

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on August 7, 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  
Leticia Tanner, Administrative Law Judge  
Jeff Mojcher, Chief Counsel  
Aaron Jackson, Staff Counsel  
Karen Halbo, Staff Counsel  
Elizabeth Clarke, Staff Counsel  
Vincent Mersich, Staff Counsel  
Scott Pease, Staff Services Manager  
Maria Rios, Legal Analyst  
Marlene Harris, OSHAB Office Technician  
Christine Vandermeer, Senior Legal Typist  
Dan Lucido, Chief Counsel, DOSH  
Rocio Reyes, Assistant Chief Counsel, DOSH  
Javier Castro, Staff Counsel, DOSH  
Jennifer Martin, Staff Counsel, DOSH  
Jordan Davis, Staff Counsel, DOSH  
Keith Mackenzie, Staff Counsel, DOSH  
Lauren Ocadiz, Staff Counsel, DOSH  
Lisa Brokaw, Staff Counsel, DOSH  
Ramesses Surban, Staff Counsel, DOSH  
Sesilya Saraydarian, Staff Counsel, DOSH  
Bruce Wick, Risk Management Director, Housing Contractors of California  
David Wiseman, Staff Counsel, Cal Fire  
Fred Walter, Attorney, Conn Maciel Carey LLP  
Karin Umpfrey, Worksafe

**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 September 4, and September 18, 2024 Board meetings remotely, pursuant to Government Code section 11123.2, subdivision (j)(2)(A).

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This motion was seconded by Ed Lowry.  
The Board voted to approve the remote attendance request 3-0.

**Minutes of July 24, 2024, Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the July 24, 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 scheduling future Round Table Discussions.

Action: Patricia Hapgood reported that the contract for the meeting location is close to being final. Advertisements and a meeting agenda will be posted once location is confirmed.

**Legislation:**

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

Action: Elizabeth Clark reported that AB3043 (related to silica dust) has been dropped. Bruce Wick added that the Standards Board is putting together regulations to cover the matter of silica dust and offered that this may be why the legislation has dropped this bill.

**Chairperson's Report:**

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

Action: Ed Lowry provided a description of the meeting with Derek Engard, Regional Director for the U.S. Department of Labor. Topics of discussion included the Board's hiring efforts, DOSH activities, and new designation of regions in the Department of Labor.

**Board Members' Reports:**

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

Action: Judith Freyman requested an update on the Uber and Lyft cases. The matter was held for discussion during closed session. Judith questioned Bruce Wick regarding a recent article in the CalOSHA Reporter. Bruce explained that the Standards Board's new Chair's will assemble a sub-

committee which will focus on health related standards separate from safety standards.

Marvin Kropke had no report.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood provided additional comments on the meeting with Derek Engard. She shared that advisors at the meeting remarked on improvements to the Appeals Board which Patty attributed to Appeals Board Staff. Patty also shared that the Board is still busy with hiring. The two ALJ positions are close to being finalized, however, the Executive Secretary position will need to be reposted. Lastly, Patty described the remodeling and updating going on in the West Covina and Sacramento offices.

**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 the purpose of the regulation package is to clean up and clarify the language in the regulations. She also shared that some members of the public have asked to view the proposed changes. The Board made a decision at this point to share the text and take public comment during the September 4 Board meeting.

2. Litigation update.

Action: Jeffrey Mojcher reported that the Board is in the final drafting stages on the General Dynamics brief which is due to be filed next week.

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: Karin Umpfrey is looking forward to the Shareholder Meeting on October 15, 2024 and appreciates the Board's efforts to coordinate dates with the public.

Lauren Ocadiz inquired about how the regulation updates could be accessed and requested to be added to the stakeholder mailing list.

Bruce Wick commented on CalOSHA funding making the point that a majority of funding is employer funding. Bruce also commented on the struggle to meet federal regulations. Lastly Bruce inquired regarding the location of the October Shareholder Meeting. Patricia Hapgood shared that the Board is in the process of confirming a contract with the Hyatt at the John Wayne Airport.

Multiple attendees announced their presence, but provided no comment.

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.)*

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|---------|--|
| 1595696 | Producers Dairy Foods, Inc.<br>Action: The Board discussed this matter.                      |
| 1483438 | Sutter Bay Hospitals dba Mills-Peninsula Medical<br>Action: The Board discussed this matter. |

**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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|---------|--|
| 1417264 | Mendez Electric, Inc.<br>Action: The Board voted to issue the draft Denial.<br>This was moved by Marvin Kropke.<br>It was seconded by Judith Freyman.<br>The vote was 3-0. |
| 1523238 | Orange County Fire Authority<br>Action: The Board discussed this matter.   |
| 1590457 | R&P Concrete Pump Service, Inc.<br>Action: The Board voted to issue the draft Denial.<br>This was moved by Marvin Kropke.<br>It was seconded by Judith Freyman.            |

The vote was 3-0.

**Orders Dismissing Appeal:**

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| 1610265 | B N H, Inc.<br>Action: The Board discussed this matter.                              |
| 1496831 | Jose Luis Perez Hernandez, an Individual<br>Action: The Board discussed this matter. |

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

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| 1704570 | Amazing Grace Elder Care LLC<br>Action: The Board discussed this matter. |
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**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<br><i>Whether the cited employer was in violation of lockout/tagout requirements.</i>   |
| 1473644 | Amazon.com Services, LLC<br><i>Whether the employer's training program was in compliance with the applicable safety order.</i>   |
| 1568252 | Arana Residential and Commercial Painting, Inc.<br><i>Whether the Division violated Employer's due process rights in conducting the inspection leading to issuing citations.</i><br>Action: The Board discussed this matter. |
| 1399613 | BMC West, LLC<br><i>Whether the Division produced evidence proving the violation, and whether the AJL correctly determined the credibility of a witness.</i>   |
| 1466722 | Bragg Investment Company, Inc.<br><i>Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.</i>   |

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- 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 (3<sup>RD</sup> 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.*  
Action: The Board discussed this matter.
- 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.*
- 1415736 Los Angeles County Probation Dept.  
*Whether the ALJ erred in reclassifying one citation from serious to general.*  
Action: The Board voted to issue a Decision After Reconsideration.  
This was moved by Marvin Kropke.  
It was seconded by Judith Freyman.  
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.*

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- 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.*  
Action: The Board discussed this matter.
- 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.*  
Action: The Board discussed this matter.
- 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)
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:**

1. Discuss title 8, California Code of Regulations section 348, the Board's present regulation which adds five days to the time in which something must be done to account for mailing time.  
Action: No report.
2. Categorizing the Board's DARs and Denials on the DIR website.  
Action: No report.
3. Superior Court cases that also involve or relate to appeals pending before the Board.  
Lyft, Inc., 30-2023-01368387-CU-MC-CXC (1594664)  
Action: The Board discussed this matter.  
  
Uber Technologies, Inc., 30-2023-01330884-CU-JR-CXC (1594663)  
Action: The Board discussed this matter.

**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.)*

1375889	A Spec Racing
1640190	Advance Services, Inc.
1694281	Advantage Elevator, Inc.
1576609	Ameri-Staff, Inc.
1721059	Arena Staffing
1686023	Arias/Graziano Enterprises
1622707	Artcad Builders, Inc.
1344814	Ashby Lumber Company
1607136	Branham Auto Service, Inc.
1727994	CA General Services
1597607	California Department of Forestry and Fire
1640976	Center for Volunteer Non-Profit Leadership
1638739	Certified Tile and Stone, Inc.
1507401	City of Sunnyvale
1700501	Coastal Welding Innovations



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1605497	Cox a Division of KLS Doors, LLC
1716267	Critchfield Mechanical, Inc.
1656629	Crown Lift Trucks
1630876	Declark Construction, Inc.
1740866	Drivege Vehicle Innovations, LLC
1715160	E. G. Ayers Distributing, Inc.
1723959	Earth Tek Engineering Corporation
1492539	Edward R. Silveira, Janeta M. Silveira, and Robert
1498142	Employbridge Holding Company
1540616	Esparza Enterprises, Inc.
1724899	F & H Cold Storage, LLC
1691132	Farm Labor Association For Growers, Inc.
1649818	Fleetpride, Inc.
1473511	Foster Poultry Farms
1737998	Giles Excavating & Paving, Inc.
1718863	Global Steel Fabricators, Inc.
1706430	Green Building Technologies Inc.
1716782	I.G.S. Molding LLC
1714595	Jett Harvest, Inc.
1727411	Jimene's Food Inc.
1511445	Kaiser Foundation Hospitals
1477006	Kindred Hospital
1476721	Kindred Hospital - La Mirada
1509844	Kindred Hospital South Bay
1689620	Lakeshore Learning Materials LLC
1732248	Leo Acquistapace Ranch
1627580	Matchmaster Dyeing and Finishing
1652102	Metal Manufacturing Company, Inc.
1645597	Metro Services Group
1673115	Mission Linen Supply, Inc.
1716120	North Bay Post Acute LLC
1696405	O'Reilly Auto Parts
1654203	Oceano Farming LLC
1694393	Omega Machine & Tool Inc.
1682336	Paragary Restaurant Group, Inc.
1746162	Parsec, Inc.
1585698	Pcn3, Inc.
1693785	Polly's Inc.
1700525	Prime Now LLC
1749715	Proframe Construction Inc.

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1519855	Purina Animal Nutrition, LLC
1625637	Quality Grain Co., Inc.
1706633	Rio Farms, LLC
1724646	Ross G Waite Construction
1598891	Schultz Industrial Services, Inc.
1653634	Seaport Meat Co
1690373	Sirio North America, Inc.
1634724	Soch Stockton, LLC
1628503	Sol-Ti, Inc.
1697968	Solv Energy, LLC
1587602	Southwest Airlines Co.
1754492	Spectra Company
1536475	Stanford Health Care
1548762	Stay Green, Inc.
1614697	Storie and Severson Construction, Inc.
1677679	Summit Roofing LLC
1473940	Sunbelt Rentals, Inc.
1653520	SV Delivery LLC
1698008	Synear Foods USA, LLC
1596324	Taylor Farms Southern California, Inc.
1606050	The Goodyear Tire & Rubber Company
1677844	The Great Sepulveda Car Wash, LLC
1704982	Thorpe Design, Inc.
1612779	Tiger Tanks, Inc.
1612693	Tilton Pacific Construction, Inc.
1555948	Tom Daigle
1684245	Tucker Produce Company LLC
1716388	Tulare Hospitality Investors, LLC
1544793	U.S. Borax, Inc.
1591766	United Parcel Service, Inc.
1685943	USA Construction Management Inc.
1717148	Vanderbilt Homes
1706801	Velasco Construction Inc.
1667873	Visalia Unified School District
1689267	Vista Verde Labor, Inc.
1421645	Wal-Mart Associates, Inc.
1633269	Warner Bros. Television

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

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**Personnel:**

*(Issues regarding staff)*

The Closed Session adjourned at 11:49 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 11:50 a.m.