

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on June 5, 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
Ka Leung, Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Leticia Tanner, Administrative Law Judge
Marlene Harris, Office Technician, OSHAB
Dan Lucido, Chief Counsel, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
Rachel Brill, Staff Counsel, DOSH
Lauren Ocadiz, Staff Counsel, DOSH
Lisa Brokaw, Staff Counsel, DOSH
David Wiseman, Staff Counsel, Cal Fire
Karin Umfrey, Staff Counsel, WorkSafe
Lisa Prince, Attorney, The Prince Law Firm
William Kroutil, Safety Manager, Communications & Power Industries
Bruce Wick, Risk Management Director, Housing Contractors of California

Request for remote attendance:

Member Marvin Kropke made a motion asking to be permitted to attend the June 19, 2024, and the July 10, 2024, Board meetings remotely in accordance with Government Code section 11123.2, subdivision (j)(2)(A).

This motion was seconded by Judith Freyman.

The Board voted to approve the remote attendance request 3-0.

Minutes of May 22, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the May 22, 2024, Board meeting as amended.
Moved by Marvin Kropke.
Seconded by Judith Freyman.
The vote was 3-0.

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 discussion.
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 discussion.
3. Discuss process for purging of files in OASIS.
Action: This topic is being held for future discussion.
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: This topic is being held for future discussion.

Legislation:

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

Action: Jeff Mojcher updated the Board on pending legislation and shared information on SB 1299 which has been approved by the Senate and is now before the Assembly. This bill relates to benefits awarded for heat-related injury to farmworkers.

Chairperson's Report:

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

Action: Chair Lowry reported on articles read on the internet-based news site Politico regarding assessed penalties and fees.

Board Members' Reports:

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

Action: Judith Freyman announced that she is waiting for today's vote by the California Senate regarding her reappointment.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Acting Executive Officer Patricia Hapgood reported that the Appeals Board has filled an Attorney III position. Two Administrative Law Judge positions remain vacant. There are a couple of support staff positions vacant and they may be reclassified and the duty statement for the Associate Governmental Program Analyst (AGPA) position is being revised. Two employees are retiring, one leaving at the end of June and the other is leaving mid-July.

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 to the regulations. There have been several meetings with OSHAB staff to look at the revisions and draft changes will be distributed to the Board before moving forward with the approval process.

2. Litigation update:

Action: Jeff Mojcher reported that the Board prevailed in the RND case. Also, the General Dynamics writ case is now scheduled for briefing in July and August 2024.

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: Everyone in attendance was offered an opportunity to express their thoughts.

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.)

1498595 Western Oilfields Supply Company
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.)

1564732 Calvary Chapel of San Jose
Action: The Board voted to take this matter under submission for reconsideration.
Moved by Marvin Kropke.
Seconded by Judith Freyman
The vote was 3-0.

1547995 Crane Development Corporation
Action: The Board voted to reinstate this appeal and remand this case to Hearing Operations for further proceedings.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

Orders Dismissing Appeal:

1680266 Alpha Polishing Corporation
Action: The Board discussed this matter.

1610350 Baron HR
Action: The Board discussed this matter.

1601818 Dynamic Plastic
Action: The Board discussed this matter.

1490008 Elite Md, Inc.
Action: The Board discussed this matter.

1598803 Henkels & McCoy
Action: The Board discussed this matter.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 5, 2024

- 1550739 Lekos Dye & Finishing, Inc.
Action: The Board discussed this matter.
- 1651741 Phillips 66 Company
Action: The Board discussed this matter.
- 1606385 U-Haul Co. of California, Inc.
Action: The Board discussed this matter.

Orders Denying Leave To File Late Appeal:

- 1685615 Deacon Construction, LLC
Action: The Board discussed this matter.
- 1626957 DS Fibertech Corp.
Action: The Board discussed this matter.

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.
- 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 5, 2024

- 1399613 BMC West, LLC
Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.
- 1466722 Bragg Investment Company, Inc.
Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.
- 1420923 Drill Tech Drilling & Shoring, Inc.
Whether the Employer failed to enforce its IIPP as required. Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.
- 1609228 Geo Group, Inc. dba Golden State Annex (3RD PTY PFR)
Whether the motion for third party status was properly denied.
Action: The Board discussed this matter.
- 1497263 Hamilton Iron Works, Inc.
section 4999, and that the citation was properly classified. And whether the penalty for Citation 1 (§ 342(a)) should be reduced.
Action: The Board voted to issue a DAR on this matter.
This was moved by Marvin Kropke.
This was seconded by Judith Freyman.
The vote was 3-0.
- 1233597 Hampton Tedder Electric (DOSH)
Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.
- 1488312 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.
- 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.
- 1486257 Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 5, 2024

- 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.
- 1486176 Tutor Perini Corporation and O&G Industries, Inc.
Whether Employer committed a serious accident-related violation of section 3328, subdivision (a).
- 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)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 5, 2024

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.)

1698670	1216 N Flores LLC
1662222	A & J Brothers Apparel Inc.
1579277	Affluent Staffing, LLC
1659601	Alard Engineering, LLC
1727338	Alfateers Service Center
1697191	Alston Construction Company, Inc.
1490294	American Builders & Contractors Supply Co, Inc.
1719135	American KGP Inc.
1656840	AMF Bowling Centers, Inc.
1580336	Amphastar Pharmaceuticals, Inc.
1562576	Arborwell LLC
1489413	Betts Company
1700390	Braggin Ragz, LLC

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 5, 2024

1679392	Cabrini Villas Homeowner Association
1665019	Cacique Foods LLC
1683984	California Conservation Corps
1616873	CalPortland Company
1709798	Canyon Rock Co., Inc.
1645117	Caravan Foods II, Inc.
1721019	Cats USA Pest Control Inc.
1552671	Circulating Air, Inc.
1598420	City of Los Angeles Department of Water and Power
1667844	City of Yuba City
1623563	Clark Construction Group California, LP
1393444	Concreative Construction Company
1706537	Concrete Value Corp
1515894	DCH California Motors Inc.
1505088	Delarosa Yerba Buena
1675238	Diamond Elite Labor Services, Inc.
1721024	Diamond Landscaping, Inc.
1627485	Dragados USA, Inc.
1529957	East Valley Hospital, LLC
1730364	Evergreen Recycling, LLC
1710034	Fetzer Vineyards
1482173	Foster Poultry Farms
1495041	Foster Poultry Farms, Inc.
1677647	Glazier Steel Inc.
1723555	Granite Construction Company
1712635	Griggs Wholesale Gardens, Inc.
1516816	Hayward Hills Operating Company LP
1598803	Henkels & McCoy
1689006	Holder Construction Group LLC
1718137	Interlink Properties, L.P.
1663528	J.T. AG, Inc.
1694366	Jae Management LLC
1630661	Jose Galvan
1666517	Kashi Keshav Investments LLC
1717030	Konoike-Pacific California, Inc.
1722057	LA's Best Afterschool Enrichment Program
1576594	Lactalis Heritage Dairy, Inc.
1651718	Los Angeles City Fire Dept. Station 67
1727998	Macy's Logistics LLC
1709911	Maribel Fashion, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 5, 2024

1312682	Mark Lee and Yong Kay, Inc.
1662993	Marriott Hotel Services, Inc.
1721047	Modern Building, Inc.
1682188	Natsu Corporation
1553887	Netflix Production, LLC
1630524	Oakhurst Industries Inc.
1561428	Old Dominion Freight Line Inc.
1669085	Onyx Construction Services Inc.
1691286	Orchard Machinery Corporation
1658370	Pacific Choice Brands Inc.
1598860	Pacific Coast Elevator Corporation
1660529	Pacific Gas and Electric Company
1687258	Palomar Display Products, Inc.
1724573	Porter FRP, Inc.
1700383	Q. Fashion, Inc.
1673895	Quikserve Cajun Inc.
1697211	Seaside Steel, Inc.
1700391	Sew Fit, Inc.
1711608	Sound-Crete Contractors, Inc.
1557541	Southwest Airlines Co.
1670453	SRS Roofing & Solar, Inc.
1494063	Stanford Health Care
1687776	Starwest Botanicals, LLC
1665026	Sun Hill Properties, Inc.
1701857	Sure Forming Systems, Inc.
1688274	Swan Associates Inc.
1536712	TC Transcontinental Packaging Corp.
1666099	The Lyman Group Inc.
1547250	Thrifty Payless, Inc.
1719932	Tire Experts
1562483	Trees - LLC
1713058	United States Bakery
1696562	Universal Sheet Metal
1536238	UPS
1713879	V3 Electric, Inc.
1702909	Valley Pallet, Inc.
1168188	Village Management Services, Inc.
1689611	Wehah Farms Inc.
1691643	Wehah Farms Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 5, 2024

1528234 Western Metal Service
1658239 Wylatti Resource Management Inc.

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:28 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 11:30 a.m.