34-2019-80003174 (1116529)
2. Davis Development Company, 34-2020-80003373 (1226084)
3. Hill Crane Service Inc., 34-2021-80003744 (1135350)
4. USA Waste of California, Inc., 34-2022-80003841 (1384029)
5. General Dynamics NASSCO, 37-2023-00024521 (1300984)
6. S.C. Anderson, Inc., 24WM000039 (1405107)

Appellate Court:

1. RND Contractors, Inc., CIVSB2119442 (1436785)

Other Items:

1. Discuss title 8, California Code of Regulations section 348, the Board's present regulation which adds five days to the time in which something must be done to account for mailing time.

Action: No report.

2. Categorizing the Board's DARs and Denials on the DIR website.

Action: No report.

3. Superior Court cases that also involve or relate to appeals pending before the Board.

Lyft, Inc., 30-2023-01368387-CU-MC-CXC (1594664)

Uber Technologies, Inc., 30-2023-01330884-CU-JR-CXC (1594663)

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.)

1677112	Atlantic Solutions Group, Inc.
1668641	Baypost Builders, Inc.
1561700	Boudreau Pipeline Corporation
1685969	Camino Real Foods
1705104	Capitol Valley Electric, Inc.
1640738	City of Los Angeles Dept Of Water & Power
1581739	City of Oakland/ Oakland Fire Department
1534817	Clyde G. Steagall, Inc.
1707308	Coronado Brewing Company, Inc.
1718138	CORTECH LLC
1709131	DESOTEC US LLC
1686206	Dig It Construction, Inc.
1674054	Dreyer's Grand Ice Cream, Inc.
1483914	Emanate Health
1662743	Erland & Co. LLC
1485155	Foster Poultry Farms, Inc.
1496618	Foster Poultry Farms, Inc.
1496781	Foster Poultry Farms, Inc.
1497572	Foster Poultry Farms, Inc.
1638525	Gelson's Markets
1536110	General Dynamics NASSCO
1313039	Generations Healthcare Agency, Inc.
1587491	GM Business Services, Inc.
1709917	Golden Eagle Roofing Services, Inc.
1557356	Golden State Ag Services, Inc.
1616320	Gray Construction, Inc.
1587159	Gruma Corporation
1417855	Hyatt Regency Sonoma Wine Country
1682974	Jerl's Muffler and Brake
1627566	Juan Carlos Arellano Medina
1531584	K C Industrial Constructors, Inc.
1695509	Khan Construction Company
1729070	LD Tree Care
1363793	Leopoldo Nunez Salas
1590260	Millie and Severson Incorporated

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1643633	Moreno Valley Lawn and Maintenance
1700508	Morley Construction Company
1602472	Octane Plus, Inc.
1698484	Orion Cityscape LLC
1706462	P&S Scaffolding Services Inc.
1638738	Pacific Peninsula Group
1662455	Pearl Crop, Inc.
1626618	Performance Food Group, Inc.
1649894	Pettigrew Construction Inc
1502419	Providence Facey Medical Foundation
1716777	Rancho Cordova Wholesale Distributing, Inc.
1401976	RDS Contracting, Inc.
1680774	REVOL Greens Ca, LLC
1708800	River City Restoration Inc.
1653086	Riverside Indoor Shooting Range
1731644	RSVC Company
1617773	Ruben's Pipeline, Inc.
1629354	Select Staffing, Inc.
1616325	Servicemaster By J&C Brown
1671775	Seven Brothers Inc.
1561686	Southern California Gas
1599479	Southwest Boot Company, Inc.
1621267	SP Plus Corporation
1662120	Sparetime Supply, Inc.
1726750	Stone Solutions
1581218	Sutter Bay Medical Foundation DbA Sutter Walk In
1672088	The Original Mowbray's Tree Service Incorporated
1513317	The Vons Companies, Inc.
1703253	Wicks Roofing, Inc.
1662768	Wiggins Lift Co., Inc.
1708611	Wyndham Vacation Ownership Inc.

Action: The Board discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:02 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 11:03 a.m.