

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on December 4, 2024
Sacramento, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Executive Officer
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
Vincent Mersich, Staff Counsel
Karen Halbo, Staff Counsel
Scott Pease, Operations Manager
Beth Reiken, Executive Secretary
Anne Marie Plasencia, Senior Legal Secretary
Maria Rios, Legal Analyst
Dan Lucido, Chief Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
Kathryn Woods, Staff Counsel, DOSH
Keith Mackenzie, Staff Counsel, DOSH
Edgar Gonzalez, District Manager, DOSH
Denisse Gomez, Officer II, DIR
David Wiseman, Staff Counsel, Cal Fire

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 November 20, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the November 20, 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 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: Scott Pease has set a meeting for next week with the Office of External Affairs (OEA) to discuss the videos and the requirements for posting them to our website.

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

Action: Scott Pease reported most of the initial recommendations have been received. He is determining how stakeholder proposals would affect OASIS and how complex the changes would be.

Legislation:

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

Action: Elizabeth Clarke provided the following update: newly elected members were sworn in on Dec. 2, 2024. The legislature reconvenes for the 2025-2026 session on January 6, 2025. Finally, Elizabeth detailed a newly proposed bill of interest to the Board - SB20 regarding fabrication activities in stone slab production.

Chairperson’s Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

Action: Ed Lowry provided comments on the CalOSHA Reporter’s article covering the Superior Court decision in General Dynamics NASSCO (1300984).

Board Members’ Reports:

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

Action: Board Members Kropke and Freyman inquired to what changes DIR/Appeals Board might face considering the upcoming federal administration changes.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood shared takeaways from the recent federal meeting including that it is too early to say what changes if any will happen as a result of the change in administration. Patricia also reported that OSHAB will be preparing Desk Procedures to confirm with the State Leadership Accountability Act (SLAA). The Board intends to finalize the documents by mid-January.

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 requested Board Members' approval to split the regulation package into two separate packages. With their approval, Karen will move forward and provide an updated report at the next Board meeting.

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: Kerry Lewis and Sam Lucas reported that the Board has hired a new Administrative Law Judge (ALJ) and that another ALJ position has been posted and is open for applications.

Kathryn Woods, referencing the CalOSHA Reporter article on the General Dynamics NASSCO case, inquired whether

the Board was in receipt of a Notice of Appeal. Board counsel has submitted a Proposed Judgment to the Court, but the Court has not yet issued a judgement. After the court issues its judgment, parties have 60 days to file a Notice of Appeal.

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.)

1235941 McCarthy Building Companies, Inc.
Action: Discussed.

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.)

1749164 La Quinta Inn & Suites by Wyndham Redding
Action: The Board voted to issue a Denial of the Petition for Reconsideration.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

1713315 Porter & Sons Painting & Construction Inc
Action: The Board voted to issue an Order Rescinding the Denial of Petition for Reconsideration and instead issue an Order Extending Time to Act on the Petition for Reconsideration. The Board also voted to issue a Denial of the Petition for Reconsideration.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

Orders Dismissing Appeal:

1613791 E & B Natural Resources Management Corporation
Action: The Board discussed this matter.

1687227 I V Mechanical, Inc.
Action: The Board discussed this matter.

1643386 Ingersoll Rand
Action: The Board discussed this matter.

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| 1728703 | Lazy Dog Family LLC
Action: The Board discussed this matter. |
| 1647460 | National Wellbore Solutions, Inc.
Action: The Board discussed this matter. |
| 1760966 | Pratt Robert Man Packaging, LLC
Action: The Board discussed this matter. |
| 1601337 | Three Star Demolition & Janitorial, Inc.
Action: The Board discussed this matter. |
| 1670197 | United Employment Solutions, Inc.
Action: The Board discussed this matter. |
| 1594773 | Vacuum Process Engineering, Inc.
Action: The Board discussed this matter. |
| 1643595 | Zi Pa Inc
Action: The Board discussed this matter. |
| 1688206 | Zoological Society of San Diego – San Diego Zoo
Action: The Board discussed this matter. |

Orders Denying Leave to File Late Appeal:

There are no Orders Denying Leave to File Late Appeal

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 |

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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.

Action: The Board discussed this matter.

1466722 Bragg Investment Company, Inc.
Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.

1647115 Concord Farms, Inc.

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.

Action: The Board discussed this matter.

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

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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.

Action: The Board discussed this matter.

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.

1475491 Sutter Bay Hospitals dba Mills-Peninsula Medical Center
Was the ALJ correct in granting Employer's appeals of the citations alleging violations of section 342, subdivision (a) and section 5199, subdivision (i)?

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

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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)
9. Arana Residential and Commercial Painting, Inc. (1568252)
10. Western Oilfields Supply Company, 24WM000169 (1498595)

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.)

1520742	Agri-Quip, Inc.
1634387	A & M Reinforcing Specialists
1748596	Abacus Business Capital, Inc.
1751989	Advanced Systems Services, Inc.
1476061	Aggreko LLC
1730349	Agra Trading, LLC
1741520	Alan Enterprise, LLC
1769311	Avis Rent a Car System LLC
1573155	BHC Crane, LLC

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1716789	Biolife Corporation
1558340	Boudreau Pipeline Corporation
1630227	California Concrete Pumping, Inc.
1622315	California Department of State Hospitals
1693422	California Shine Construction
1742234	Casper Company
1730044	Continental Terminals Annex Inc.
1708525	Cowboys Roofing
1728175	CRC Roofing, Inc.
1719937	DL Propriis Construction, Inc.
1643263	Dolgen California, LLC
1654431	Earl Huey
1718839	Excalibur Well Services Corporation
1583169	Fedex Ground
1583980	Garney Pacific, Inc.
1657911	General Dynamics NASSCO
1601347	Giampolini & Co.
1756086	Golden Labor Services, LLC
1584455	Ignacio Quezada
1733267	Imperial Irrigation District
1617474	J&J Snack Foods Corporation of California
1581861	JK Management, Inc.
1712386	Jocer Enterprises, Inc.
1701093	Joseph Crown Construction and Development, Inc.
1512533	Kaiser Foundation Hospitals/Kaiser Permanente
1610278	Kenyon Plastering of California, Inc.
1640288	LA Valle Sabbia, Inc.
1735487	Limoneira Co.
1731638	Los Angeles Community Hospital
1750964	Lotus Villa Affiliate LLC
1680705	Moreno Trenching, LTD.
1637486	Nunes and Sons, Inc.
1706794	Papazian Inc.
1607484	Plamar U.S.A.
1653977	Polar Power, Inc.
1702566	Precision Castparts Corp
1706526	R/D Construction-Roberts & De La Torre
1740978	Recon360 LLC
1629760	Recycled Base Materials, Inc.
1750842	Reliable Roofing, Loomis
1475110	San Francisco Bay Area Rapid Transit
1508154	San Francisco Fire Department
1512093	Sandridge Partners, LP
1733626	Scorpion Services, Inc.
1691279	Sentinel Peak Resources Management LLC
1721057	Serco, Inc.

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1595597	Shimmick Construction
1601273	Sierra Aluminum
1682167	Six Star Framing Concepts Inc
1647425	Socal Home Builders, Inc.
1720144	Society of Orators LLC
1752492	South Coast Mechanical Insulation
1749820	Staples Inc.
1657690	Sun Pacific Shippers, L.P.
1382323	Superprint Lithographics Inc.
1696548	Talley Transportation
1700388	Tammy's Place LLC
1539563	The Lawson Roofing Co., Inc.
1704859	The Tree Guys, Inc.
1728822	TN 27, Inc.
1725422	Tom Brennan Plumbing Inc
1575436	Tractel, Inc.
1744550	Tudor Ranch
1699055	VCSD, Inc.
1737027	Veridiam Inc.
1625329	Vessel CA Operations LLC
1653643	VM Tree Service, Inc.
1672871	Wright Tree Service of the West, Inc.
1700021	Youngstown Grape Distributors Inc
	Action: The Board discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:33 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 11:34 a.m.