

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on November 6, 2024
Sacramento, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Kerry Lewis, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Leticia Tanner, 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
Christine Vandermeer, Senior Legal Typist
Denise Cardoso, Assistant Chief Counsel, DOSH
Jennifer Martin, Staff Counsel, DOSH
Sesilya Saraydarian, Staff Counsel, DOSH
David Wiseman, Staff Counsel, Cal Fire
Kevin D. Bland, Ogletree Deakins
Kevin Piercy

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:

No Report.

Minutes of October 23, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the October 23, 2024 meeting.
This was moved by Ed Lowry.
It was seconded by Judith Freyman.

The vote was 2-0. (Board Member Kropke was on a previously noticed vacation, and joined the Meeting after this vote was taken.)

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 the newly prepared informational stakeholder videos (re “How to File an Appeal”) and discuss whether to post on OSHAB’s website. In addition, discuss whether the Board should explore any other avenues to publicize the availability of these videos to stakeholders.

Action: Various members of the Board and Board staff agreed that the videos are ready to be shared publicly. Ed Lowry mentioned that the first step to getting the videos out for public consumption should be to post the videos to OSHAB’s website. Ed also discussed formally reaching out to the Division to discuss the potential of adding links to the videos in the citation package and/or on the Division’s website.

2. Discuss proposals and comments received at the recent roundtable meeting.

Action: Aaron Jackson provided an overview of concerns raised during the recent roundtable meeting. Ed Lowry requested Board staff provide a report at the next meeting addressing what can be done to address the concerns raised at the stakeholder roundtable meeting.

Legislation:

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

Action: Elizabeth Clarke provided the following update: newly elected members will be sworn in on Dec. 2, 2024. The legislature reconvenes for the 2025-2026 session on January 6, 2025.

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: In Patricia Hapgood's absence Scott Pease provided an update on the Board's hiring efforts. Regarding the two Administrative Law Judge Positions, one candidate has accepted the position and will start in early December, the other position is being re-opened for new candidates. A candidate for the Executive Secretary position has been selected and submitted to HR for approval. A retired annuitant has been selected for the Office Assistant position in West Covina, and candidate will start in mid-November. Also in mid-November, interviews for the Office Technician position in the Sacramento office will begin. Finally, interviews of candidates for the AGPA position in Sacramento are expected to begin in December.

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 shared that Board staff will meet Friday to discuss next steps regarding the proposed regulatory changes.

- a. Discuss proposals for possible adoption of rules of professional responsibility pertaining to lay representatives that charge money for their services.

Action: Aaron Jackson summarized his memo on this topic. The Board offered to take comments from the public during the public comment section of the meeting.

2. Litigation update.

Action: Jeffrey Mojcher reported that RND Contractors (1436785) has filed a Request for Dismissal of their Writ Petition with

prejudice. The Board has also been served with a new Writ Petition in the matter of Western Oilfields Supply Company (1498595). The Board has also learned that Catherine Baldi, owner of Arana Residential and Commercial Painting, Inc. (1568252), has filed a writ action against the Board. The Board has not yet been served.

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: Kevin Bland shared that he thought it was a good idea to hold lay representatives to some rules of professional conduct.

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 voted to issue a Denial of Petition for Reconsideration.
This was moved by Ed Lowry.
It was seconded by Judith Freyman.
The vote was 3-0.

1719411 Ramon Camiro Santiago, An Individual
Action: The Board voted to issue an Order of Remand.
This was moved by Judith Freyman.
It was seconded by Marvin Kropke.
The vote was 3-0.

Orders Dismissing Appeal:

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| 1609241 | Darnell Caster, LLC
Action: The Board discussed this matter. |
| 1718168 | Eureka Restaurant Group, LLC
Action: The Board discussed this matter. |
| 1684649 | Hasa, Inc.
Action: The Board discussed this matter. |
| 1652716 | Pacifica Senior Living LLC
Action: The Board discussed this matter. |
| 1661252 | Top Design Commercial, Inc.
Action: The Board discussed this matter. |

Orders Denying Leave to File Late Appeal:

Action: No report.

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
<i>Whether the cited employer was in violation of lockout/tagout requirements.</i> |
| 1473644 | Amazon.com Services, LLC
<i>Whether the employer's training program was in compliance with the applicable safety order.</i> |
| 1399613 | BMC West, LLC
<i>Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.</i> |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 6, 2024

- 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.
Was the ALJ correct in holding that Employer did not violate section 4002, subdivision (a)? Was the ALJ correct in finding that Employer satisfied the IEAD with respect to the alleged violation of section 3314, subdivision (c)?
- 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.
Action: The Board discussed this matter.
- 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.

- 1760736 RJS Electric
Was the ALJ's Order Denying Late Appeal correctly decided?
- 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?
Action: The Board voted to issue an Errata with revisions requested by Aaron Jackson.
This was moved by Judith Freyman.
It was seconded by Marvin Kropke.
The vote was 3-0.

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)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 6, 2024

4. USA Waste of California, Inc., 34-2022-80003841 (1384029)
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)
9. Arana Residential and Commercial Painting, Inc. (1568252)

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.)

1545510	Alexander Valley Cellars, LLC
1751918	Allen Industries, Inc.
1712447	Allied Construction Services
1727996	Aluminum Precision Products, Inc.
1644510	Amazon.com Services, LLC
1656334	American Scaffold, LLC
1629732	Ana Rita Borba
1715773	Aquatic Trucking Company
1702226	Avalon Transportation, LLC
1622744	Aviation Fuel Systems Repair, Inc.
1716331	BHI Energy Specialty Service, LLC
1694108	Big Ones Tires, Inc.
1736849	Black Eagle Pallet Logistics, Inc.
1661917	Brandt Company, Inc.
1728211	C M C Steel Fabricators, Inc.
1670452	California Department of Corrections and Rehabilitation – Corcoran State Prison
1737317	Cardinal Health
1685669	Contra Costa Waste Services, Inc.
1638748	Corona Millworks Co., Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 6, 2024

1533392	D & M Traffic Services, Inc.
1685332	Darrell Thompson Tank and Construction, Inc.
1710709	DB Painting Maintenance, Inc.
1703415	DE Silva Brothers Company
1704542	DG Strategic VII, LLC
1706174	DS Fibertech Corp.
1700389	DTE Trading, Inc.
1601818	Dynamic Plastic
1743730	E & J Shutters and Blinds, Inc.
1715678	E V Builders, Inc.
1589011	Emanate Health / Queen of the Valley Hospital
1720240	Esparza Enterprises, Inc.
1688764	Family 1 Auto Body, Inc.
1674336	Finishing Touch Moulding, Inc.
1686012	Gonsalves and Santucci, Inc.
1748959	Groundwork Group, Inc.
1573737	GXO Logistics Supply Chain, Inc.
1746715	Ingomar Packing Company, LLC
1706800	Interstate Commercial Construction Corp.
1720373	ISCO Machinery, Inc.
1506567	J & B Materials
1593096	J A Z Plastering
1656177	Jeff Penn Services, Inc.
1751754	Kagome, Inc.
1542345	Katch Environmental, Inc.
1737777	Kin Ming Chau, An Individual
1641277	Kohl's Department Stores, Inc.
1710380	Kurzeka Hardware Co., Inc.
1706726	L&S Framing, Inc.
1721579	Lafayette Ace Hardware, Inc.
1708999	Larry's Automotive, Inc.
1642172	Lawton Construction and Restoration, Inc.
1713422	Lewis Tree Service, Inc.
1735598	Los Angeles County Fire Department
1688363	Louie Loizu
1728830	M.W.K. Pattern Making, Inc.
1648907	Merit Aluminum, Inc.
1644841	Mid Valley Lender, Inc.
1716438	Mike's Auto Repair & Body Center, Inc.
1702217	Milosz Makarewicz
1469987	Mitsubishi Cement Corporation
1732598	North Bay Plumbing, Inc.
1679206	On-Target Indoor Shooting Range, LLC
1624987	Orco Block & Hardscape
1742634	Pacific Landscaping Designs, Inc.
1722236	Pacific Steel Group LLC

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
November 6, 2024

1727966	Pasha Stevedoring & Terminals, L.P.
1721102	Perch Construction, Inc.
1439563	PK Mechanical
1513320	Ralph's Grocery Company
1693734	Ranger Pipelines Incorporated
1604924	Restoration Hardware, Inc.
1436785	RND Contractors, Inc.
1699137	Roofing Logistics, Inc.
1740480	S. Martinelli and Company
1525793	San Diego Zoo Global
1671735	Santa Monica-Malibu Unified School District
1689521	Sea Shield Marine Products, Inc.
1633195	Sequoia Services, Inc.
1754189	Solevy Co., LLC
1729714	South Coast Lighting & Design, Inc.
1529421	Southern California Edison Company
1662672	Southern Marin Fire Protection District
1684651	Splendid Stone and Tile, Inc.
1668826	Steve Robert Steinackle
1696885	Sun Valley Applicators, LLC
1500415	Sutter Bay Hospitals
1582928	T-Y Nursery, Inc.
1648419	TDI Refrigeration and Air Conditioning, Inc.
1676457	The Herrick Corporation
1366856	The Kraken, LLC
1696084	The Sheridan Group
1749359	The Vons Companies, Inc.
1570492	Tricamo Construction, Inc.
1516823	Trinity River Lumber Company
1569982	Trojan Battery Company, LLC
1564148	Underground Construction Company, Inc.
1663814	United Labor Services, Inc.
1706982	United Trim Cabinet Install
1693664	Van Beek Brothers Dairy
1698468	Vernon Sales, Inc.
1610335	Walmart, Inc.
1516815	Woodward HRT, Inc.
Action:	The Board discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:37 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 11:38 a.m.