

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on September 18, 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  
Les Murad, II, Administrative Law Judge  
Leticia Tanner, Administrative Law Judge  
Mario Grimm, Administrative Law Judge  
Jeffrey Mojcher, Chief Counsel  
Aaron Jackson, Staff Counsel  
Elizabeth Clarke, Staff Counsel  
Karen Halbo, Staff Counsel  
Vincent Mersich, Staff Counsel  
Scott Pease, Operations Manager  
Maria Rios, Legal Analyst  
Anne Marie Plasencia, Senior Legal Typist  
Marlene Harris, Office Technician  
Dan Lucido, Chief Counsel, DOSH  
Denise Cardoso, Assistant Chief Counsel, DOSH  
Rocio Reyes, Assistant Chief Counsel, DOSH  
Douglas Gale, Staff Counsel, DOSH  
Javier Castro, Staff Counsel, DOSH  
Jennifer Martin, Staff Counsel, DOSH  
Joey Crocker, Staff Counsel, DOSH  
John Steve Barnett, Staff Counsel, DOSH  
Kathryn Woods, Staff Counsel, DOSH  
Lauren Ocadiz, Staff Counsel, DOSH  
Lisa Brokaw, Staff Counsel, DOSH  
Michelle Henson, Staff Counsel, DOSH  
Ramesses Surban, Staff Counsel, DOSH  
Sesilya Saraydarian, Staff Counsel, DOSH  
Tuyet Tran, Staff Counsel, DOSH  
Ali Merchant, DOSH  
Eddie Miranda, Regional Manager DOSH  
Hassan Adan, Regional Manager, DOSH  
Larry Martin, Senior Safety Engineer  
William Estakhri, Regional Manager, DOSH  
Brooke Currier, Kienle Law, PC  
Bruce Wick, Risk Management Director, Housing Contractors of California  
David Wiseman, Staff Counsel, Cal Fire  
Jessica Leal, Office of the Attorney General

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
September 18, 2024

Karin Umpfrey, Worksafe  
Kevin D. Bland, Ogletree Deakins  
Lisa Baiocchi, Lisa Prince Law  
Lisa Prince, Lisa Prince Law  
M Doherty  
M Doherty 2  
Megan Shaked, Conn Maciel Carey LLP  
Nick Pancharian, California Prison Industry Authority

**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 October 9, and October 23, 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 September 4, 2024, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the September 4, 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: Ramesses Surban and Javier Castro presented comments on behalf of the Division of Occupational Safety and Health.

Kevin Bland, Bruce Wick, Dave Wiseman, and Lisa Prince also provided comment.

**Old Business:**

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

1. Discuss the planning and preparation for the forthcoming Round Table meeting.  
Action: No report.

**Legislation:**

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

Action: Elizabeth Clarke provided comment regarding AB 1976. In summary, the Bill would require the Division to draft rulemaking regarding first aid kits and opioid antagonist medications. This Bill is awaiting the Governor's signature.

**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: Patricia Hapgood advised that the details for the upcoming roundtable meeting are nearly complete and a notice will go out tomorrow, September 19, 2024. Patricia requested that stakeholders review the notice and make agenda requests as needed.

Additionally, Patricia provided an update on the Board's hiring efforts: two administrative law judges and two retired annuitants have or will be starting soon.

**Staff Reports:**

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

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
September 18, 2024

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: Jeffrey Mojcher reported that the hearing in General Dynamics NASSCO, 37-2023-00024521 (1300984) was continued to September 24, 2024.

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.)*

There are no Decisions.

**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.)*

1483438 Sutter Bay Hospitals dba Mills-Peninsula Medical Center  
Action: The Board voted to issue an order taking the petition for reconsideration under submission. 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.

**Orders Dismissing Appeal:**

- 1516789 American Mobile Nurses, Inc.  
Action: The Board discussed this matter.
- 1236819 Earth Tech Well Drilling  
Action: The Board discussed this matter.
- 1541294 Rick Young  
Action: The Board discussed this matter.

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

- 1719398 Cody Jacobsen, An Individual  
Action: The Board discussed this matter.
- 1539535 Oaty Mesa Sales, Inc.  
Action: The Board discussed this matter.
- 1719964 United States Pipe and Foundry Company, 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.

**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.*

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
September 18, 2024

- 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.*
- 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.*
- 1523238 Orange County Fire Authority  
*Whether the ALJ's order barring Employer from arguing various affirmative defenses was an abuse of discretion.*

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
September 18, 2024

- 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)
4. USA Waste of California, Inc., 34-2022-80003841 (1384029)

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
September 18, 2024

5. General Dynamics NASSCO, 37-2023-00024521 (1300984)  
Action: The Board discussed this matter.
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:**

There are no Other Items.

**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.)*

1670464	A-G Sod Farms, Inc.
1693828	Abraham Auto Repair, Inc.
1730922	American Ice Co.
1428136	Anderson Pacific Engineering Construction, Inc.
1654885	Arco Murray National Norcal, Inc.
1611131	ARCOSA LWFP, LLC
1695262	Bert & Cheryl Weststeyn
1616579	Bluewater Business Group, Inc.
1368254	Burtech Pipeline Incorporated
1735802	CalChef Foods LLC
1643306	Controlled Thermal Resources
1575582	County of Los Angeles UCLA Harbor Medical Center
1709929	CTrust, Staffing LLC
1714952	Fallbrook Public Utility District
1743919	Freedom Forever California, LLC
1688905	Fresh Express, Inc.
1731788	Gold Top Ranch
1690069	Healthright 360 San Mateo Clinic
1694341	Heavenly Construction, Inc.
1731149	J. Rodriguez Farm Labor Contractor Inc.
1560005	Jose A. Cardenas
1737392	Michael Shaffer
1674906	Micro Paradox, Inc.
1760115	Mission Landscape



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
September 18, 2024

1698827	Mr. Roofing, Inc.
1747054	Nirmala R. Parmar, Individual
1687261	Nor Cal Fast Foods Inc.
1707420	Nordstrom, Inc.
1731363	NVision Build
1552325	Oakley Union School District
1722600	Oilar's AG Services
1713063	Pablo Rivas, An Individual
1749853	Panera LLC
1685253	Pearce Concrete And Masonry, Inc.
1543406	Pitman Family Farms
1577829	Priority Landscape Services, LLC
1729058	Quail Park Memory Care
1489281	R & V Investments, LLC
1681000	Rancho Coastal Environmental Service Inc.
1564191	Rancho Nuevo Harvesting, Inc.
1598403	Reyes Holdings
1680214	RTX Corporation - Pratt & Whitney Division
1728006	S & J Home Maintenance, Inc.
1732014	Sierra Pacific Industries, Inc.
1585176	Skanska-Traylor-Shea A Joint Venture
1736831	Southwestern Wire Inc.
1590256	Stanislaus Farm Supply Company
1616319	Starko, Inc.
1759732	Steelhead Constructors, Inc
1622268	Target Corporation
1728735	Target Corporation
1684441	Trans-West Security Services, Inc.
1574712	Triangle Rock Products, LLC
1657808	VF Outdoor, LLC
1607536	Yuba River Moulding & Mill Work, Inc.

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

**Personnel:**

*(Issues regarding staff)*

The Closed Session adjourned at 11:32 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 11:33 a.m.