

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on July 10, 2024
Sacramento, California
Zoom Platform

Present:

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
Christopher Jessup, Administrative Law Judge
Leticia Tanner, Administrative Law Judge
Jeff Mojcher, Chief Counsel
Aaron Jackson, Staff Counsel
Karen Halbo, Staff Counsel
Elizabeth Clarke, Staff Counsel
Vincent Mersich, Staff Counsel
Scott Pease, Staff Services Manager
Maria Rios, Legal Analyst
Anne Marie Plasencia, Senior Legal Typist
Denise Cardoso, Assistant Chief Counsel, DOSH
Rocio Reyes, Assistant Chief Counsel, DOSH
Tuyet Tran, Staff Counsel, DOSH
Sesilya Saraydarian, Staff Counsel, DOSH
Lisa Brokaw, Staff Counsel, DOSH
John Steve Barnett, Staff Counsel, DOSH
Douglas Gale, Staff Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
David Wiseman, Staff Counsel, Cal Fire
Catherine (full name and title not provided)
Kevin Bland, Attorney, Ogletree Deakins
Bruce Wick, Risk Management Director, Housing Contractors of California
Karin Umpfrey, Worksafe
William Kroutil, Safety Manager, Communications & Power Industries

Ed Lowry, Public Member, Chair, absent due to illness

Notice of remote attendance:

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

Request for remote attendance:

Member Marvin Kropke made a motion requesting to attend the July 24, and August 7, 2024 Board meetings remotely, pursuant to 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 2-0.

Minutes of June 19, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the June 19, 2024 meeting.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 2-0.

New Business:

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

Action: Karen Halbo raised concerns about providing opportunities for stakeholder input in advance of Round Table Discussion.

Action: Aaron Jackson and Vincent Mersich briefed the Board on the Securities and Exchange Commission v. Jarkesky matter decided by the U.S. Supreme Court on June 27, 2024.

Old Business:

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

1. Discuss scheduling future Round Table Discussions.

Action: Proposed dates discussed for October 2024.

Legislation:

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

Action: Elizabeth Clarke shared that she is tracking three bills that are currently pending before the legislative committee.

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: Acting Executive Officer Patricia Hapgood updated the Board on the progress of interviewing for two Administrative Law Judge positions. The Board also hopes to soon bring on two ALJ Retired Annuitants to assist the Administrative Law Judges. The Board has been approved to hire two Office Technician Retired Annuitants.

Staff Reports:

(Reports from the Supervising ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss and may take action on proposals for new regulations or proposals for modifications to, or repeal of, existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: No report.

2. Litigation update.

Action: No report.

3. Presiding Administrative Law Judges Kerry Lewis and Sam Lucas reported that they have both been working alongside Patty Hapgood to fill the vacant ALJ positions and that normal business is moving along without issue.

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. Some in attendance discussed their availability for the Round Table Discussion in October and objectives the of the meeting were discussed.

Kevin Bland requested a status update on the matter of setting 15 minute Status Conferences. Sam Lucas provided an update.

William Kroutil requested guidance on how to properly interpret regulations and statutes to understand the original intent. Aaron Jackson provided direction. Other attendees provided input.

Bruce Wick clarified that the Legislature is presently on recess, will return from break August 5, 2024, and will conclude the legislative session on August 31, 2024 (because it is an election year).

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 were no Decisions submitted 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.)

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| 1631420 | Bobby Gilbert
Action: The Board voted to issue the draft Denial as amended.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 2-0. |
| 1704404 | Clete Security Services, Esq.
Action: The Board discussed this matter. |
| 1499137 | Employbridge Holding Company
Action: The Board voted to take the Petition for Reconsideration under submission.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 2-0. |
| 1417264 | Mendez Electric, Inc.
Action: The Board discussed this matter. |
| 1351361 | Priority Workforce, Inc.
Action: The Board discussed this matter. |
| 1498595 | Western Oilfields Supply Company
Action: The Board voted to take the Petition for Reconsideration under submission.
This was moved by Marvin Kropke. |

It was seconded by Judith Freyman.
The vote was 2-0.

Orders Dismissing Appeal:

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| 1576200 | Ittella International, LLC
Action: The Board discussed this matter. |
| 1496780 | Norman Industrial Materials, Inc.
Action: The Board discussed this matter. |
| 1693812 | Tuong Du
Action: The Board discussed this matter. |
| 1682182 | United Parcel Service
Action: The Board discussed this matter. |
| 1367994 | Warren Lee DbA Value Plus Global, Valueplu
Action: The Board discussed this matter. |

Orders Denying Leave to File Late Appeal:

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| 1704784 | Alstom Transportation Inc.
Action: The Board discussed this matter. |
| 1681321 | Contractors Wardrobe, Inc.
Action: The Board discussed this matter. |
| 1614954 | Labor Pro, 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.

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| 1431672 | A. Teichert & Son, LLC
<i>Whether the cited employer was in violation of lockout/tagout requirements.</i> |
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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.
Action: The Board discussed this matter.
- 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.
- 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.
- 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.

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- 1415736 Los Angeles County Probation Dept.
Whether the ALJ erred in reclassifying one citation from serious to general.
Action: The Board discussed this 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.
Action: The Board discussed this matter.
- 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)
5. General Dynamics NASSCO, 37-2023-00024521 (1300984)

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6. S.C. Anderson, Inc., 24WM000039 (1405107)
7. Angelus Block Co., Inc., CIVSB2417796 (1113026)

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)
Action: No report.

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

1647406	3wire LLC
1605253	Advantex Of California, LLC
1725749	Albertson's Companies Inc
1639608	American Auto Works, LLC
1717911	Bakersfield Renewable Fuels, LLC
1685665	Brown-Pacific, Inc.
1703677	Carmelo Barajas-Ceja
1463623	CBRE, Inc.
1568199	Circle Graphics, Inc.
1670196	Cirks Construction Inc.
1638535	Coit and Hewes, LLC
1683202	Comfort Zone Heating and Air
1676309	Consolidated Electrical Distributors, Inc.

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1670685	Contractors Wardrobe, Inc.
1709928	Corona - College Heights Orange And Lemon
1515777	County Of Los Angeles, Public Works
1721596	CTS Fabrication USA, Inc.
1713985	Cupertino Electric, Inc
1522997	David Hernandez
1540059	Davis Stone Incorporated
1705217	Diamond Foods, LLC
1614682	Diversity Hospitality Services
1608442	Double Lucky, Inc.
1557844	Dry Creek Vineyard, Inc.
1721058	Eaglelift, Inc.
1698502	Ee Hall, Inc.
1653956	Elected Personnel, LLC
1445812	Energy Star Lighting Electric, Inc.
1677551	Ensign Santa Rosa, LLC
1685238	European Automotive Collision Center
1742741	Feather River Recreation & Park District
1685862	Gama Contracting Services, Inc.
1677995	Gary Foster
1718428	Geovest Corporation
1675164	Girard's Fine Foods Inc.
1514240	Gonsalves & Santucci, Inc.
1633374	Hansen Steel Services LLC
1570162	Harper Construction Company, Inc.
1710873	Harrison Drywall Inc
1700385	Hermosa Apparel, Inc.
1644460	Hyatt Corporation
1675287	Hyatt Corporation
1455045	Image Cabinet And Stone, Inc.
1682330	J&H Diversified, Inc.
1726847	Jerry's Pallets Inc.
1733048	Jett Harvest, Inc.
1567459	Kaiser Foundation Hospitals
1673094	Kal Fume Inc
1716954	Kruppa Enterprises, LLC
1567579	La Tortilla Factory, Inc.
1674632	La Tortilla Factory, Inc.
1736215	Lathrop Woodworks
1568455	LMR Wine Estates LLC

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1472632	Los Angeles Department of Water And Power
1508489	Lyons Magnus, LLC
1738489	M A Steiner Construction Inc.
1547493	M.A. Medina Farm Labor Services, Inc.
1695012	Manuel De Jesus Medina
1543823	Medina Enterprises, Inc.
1699113	Mid Valley Recycling LLC
1640067	Milicic Farming LLC
1613145	MSE Landscape Professionals, Inc.
1664688	MSI Structural Steel, LLC
1519299	Ontrac, Inc.
1688333	Pacific Bell Telephone Company
1524556	Pactiv, LLC
1529839	Palomar Health
1724830	Port Of Oakland
1641078	Premium Wood Stakes, Inc.
1581607	Production Framing, Inc.
1636755	Richard Won Kim, An Individual
1623017	Robertson's Ready Mix Ltd, A California Limited
1577814	Royal Paper Box
1642714	Sahara Construction Co., Inc.
1733257	Samuel Macias, An Individual
1744704	Shannon Ranches, Inc.
1653321	Sierra At Tahoe, LLC
1694863	Sierra Pacific Industries
1720736	Sierra Pacific Industries
1723883	Sierra Pacific Industries
1732627	Sierra Roofing and Solar, Inc.
1748233	Skyline Tree Enterprise, Inc.
1718127	Soch Management, LLC.
1552839	Southwest Airlines
1576672	SSA Group, LLC
1660049	Stanford University
1720573	Sunrise Senior Living Services, Inc.
1557491	Super Center Concepts, Inc.
1651492	Super Michelada Corporation
1487971	Sutter Valley Hospitals Dba Sutter Solano Medical
1714169	T-Mobile Us, Inc
1604378	Tashcon Corporation
1451479	The G.B. Group, Inc.

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1707789	The Habit Restaurants, LLC
1510739	The Original Mowbray's Tree Service, Inc.
1715268	The Posh Bakery, Inc.
1628696	The RV Pros, Inc.
1610523	Thrifty Payless, Inc.
1667876	Trims Buttons & Dye, Inc.
1692236	UL Construction, Inc.
1552404	United Staffing Associates, LLC
1645149	Wal-Mart Associates Inc.
1690038	Walmart, Inc.
1525433	Watt Electric Corp.
1679876	Wawona Frozen Foods
1642546	West Coast Gasket Co.
1504467	Westrock Cp, LLC.
1692199	Workman Communications LLC

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 10:55 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 10:56 a.m.