

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on December 18, 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
Mario L. Grimm, Administrative Law Judge
Weiru Wang, 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
Maria Rios, Legal Analyst
Beth Reiken, Executive Secretary
Rocio Reyes, Assistant Chief Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
John Steve Barnett, Staff Counsel, DOSH
Kathryn Woods, Staff Counsel, DOSH
Lisa Brokaw, Staff Counsel, DOSH
Rachel Brill, Staff Counsel, DOSH
David Wiseman, Staff Counsel, Cal Fire
Karin Umpfrey, Worksafe
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 January 8, and January 22, 2025, board meetings remotely, pursuant to Government Code section 11123.2, subdivision (j)(2)(A).

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This motion was seconded by Judith Freyman.

The Board voted to approve the remote attendance request 3-0.

Minutes of December 4, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the December 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.)

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 met with the Office of External Affairs (OEA) to discuss the OSHAB instructional videos for the public and the requirements for posting them to OSHAB’s website. The videos have been reviewed, and now he is coordinating with Director Hagen to get them posted on the DIR’s YouTube channel.

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: 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: A candidate has been selected for the Office Technician (OT) position with an anticipated start date in 4 weeks. Patty Hapgood and Sam Lucas met with the DIR planner to discuss the final plans for the remodel of the West Covina office. Remodeling to include turning the existing unused library into a breakroom, updating the carpet, paint, and audio-visual equipment.

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 vote to adopt the Prehearing and Hearing regulations text. This was moved by Marvin Kropke. It was seconded by Judith Freyman. The vote was 3-0.

2. Litigation Update

Action: The Board will be filing a Demurrer in the Baldi case within the week. There is a status conference scheduled for February 2025 in the Baldi matter.

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: Various attendees shared their reflections on the year and wished Happy Holidays and a Happy New Year to the Board, employees, and stakeholders.

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

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Decision. The board members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)

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| 1601687 | R D Olson Construction
Action: Discussed |
| 1454931 | Tesla, Inc
Action: Discussed |
| 1604884 | United Parcel Service, 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.)

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| 1109663 | Richard L Barnes General Contractor
Action: The Board voted to issue an Order of Remand focusing on the issue of whether the Division cited the correct person/entity. This was moved by Marvin Kropke. It was seconded by Judith Freyman. The vote was 3-0. |
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Orders Dismissing Appeal:

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| 1552021 | Action Urgent Care Inc.
Action: The Board discussed this matter. |
| 1633352 | Amarjit Kandola
Action: The Board discussed this matter. |
| 1653876 | Ducoing Enterprises, Inc
Action: The Board discussed this matter. |
| 1694098 | Julio & Son's Auto Services
Action: The Board discussed this matter. |
| 1620475 | Loomis Armored US
Action: The Board discussed this matter. |
| 1595422 | Pimentel Vineyard Management, Inc.
Action: The Board discussed this matter. |
| 1514697 | Southern California Gold Products, Inc.
Action: The Board discussed this matter. |

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1594443 Villa's Roofing Company, Inc.
Action: The Board discussed this matter.

1677667 Wedriveu, Inc
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.

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.

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.

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- 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.
Whether there was good cause for the late appeal.
- 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.
- 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 voted to issue the Decision After Reconsideration.
This was moved by Judith Freyman.
It was seconded by Marvin Kropke.

The vote was 3-0.

- 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 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)
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.)

1634387	A & M Reinforcing Specialists
1733248	A Train Staffing LLC
1598114	Able Sheet Metal, Inc.
1557898	Accel Framing, Inc.
1579550	Acosta Heat and Air Conditioning, Inc.
1750562	Advantage Drywall, Inc.
1643723	AI California LLC
1595756	AI California, LLC
1730359	Amando's Roofing Inc.
1739999	Amgen Inc.
1727689	Ampla Health
1724592	Anderson Charnesky Structural Steel
1738860	Anderson Charnesky Structural Steel
1713918	Anvil Builders, Inc
1728225	Atlas Environmental Services
1699115	Atlas Vineyard Management, LLC
1731724	AVN, Inc
1568915	Brightview Landscape Services, Inc.
1723456	C & L Refrigeration Corporation

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1688163	C&C Utility, Inc.
1608410	Cacique Foods, LLC.
1746058	Calavo Growers Inc DBA GH Foods
1719941	California Department of Motor Vehicles
1731012	California Resources Corporation
1748153	Cappo Management XLVII, LLC
1694700	Capstone Logistics
1664065	Certified Freight Logistics, In
1542754	Citistaff Solutions, Inc
1576674	Covi Concrete Construction, Inc
1593924	Crowder Constructions, Inc
1716648	CVTC, LLC
1739768	D.M. Camp & Sons
1701094	DSD Trucking, Inc
1677268	E&S Ring Management Corporation
1588637	Elka Construction, Inc.
1652360	Garcia Masonry & Development, Inc
1736213	Gerson Funes
1747029	Gilead Sciences, Inc.
1688145	Griswold Industries
1361841	Hampton Tedd Electric
1544214	Hi Grade Materials Co.
1741501	Horizon Farms LLC
1561956	Housing Authority of City of Fresno
1379721	JBT Aerotech Corporation
1566754	John Mourier Construction Inc.
1500445	Key Energy Services, LLC
1609907	Lancaster Burns Construction LLC
1728703	Lazy Dog Family LLC
1636951	Lehr Brothers Inc
1733606	LKQ Corporation
1657470	Machado Family Limited Partnership DBA Alvaro
1682871	Rackley Company, Inc
1686383	Ramsey Security
1716430	Regal Repair, Inc
1630855	Richard W. Herman, Inc
1695287	Richmond Sanitary Service, Inc
1748159	Robert Morken Construction Inc
1513800	Robert Peterson
1568375	San Diego Gas and Electric
1442876	Securitas Security Services USA, Inc.
1648606	Silver Farm Labor Inc
1588901	Snelson Companies, Inc.
1108581	Steeltech Reinforcing, Inc
1709137	Sutter Hotel Group, LLC
1670099	Timber Works Construction Inc

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1327280	United Parcel Service
1501579	United Rentals Northwest, Inc
1497293	USF Reddaway, Inc.
1579548	Valley Gym Corp/USA Fitness Super Center
1602898	Vehicle Technical Consultants, Inc
1590477	Vin Lux Fine Wine Transport, LLC
1734643	Vision Construction Group, Inc
1695255	Wayne J. Sand & Gravel, Inc
1728339	West Coast Turf, Inc
1712239	William M. Perkins Company, Inc
1659376	Worldwide Flight Services, Inc.
1709078	XL Concrete Masonry, Inc
1690020	XPO Logistics Freight, Inc
1677796	Yergat Packing Company, Inc
1689486	Yosemite/Bass Lake Activities, Inc.

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 10:57 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 10:58 a.m.