

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on October 23, 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
Leticia Tanner, Administrative Law Judge
Rheeah Yoo Avelar, Administrative Law Judge
Aaron Jackson, Staff Counsel
Vincent Mersich, Staff Counsel
Scott Pease, Operations Manager
Maria Rios, Legal Analyst
Anne Marie Plascencia, Senior Legal Typist
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
Michelle Henson, Staff Counsel, DOSH
Sesilya Saraydarian, Staff Counsel, DOSH
Edgar Gonzalez, District Manager, DOSH
David Wiseman, Staff Counsel, Cal Fire
Kevin D. Bland, Ogletree Deakins

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 November 6, and November 20, 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 3-0.

Minutes of October 9, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the October 9, 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. Discuss informational stakeholder videos for posting to OSHAB's website.
Action: Kerry Lewis described the new videos designed to provide Employers with information about the appeal process and requested input on how to get this information out to the filing community. The conversation is ongoing.

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: The Board received feedback regarding the latest round table meeting and discussed the regularity of future meetings.

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 reiterated the ideas expressed about the most recent round table meeting and future meetings.

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 described the Board's recent hiring efforts. The Board received approximately 180 applications for the

Office Technician position. Additionally, the Board expects to onboard the candidate selected for the Executive Secretary position within the next 30 days. The hiring process for the Administrative Law Judge (ALJ) position is currently pending and the position may need to be reposted. Finally, the Board received approval to hire a Retired Annuitant for the temporarily vacant Office Assistant position in West Covina.

Patricia Hapgood also reported that she and Ed Lowry will participate in a meeting with FedOSHA on November 5, 2024.

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: Aaron Jackson reported that Karen Halbo and Marlene Harris are working together to prepare a memorandum regarding the proposals.

2. Litigation update.

Action: Aaron Jackson reported that the Board has become aware of a potential superior court filing in the matter of Arana Residential and Commercial Painting, Inc. (1568252).

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: No report.

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.)

- 1539535 Otay Mesa Sales, Inc.
Action: The Board discussed this matter.
- 1546749 Precision Framing Systems, Inc.
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.
- 1238985 Grimmway Enterprises, Inc.
Action: The Board discussed this matter.

Orders Dismissing Appeal:

- 317189215 Alloy Processing
Action: The Board discussed this matter.
- 1056721 APlus Constructors, Inc.
Action: The Board discussed this matter.
- 1056252 Austin Sundt Joint Venture
Action: The Board discussed this matter.
- 317730133 Bear Creek Partners, LLC dba Bear Creek Golf Club
Action: The Board discussed this matter.
- 1616891 DTS Enterprise, Inc.
Action: The Board discussed this matter.
- 1546006 San Bon Constructors Inc.
Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

- 1647115 Concord Farms, Inc.
Action: The Board discussed this matter.
- 1760736 RJS Electric
Action: The Board voted to issue an Order of
 Reconsideration.
 This was moved by Judith Freyman.

It was seconded by Marvin Kropke.
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.

- 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.

- 1238985 Grimmway Enterprises, Inc.

- 1233597 Hampton Tedder Electric (DOSH)

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Whether the ALJ correctly decided that the Employer violated three high voltage safety orders.

Action: The Board voted to issue the Decision After Reconsideration as amended.
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.
- 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.
- 1483438 Sutter Bay Hospitals dba Mills-Peninsula Medical Center
- 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)
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.)

1600495 ACS Staffing, Inc.
1513185 All Ready Farm Labor, Inc.
1751146 Alpine Meats Inc.

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1656526	Amazon.com Services, LLC
1432652	AmeriGas, Inc.
1582873	Balfour Beatty Infrastructure, Inc.
1691618	Benicia Public Library
1744487	Better Booch Inc.
1579995	Brent Fox
1557752	CA Public Health Licensing and Certification
1621641	California Solar Integrators, Inc.
1733047	Charles Bates, Inc.
1445287	City of Palo Alto
1471031	Community Support Network
1699236	Dino's Masonry, Inc.
1728317	Dong Jin America, Inc.
1743922	Dynamic Iron Works Inc.
1583189	Edward W. Scott Electric Co., Inc.
1749418	Emerald Textiles Services, Northern California
1636493	Erickson Framing CA, LLC
1406439	Fisher Ranch LLC
1756782	FPR-II, LLC
1710849	Full Steam Staffing, LLC
1691566	FXI
1612873	Galpin Motors, Inc.
1641280	Galpin Motors, Inc.
1457916	General Dynamics NASSCO
1595402	GGG Demolition, Inc.
1719948	Golden Bear Contracting Services, Inc.
1706435	Greenfield Construction, LLC
1736240	Harbor Island Hotel Group LP
316983386	Irwin Industries, Inc.
1711956	IVO Wall Experts, Inc.
1633995	Jordan M Robinson
1680819	Juan Miguel Navarro Farias
1643223	Kellogg Supply, Inc.
1431361	Kindness General Contractors, LLC
1719330	Larry's Tires, Inc.
1749866	LDM Plumbing & Mechanical, Inc.
1692053	Lead Point Business Services
1744258	Llamas Construction Clean Up Inc.
1733549	Lodi Unified School District
1692051	M.B. Fast Foods Inc.
1752479	Madera Farm Labor, Inc.
1471923	Mario's Tree Service, Inc.
1739128	Mariposa Landscape & Tree Service, Inc.
1727187	Mason Building and Design LLC
1550807	Maxim Crane Works LP
1741509	Melgar Mechanical, Inc.

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1700432	Midnight Harvest, Inc.
1718356	Miller Family Wine Company, LLC
1550689	Mission Boulevard Day Program LLC
1635913	My Favorite Neighbor, LLC
1717167	N & F Custom Builders
1709817	New Haven Youth and Family Services, Inc.
1729940	Oak Tree AG Mgt., Inc.
1713921	Pinnpack Capital Holdings LLC
1665270	Plaza Del Sol Real Estate, LLC
1531537	Prime Now, LLC
1729625	Q.E.D. Systems, Inc.
1694363	Reliable Resources, Inc.
1728299	Riverside Unified School District
1656656	RM Executive Transportation
1728602	Robert Meuschke Company, Inc.
1696668	Select Tech Inc.
1677681	Si Ya Na Ram, Inc.
1350401	Silverado Contractors, Inc.
1706777	South Bay Collision Care Inc.
1741263	Speedco Truck Lube and Tires
1666953	Stantec Consulting Services, Inc.
1576863	Sutter Bay Hospitals
1580084	Sutter Bay Hospitals
1604810	Sutter Bay Hospitals
1730586	Tenderloin Neighborhood Development
1557759	TIC – The Industrial Company
1704787	Tom Woodburn
1708226	Tri Star Foods, LLC
1588166	Ultimate Flex, LLC
1644485	Umiyama Corporation
1698790	United Constructors, Inc.
1767707	Valencia Stucco
1495751	Ventura Directional Drilling
1662639	Weckworth Electric Group, Inc.
1697218	West Coast Drywall & Company Inc.
1697202	Westrock CP, LLC
Action:	The Board discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:
(Issues regarding staff)

The Closed Session adjourned at 11:43 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 11:44 a.m.