

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on June 19, 2024**  
**Sacramento, 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  
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  
Leticia Tanner, Administrative Law Judge  
Denise Cardoso, Assistant Chief Counsel, DOSH  
Tuyet Tran, Staff Counsel, DOSH  
Rachel Brill, Staff Counsel, DOSH  
Lauren Ocadiz, Staff Counsel, DOSH  
Sesilya Saraydarian, Staff Counsel, DOSH  
William Cregar, Retired Annuitant, DOSH  
David Wiseman, Staff Counsel, Cal Fire  
Kevin Bland, Attorney, Ogletree Deakins  
Bruce Wick, Risk Management Director, Housing Contractors of California  
John Steve Barnett

**Notice of remote attendance:**

As required by Government Code Section 11123.5(d), notice is hereby given that Board member Marvin P. Kropke will be participating remotely pursuant to Government Code Section 11123.2(j)(2), and Board member Judith Freyman will be participating remotely pursuant to Government Code Section 11123.2(j)(1).

**Minutes of June 5, 2024, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action:           The Board approved the minutes of the June 5, 2024, Board meeting as amended.  
This was moved by Marvin Kropke.  
It was 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: Patty Hapgood reported that locations and dates are being researched for holding a Roundtable in Southern California this fall.
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 shared that there is no report at this time.

**Chairperson's Report:**

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

Action: Chair Lowry acknowledged that Vincent Mersich is returning to the Board's Legal Unit.

**Board Members' Reports:**

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

Action: There was no report.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Acting Executive Officer Patricia Hapgood updated the Board on the progress of interviewing for an Administrative Law Judge for the Sacramento office. The Board also hopes to soon bring on two Retired Annuitants once our AGPA and Executive Secretary retire.

**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. Proposed changes are currently being reviewed by OSHAB staff.
  
2. Litigation update:  
Action: Jeff Mojcher reported that a new writ has been filed in the Angeles Block Co., Inc. case in Southern California.

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 address the Board and many expressed gratitude and said good-bye to Janis Jonas as this is her last Board meeting before retiring.

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.)*

- |         |                                  |
|---------|----------------------------------|
| 1499137 | Employbridge Holding Company     |
| Action: | The Board discussed this matter. |
| 1372705 | Herrick Corporation              |
| 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.)*

- 1631420 Bobby Gilbert  
Action: The Board voted to issue an order extending time for this petition.  
This was moved by Marvin Kropke.  
It was seconded by Judith Freyman.  
The vote was 3-0.
- 1593924 Crowder Construction  
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:**

- 1650044 Central Transport LLC  
Action: The Board discussed this matter.

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

- 1709627 Select Education Group, Inc.  
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.*

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- 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.*
- 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.*
- 1564732 Calvary Chapel of San Jose  
*Whether the ALJ was correct that the good faith exception does not apply.*  
Action: The Board voted to amend and issue the DAR for this matter.  
This was moved by Marvin Kropke.  
It was seconded by Judith Freyman  
The vote was 3-0.
- 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 (3<sup>RD</sup> PTY PFR)  
*Whether the motion for third party status was properly denied.*  
Action: The Board voted to issue the Second Order Requesting Briefing.  
This was moved by Marvin Kropke.  
It 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.*

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- 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.*
- 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.*  
Action: The Board voted to issue the DAR for this matter.  
This was moved by Marvin Kropke.  
It was seconded by Judith Freyman.  
The vote was 3-0.
- 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).*

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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:**

There are no cases currently filed with the Appellate Court.

**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.)*

1679149	Ayres Hotel Company, Inc.
1567563	Basalite Concrete Products, LLC
1500444	Bonanza Productions Inc.
1673700	Cal-Pacific Construction, Inc.
1644925	California Custom Fruits and Flavors, Inc.
1651690	Cardenas Markets, Inc.
1480765	Carmel Partners Inc.
1475269	Cedar Operations, LLC
1725504	Champion Home Builders Inc.
1721756	CKM Painting
1659030	Closets by Design Inc.
1693647	D Lassen LLC
1734208	Danco Builders
1619646	De Jarnette Forest Lumber
1698653	Devil Mountain Wholesale Nursery
1683182	Dinucci Corporation
1691539	Donald D. Diffenbaugh Construction Inc.
1664096	Dons Market LLC
1723200	El Dorado County Sheriff's Office
1733245	Elie Tanios, an Individual
1716631	Elite Builder Services, Inc.
1645258	Evergood Sausage Co Inc.
1570996	FBV Morro Bay Joint Venture
1658856	Flex Interconnect Technologies
1708010	Freewire Technologies, Inc.
1701068	Frontier Building Products Pacific, Inc.
1696401	Gallo Cattle Company LP
1702778	Goodfellow Bros. California, LLC
1702900	Homer T. Hayward Lumber Co
1675917	J Rivas & Sons Transport Inc.
1678660	John Reedy Company, LLC
1705807	Jose De Jesus Pelayo-Gudino
1536447	KAG Merchant Gas Group, LLC
1697723	Keith Monroe & Company
1667491	KV Construction 1, Inc.



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1722911	Lamanuzzi & Pantaleo, LLC
1519800	M4 Concrete and Drywall
1566668	Malcolm Drilling Company, Inc.
1719872	Metals Treatment Technologies, LLC
1713411	Metro Services Group
1699678	Michael's Concrete
1673631	Miguel Angel Guzman
1702390	Morada Produce Company, L.P.
1699967	NH Holdings Inc.
1684235	Pleasanton Garbage Service Inc.
1681341	PLT-Art International
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1547000	PSSI Holdings, LLC
1690285	Purple Line LLC
1713300	Quality Development and Construction, Inc.
1671898	Ramen 7 LLC
1711791	RC Willey Home Furnishings
1601835	Reyes Contracting, Inc.
1685103	Rigoberto Isabel Calderon Cifuentes
1694711	Rush Personnel Services, Inc.
1590923	Saddleback Roofing, Inc.
1580540	Securitas Security Services USA, Inc.
1666146	SEFNCO Communications Inc.
1737669	Stanislaus County
1717246	Steve Roberts Roofing
1711583	Strand Ace Hardware, Inc.
1621333	T.M. Cobb Company
1571630	The American Bottling Company
1627448	The F A Bartlett Tree Expert Company
1711839	Tope's Environmental Inc.
1719859	Tulio Costa
1645882	U.S. Foodservice, Inc.
1575627	Ultimate Internet Access, Inc.
1653866	United Ground Express, Inc.
1728649	United Logistic Solutions, Inc.
1615490	United Natural Foods, Inc.
1701865	West Coast Harvesting & Packing, Inc.

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

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**Personnel:**

*(Issues regarding staff)*

The Closed Session adjourned at 10:52 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 10:55 a.m.