

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on September 4, 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
Leticia Tanner, Administrative Law Judge
Mario Grimm, Administrative Law Judge
Rheeah Yoo Avelar, Administrative Law Judge
Jeffrey Mojcher, Chief Counsel
Aaron Jackson, Staff Counsel
Elizabeth Clarke, Staff Counsel
Karen Halbo, Staff Counsel
Vincent Mersich, Staff Counsel
Maria Rios, Legal Analyst
Anne Marie Plasencia, Senior Legal Typist
Christine Vandermeer, Senior Legal Typist
Dan Lucido, Chief Counsel, DOSH
Denise Cardoso, Assistant Chief Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
Joey Crocker, Staff Counsel, DOSH
Kathryn Woods, Staff Counsel, DOSH
Keith Mackenzie, Staff Counsel, DOSH
Lisa Brokaw, Staff Counsel, DOSH
Rachel E. Brill, Staff Counsel, DOSH
Michelle Henson, Staff Counsel, DOSH
Ramesses Surban, Staff Counsel, DOSH
Sesilya Saraydarian, Staff Counsel, DOSH
Edgar Gonzalez, District Manager, DOSH
Karen Smith, Senior Industrial Hygienist Supervisor, DOSH
Andrea Chavez, Conn Maciel Carey LLP
Bruce Wick, Risk Management Director, Housing Contractors of California
Charles Keller, Snell and Wilmer LLP
Chris Tribolet, Peacock Piper Tong and Voss LLP
David Donnell, Donnell, Melgoza and Scates PC
David Wiseman, Staff Counsel, Cal Fire
Glen Piper, Peacock Piper Tong and Voss LLP
Karin Umpfrey, Worksafe
Kevin D. Bland, Ogletree Deakins
Lisa Baiocchi, Lisa Prince Law
Megan Shaked, Conn Maciel Carey LLP

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Nick Pancharian, California Prison Industry Authority
Samuel Rose, Conn Maciel Carey LLP

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 new motions were made at this meeting.

Minutes of August 21, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the August 21, 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.)

1. Opportunity for Stakeholders to provide informal commentary and feedback on the proposed regulatory changes regarding Updating Appeal Initiation and Hearing Operations, amending title 8, California Code of Regulations, sections 347, 348, 351, 355.1, 355.3, 355.4, 355.5, 356, 356.1, 359, 359.1, 364.2, 370, 371, 371.1, 373, 374, 374.2, 374.3, 376, 378, and 383.

Action: Several of the public members offered thoughts and comments on the proposed regulatory change. Some of those comments included concerns about the compressed timeframe for comments, questions about acceptable signatures on documents, why there are extensions for email service with regard to the computation of time in section 348, and others. Karen Halbo collected all comments.

Certain members advised that they had not received the notice. The issue was identified and the notice will be resent. Further discussion will occur at the next Board meeting on September 18, 2024. Some members noted that they would be submitting written comments.

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 a formal notice for the October Round Table Discussion will be sent out within a week and that the Board is aware of the service workers' strike that is ongoing and is prepared to make adjustments as needed.

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 provided a report about the CalOSHA advisory meeting hosted by Dan Lucido in August. Some items of note included the collaborative nature of the meeting, updates on CalOSHA's hiring progress, and the Translate Live Pilot Program.

Board Members' Reports:

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

Action: Judith Freyman and Marvin Kropke presented thoughts and questions about a recent article related to the National Labor Relations Board and whether or how any of the subjects discussed in the article would affect the Appeals Board. No specifics were discussed and the matter was reserved for further discussion during the deliberative session.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patty's comments are recorded under the Old Business section above.

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 had received one letter in response to the notice of proposed regulations change. All comments from this meeting will be captured as well.

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2. Litigation update.

Action: Jeffrey Mojcher reported that the Board will attend a merits hearing in the matter of General Dynamics on September 12th.

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: Members of the public offered comments regarding the public rulemaking, as noted above.

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.)

1238985 Grimmway Enterprises, 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.)

1704570 Amazing Grace Elder Care LLC
Action: The Board voted to issue an order of remand.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

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1598000 Eric S Anderson Roofing
Action: The Board voted to issue an order of remand.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

Orders Dismissing Appeal:

1688679 Champion Home Builders
Action: The Board discussed this matter.

1631416 Custom Painting and Decorating, Inc.
Action: The Board discussed this matter.

1610018 Kasis Construction, Inc.
Action: The Board discussed this matter.

1614581 William Little Real Estate Rental Agency
Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

No Orders Denying Leave.

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.

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- 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.*
- 1499137 Employbridge Holding Company
Whether Employer violated IIPP requirements 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.
Action: The Board voted to issue an order for further briefing.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.
- 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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- 1523238 Orange County Fire Authority
Whether the ALJ's order barring Employer from arguing various affirmative defenses was an abuse of discretion.
- 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.
- 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?

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)

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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.)

1727188	AAA Landscaping Group Inc.
1486118	ACCO Engineering System
1329660	Aerotek, Inc.
1617625	AI California, LLC
1633935	Allied Potato, Inc.
1751985	Alpaca Enterprises Inc.
1739254	American Recycling Intl. Inc.
1732143	American Solar Power
1568023	Ardagh Glass Inc.
1582670	Avocado Green Brands, LLC
1639574	Bragg Investment Company, Inc.
1706716	C A Buchen Corp.

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1681041	CA State Hospitals - Atascadero (DSH)
1618445	Central Valley Meat Co., Inc.
1728630	City of San Leandro Public Works
1443662	Clark Construction Group California LP
1672026	Colleen & Herb Enterprises, Inc.
1711209	Connect Staffing Inc.
1513298	County of Los Angeles Sheriff's Department
1663067	CTC Global
1725241	Dry Vac Environmental Services Inc.
1564878	Emmerson Construction, Inc.
1733758	Empire Nut Company, LLC
1653269	Evangelical Free Church of Porterville
1567648	General Dynamics NASSCO
1715501	GHG Properties, LLC
1513479	Granite Rock Company
1416261	Hallin and Herrera, Inc.
1616018	Ilink Business Management
1718257	International Paper Co
1564490	JAJ Roofing
1490783	Kaiser Foundation Hospitals
1610018	Kasis Construction, Inc.
1680653	Ken Dunbar & Sons, Inc
1700296	LA Rocca Design
1615687	Lance Camper
1640589	Land O'Lakes, Inc.
1542814	Lepirino Foods Co.
1571948	Lepirino Foods Company
1675609	Martin Marietta Southern California Cement, LLC
1657801	Maruchan Inc.
1652253	MCNIB Corporation
1712460	MGD Home Builders
1713258	Modern Building, Inc.
1657682	MT Rubidouxidence Opco LLC
1718420	Muehlhan Certified Coating, Inc.
1645131	Mukta Tantod, An Individual
1712379	Oakmont Management Group LLC
1724838	Pasadena Meadows Nursing Center, LP
1524588	PC Care, LLC
1696667	Perfect 85 Degrees C, Inc.
1675332	Pods Enterprises, LLC
1606293	Production Framing, Inc.
1524400	Providence Health System - Southern California
1698830	R.G Gutter Services Inc.
1630279	Roo-Hide Saddlery, LLC
1725264	Rosebud Holdings, LLC
1625013	Sacramento City Unified School District:

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1573289	Smithfield Foods, Inc.
1687446	SOL-TI, Inc.
1501988	Solar Turbines, Inc.
1671676	Sydney Peak Stone Inc.
1713045	Tip Top Roofing Inc.
1716101	Trademark Pool and Spa, Inc.
1674970	Trader Joe's Company
1708506	Twing Incorporated
1731156	Tyler C. Angle Family Ventures, LP
1753886	United Building Contractors, Inc.
1562290	Whole Foods Market California, Inc.

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:31 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 11:32 a.m.