

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on July 24, 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
Sam Lucas, Presiding Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Mario L. Grimm, 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
Christine Vandermeer, Senior Legal Typist
Dan Lucido, Chief Counsel, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
Kathryn Woods, Staff Counsel, DOSH
Sesilya Saraydarian, Staff Counsel, DOSH
Rachel E. Brill, Staff Counsel, DOSH
John Steve Barnett, Staff Counsel, DOSH
Ramesses Surban, Staff Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
Jennifer Yanni, Attorney, Ogletree Deakins
Rachel van Greenhoven, Worksafe
William Kroutil, Safety Manager, Communications & Power Industries

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 August 7, and August 21, 2024 Board meetings remotely, pursuant to Government Code section 11123.2, subdivision (j)(2)(A).

This motion was seconded by Ed Lowry.

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

Minutes of July 10, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the July 10, 2024 meeting, as amended.
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: No report.

Old Business:

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

1. Discuss scheduling future Round Table Discussions.

Action: Patricia Hapgood confirmed that the meeting date will be October 15, 2024. She also reported that a location has been identified and is pending confirmation. Advertisements and a meeting agenda will be posted once all details are finalized.

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: Ed Lowry reported that he contracted COVID and that was the reason for his absence from the July 10 meeting. He also shared some comments on the July 19, 2024 CalOSHA Reporter articles related to SB 606 and the Silica Requirements.

Board Members' Reports:

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

Action: Marvin Kropke and Judith Freyman shared that they were pleased that a date for the Round Table Discussion has been set.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood reported that she would attend the Fed OSHA Meeting on August 6, 2024. She also provided an update on the Board's hiring efforts for the two Administrative Law Judge positions and two Office

Technician positions and that the Board has received 33 applications for the Executive Secretary positions.

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: Karen Halbo reported that she is working on the regulation proposal and the process for obtaining comments on the proposal.

2. Litigation update.

Action: Jeffrey Mojcher reported that a Remittitur has been issued in the matter of RND Contractors, Inc.

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: Jennifer Yanni had no substantive comments. She stated she was attending the meeting in Kevin Bland's absence.

William Kroutil presented a question: Does the Board staff review tables of contents in briefs and, if yes, what are they looking for? Ed Lowry answered that he looks for the arguments which will be presented in the briefs and Sam Lucas said that the table of contents helps him to get a sense of what to expect from the brief.

Denise Cardoso answered William Kroutil's question stating that tables of contents are like a roadmap helping the reader identify important elements of the brief. Denise also notified attendees that the Division is hiring attorneys.

Rachel van Greenhoven stated she was attending in Karin Umfrey's absence.

Multiple Division Counsel announced their attendance including: John S. Barnette, Javier Castro, Rachel E. Brill, Sesilya Saraydarian and Ramesses Surban.

Dan Lucido announced that the Division is hosting a hiring event on August 1, 2024 at U.C. Merced and asked others to spread the word.

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.)

- | | |
|---------|---|
| 1704404 | Clete Security Services, Esq.
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 3-0. |
| 1716139 | Huerta Legacy, Inc.
Action: The Board voted to issue an order to of remand reinstating the appeal in this matter.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0. |
| 1417264 | Mendez Electric, Inc.
Action: The Board discussed this matter. |
| 1351361 | Priority Workforce, Inc.
Action: The Board voted to issue the draft Denial.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0. |
| 1590457 | R&P Concrete Pump Service, Inc.
Action: The Board discussed this matter. |

Orders Dismissing Appeal:

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 24, 2024

- 1683831 Aid Builders, Inc.
Action: The Board discussed this matter.
- 1725953 Century Golf Partners Holdings III, LP
Action: The Board discussed this matter.
- 1716139 Huerta Legacy, Inc.
Action: The Board discussed this matter.
- 1609749 John Losoya Construction, Inc.
Action: The Board discussed this matter.
- 1698470 Orlandini Enterprises
Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

- 1694108 Big Ones Tires, Inc.
Action: The Board voted to issue an order to of remand reinstating the appeal in this matter. This was moved by Marvin Kropke. It was seconded by Judith Freyman. The vote was 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.
- 1398352 Anheuser-Busch, LLC
Whether the evidence supports the holding that employer violated lockout/tagout requirements.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 24, 2024

- Action: The Board voted to issue a Decision After Reconsideration.
This was moved by Judith Freyman.
It was seconded by Marvin Kropke.
The vote was 3-0.
- 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.
- 1415736 Los Angeles County Probation Dept.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 24, 2024

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)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 24, 2024

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.)

1632293	2210 Santa Ana Opco, LLC
1668267	2400 W Midvalley, LLC
1649250	Anthony Machado Trucking, Inc.
1717281	Aust Brother's, Inc.
1602795	Barron Builders, Inc.
1721421	Basalite Concrete Products
1545441	BBI-Con, Inc.
1713777	Bestshot Construction Inc.
1748786	Blalock Electric & Solar Inc.
1657917	Borrmann Metal Center
1619367	Brett Kelly, an Individual
1558190	Caes Systems LLC
1716702	Cali Framing Supplies, LLC

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 24, 2024

1716626	City of Livingston - Public Works
1714839	Concrete Value Corp
1608630	Courtney, Inc.
1657416	Craig Lambert
1675174	Crst Expedited, Inc.
1712434	D.L. Sinjem Company, Inc.
1614402	Davis Development Company, Inc.
1711959	Deluxe Building Products, LLC
1535351	Double V Farm Labor Contracting, Inc.
1722060	FBT Group, Inc.
1554579	Federal Express Corporation
1481502	Fremont Healthcare Operating Co., LP
1690991	Fresh Harvest, Inc.
1624462	Garden View Inc.
1728756	Garner Products Inc.
1580353	GECMS, Inc.
1710705	H A Rider & Sons
1707170	Hasa, Inc.
1707171	Hasa, Inc.
1674547	Hatsatoun Restaurant, Inc.
1630531	Heritage Distributing Company
1598417	High Desert Dairy
1688765	HTI Polymer, Inc.
1683440	Johnson Iron Inc.
1547638	JPF Incorporated
1667880	Kafco Sales Company
1663830	Kehe Distributors LLC
1683460	Konica Minolta Business Solutions USA, Inc.
1733649	Los Angeles County Public Works
1599134	Lush Cosmetics, Inc.
1677830	Madrona Carwash, Inc.
1725650	Majestic Retail Group, Inc.
1649689	Modern Building, Inc.
1712216	MVP Builders, LLC
1716597	Nole Enterprises, Inc.
1615231	Original Sid Blackman Plumbing, Inc.
1694412	Orion Cityscape LLC
1741001	Overton Security Services, Inc.
1691204	Panda Restaurant Group, Inc.
1694107	Paragon Framing, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
July 24, 2024

1723405	Pennant Group - Orange Senior Care, LLC
1599382	Polydrop, Inc.
1663517	Prestige Assisted Living
1568004	QMI Masonry, Inc.
1592463	R & S Beverage Co.
1731643	Ragsdale Family Corporation
1682332	Retirement Housing Foundation
1588643	RSVC Company
1593264	Salinas Farm Labor Contractor, Inc.
1558901	Sentinel Energy, LLC
1522408	Setton Pistachio of Terra Bella, Inc.
1524343	SF Baseball Associates, LLC
1662502	Skycraft Roofing Inc.
1726351	SNL Group Inc.
1635480	SOLV Energy, LLC
1699019	Southern California Edison Co.
1633725	Springfield Builders
1667853	The Style Union, LLC
1727427	Thomas James Carpenter
1718731	TMT Trading, Inc.
1489284	Tosca Services, LLC
1563162	Trademark Construction Co., Inc.
1677690	Walmart, Inc.
1730878	West Lane Radiator & Air Conditioning, Inc.
1624464	Wisdom Creation Inc.

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:49 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 11:50 a.m.