

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on August 21, 2024**  
**Sacramento, California**  
**Zoom Platform**

**Present:**

Ed Lowry, Public Member, Chair  
Judith Freyman, Management Member  
Marvin Kropke, Labor Member  
Patricia Hapgood, Acting Executive Officer  
Sam Lucas, Presiding Administrative Law Judge  
Les Murad, Administrative Law Judge  
Mario Grimm, Administrative Law Judge  
Aaron Jackson, Staff Counsel  
Karen Halbo, Staff Counsel  
Scott Pease, Staff Services Manager  
Maria Rios, Legal Analyst  
Marlene Harris, OSHAB Office Technician  
Anne Marie Plasencia, Senior Legal Typist  
Christine Vandermeer, Senior Legal Typist  
Denise Cardoso, Assistant Chief Counsel, DOSH  
Javier Castro, Staff Counsel, DOSH  
John Steve Barnett, Staff Counsel, DOSH  
Jordan Davis, Staff Counsel, DOSH  
Keith Mackenzie, Staff Counsel, DOSH  
Lisa Brokaw, Staff Counsel, DOSH  
Ramesses Surban, Staff Counsel, DOSH  
Sesilya Saraydarian, Staff Counsel, DOSH  
Hannah Baird, California Prison Industry Authority  
Bruce Wick, Risk Management Director, Housing Contractors of California  
David Wiseman, Staff Counsel, Cal Fire  
Karin Umpfrey, Worksafe

**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:**

At the Meeting on August 7, 2024, Member Marvin Kropke's motion requesting to attend the September 4, and September 18, 2024 Board meetings remotely, pursuant to Government Code section 11123.2, subdivision (j)(2)(A) was approved. No motions were made at this meeting.

**Minutes of August 7, 2024, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the August 7, 2024 meeting.  
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: 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 reported that the contract for the meeting location has been finalized and payment is pending. The location has a maximum occupancy of 80, so entry into the meeting will be on a first come first served basis. A flyer is pending approval and will be sent out upon approval.

**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: No report.

**Board Members' Reports:**

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

Action: Judith Freyman commented on extreme heat enforcement legislation. Bruce Wick provided context and information regarding the current legislation.

Marvin Kropke expressed enthusiasm about the upcoming roundtable meeting.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood provided an update on the Board's hiring efforts: 2 Administrative Law Judges (ALJ) have been hired and are expected to begin on October 1<sup>st</sup>. A total of 4 retired annuitants will begin work soon to fill 2 more ALJ positions as well as the AGPA and Executive Secretary position. As a

final personnel note, Patty noted that the Board will need to hire a fifth retired annuitant or an intermittent position to fill in for a member of the Board's staff who was recently injured in a major car accident and will be out for an extended period.

In regards to Zoom conferences and hearings: Patty reported that a new Zoom contract is in the works.

**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: Sam Lucas noted that 86.9% of COVID related appeals have been resolved which is up from 70% at the same time last year. This is attributed to factors such as a plateau in the number of new COVID related appeals as well as the parties' continued effort to resolve them through settlement discussions.

2. Litigation update.

Action: No report.

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: Bruce Wick shared thoughts about the Standards Board's most recent meeting and contrasted that with the advisory meeting regarding SB606 with Denise Cardoso and others from the Division.

Denise Cardoso expressed special thanks to Lisa Wong and Rachel Brill for helping with the meeting. The goal of the meeting was to have clear language in the regulations in order to make it easier to comply.

Multiple attendees announced their presence, but provided no comment.

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.)*

1583201      Transitamerica Services, Inc.  
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.)*

1523238      Orange County Fire Authority  
Action:      The Board voted to issue grant the Petition for Reconsideration.  
This was moved by Marvin Kropke.  
It was seconded by Judith Freyman.  
The vote was 3-0.

**Orders Dismissing Appeal:**

1514170      Andy's Landscaping & Tree Service, Inc.  
Action:      The Board discussed this matter.

1636640      Angelica Monique Ramirez dba AMR Contracting  
Action:      The Board discussed this matter.

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

1733648      Albus & Associates Inc.  
Action:      The Board discussed this matter.

1721636      Costa Mesa Healthcare Inc.  
Action:      The Board discussed this matter.

1691883      Dawit Goitom Fessehay  
Action:      The Board voted to remand this matter.  
This was moved by Marvin Kropke.  
It was seconded by Judith Freyman.  
The vote was 3-0.

1690885      Waterproofing and Roofing Solutions, 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<br><i>Whether the cited employer was in violation of lockout/tagout requirements.</i>   |
| 1473644 | Amazon.com Services, LLC<br><i>Whether the employer's training program was in compliance with the applicable safety order.</i>   |
| 1568252 | Arana Residential and Commercial Painting, Inc.<br><i>Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.</i>                         |
| 1399613 | BMC West, LLC<br><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.<br><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.<br><i>Whether the Employer failed to enforce its IIPP as required.<br/>Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.</i> |
| 1499137 | Employbridge Holding Company<br><i>Whether Employer violated IIPP requirements as alleged.</i>   |
| 1609228 | Geo Group, Inc. dba Golden State Annex (3 <sup>RD</sup> PTY PFR)<br><i>Whether the motion for third party status was properly denied.</i>  |

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- 1233597 Hampton Tedder Electric (DOSH)  
*Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.*  
Action: The Board discussed this matter.
- 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.*
- 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.*  
Action: The Board discussed this matter.

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- 1498595      Western Oilfields Supply Company  
*Did the ALJ err by affirming a citation alleging that Employer did not guard a machine at its point of operation? And did the ALJ err by allowing an amendment to the citation so the Division could assert an alternate theory?*  
Action:          The Board discussed this matter.

**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)
7. Angelus Block Co., Inc., CIVSB2417796 (1113026)
8. Hamilton Iron Works, Inc., 24WM000100 (1497263)

**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.)*

|         |  |
|---------|--|
| 1662218 | 2N Clothing, Inc.                              |
| 1488957 | Able Sheet Metal, Inc.                         |
| 1538332 | Albeco, Inc.                                   |
| 1647852 | Alliance Ground International LLC              |
| 1696842 | Altman Specialty Plants, LLC.                  |
| 1487399 | Anaheim Healthcare Center, LLC                 |
| 1514170 | Andy's Landscaping & Tree Service, Inc.        |
| 1683541 | Asacrete, Inc.                                 |
| 1694103 | Bert's Foreign Car Service, Inc.               |
| 1663130 | Brian Baker & Lora Baker                       |
| 1698773 | C3 Construction Group, Inc.                    |
| 1688136 | CBC Framing, Inc.                              |
| 1752676 | Cesar Mendoza Electric, Inc.                   |
| 1666174 | Chrisp Company                                 |
| 1729200 | City of Alameda - Public Works                 |
| 1516429 | Cobalt Power Systems                           |
| 1721636 | Costa Mesa Healthcare, Inc.                    |
| 1578945 | County of San Bernardino Children & Family     |
| 1547995 | Crane Development Corporation                  |
| 1649699 | Craven Landscaping, Inc.                       |
| 1685873 | Curtis & Sons Door, Inc.                       |
| 1647111 | Dana Butcher Associates                        |
| 1637904 | Diaz Plastering, Inc.                          |
| 1760321 | Dryco Construction, Inc.                       |
| 1719966 | Genesis Plumbing, Inc.                         |
| 1732015 | Giuliano-Pagano Corporation                    |
| 1611583 | Glendale & Manhattan Motel, Inc.               |
| 1718421 | Global Modular, Inc.                           |
| 1702817 | Gonzalez Farm Labor Services, LLC              |
| 1696101 | Hilmar Cheese Company                          |
| 1667796 | Izurieta Fence Company, Inc.                   |
| 1508393 | Kindred Hospital Los Angeles                   |
| 1575405 | Kindred Hospital South Bay                     |
| 1726447 | Kisco Senior Living LLC                        |
| 1498721 | KND Development 54, LLC                        |
| 1629043 | L3 Investment Holding, Inc.                    |
| 1612671 | LAPD - Evidence & Property Management Division |
| 1544985 | Los Altos Food Products, LLC                   |



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| 1623704 | Lowe's Home Centers, LLC                        |
| 1689229 | Marriott Hotel Services, LLC                    |
| 1640600 | MI Casita Salvadoreña Restaurant, Inc.          |
| 1604360 | MJD Concrete Works, Inc.                        |
| 1505831 | Mountain F Enterprises, Inc.                    |
| 1506810 | Mr. Crane, Inc.                                 |
| 1677210 | Otay Water District                             |
| 1547001 | OWB Packers, LLC                                |
| 1676073 | Precision Coil Spring Company                   |
| 1735602 | Professional Asbestos and Lead Services LLC     |
| 1684479 | R.O.M. Investments, Inc.                        |
| 1504399 | Ralph's Grocery Company                         |
| 1733045 | Rancho Valencia Resort Partners LLC             |
| 1642653 | Raymer Construction Inc.                        |
| 1488201 | Rehabilitation Center of Santa Monica Operating |
| 1716421 | Remo, Inc.                                      |
| 1570992 | Riverside County Sheriff Department             |
| 1696955 | Riverside County Sheriff's Department           |
| 1721451 | S & K Plating, Inc.                             |
| 1704565 | SMI Development Group, Inc.                     |
| 1622131 | Solar-Klean, LLC                                |
| 1538506 | Spectrum Construction Group, Inc.               |
| 1475440 | Sutter Bay Hospitals California Pacific Medical |
| 1706525 | Sysco Corporation                               |
| 1707274 | Sysco San Francisco, Inc.                       |
| 1520771 | Taylor Farms Retail, Inc.                       |
| 1507443 | The Vons Companies, Inc.                        |
| 1720154 | Timberline                                      |
| 1512415 | Trapac, LLC                                     |
| 1725262 | UC Davis Cahfs Veterinary Department            |
| 1637197 | United Airlines, Inc.                           |
| 1526892 | Universal Dust Collector Mfg. & Supply Corp     |
| 1613327 | Universal Iron Works, Inc.                      |
| 1740985 | Universal Wood Moulding, Inc.                   |
| 1694314 | Ventoux Corporation                             |
| 1706640 | Walmart, Inc.                                   |
| 1665736 | Walmart, Store #1840                            |
| 1700384 | Westin Style, Inc.                              |
| 1437406 | Wright Tree Service of the West, 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 11:30 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 11:31 a.m.