

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on January 8, 2025
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
Rheeah Yoo Avelar, Administrative Law Judge
Leticia Tanner, 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
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
Ramesses Surban, Staff Counsel, DOSH
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 December 18, 2024, Meeting:

(Approve or amend minutes of previous board meeting.)

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Action: The Board approved the minutes of the December 18, 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 reported the videos have been sent to DIR’s Director, Katie Hagen, and are pending approval before they can be posted to the DIR’s website. Patty Hapgood will follow up with Director Hagen.

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

Action: Scott Pease prepared a memorandum providing an analysis of stakeholder’s comments. Ed Lowry requested additional time to review the memo. This item will remain on the agenda.

Legislation:

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

Action: Elizabeth Clarke reported there are currently no Assembly Bills of interest to the Board.

Chairperson’s Report:

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

Action: Ed Lowry reported he has been reappointed as Board Chair by Governor Newsom.

Board Members’ Reports:

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

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Action: Marvin Kropke voiced concern and sympathy for the families affected by the Southern California fires.

Judith Freyman shared she recently read an article which discussed phasing out the use of forklifts in warehouses.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: No report

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 a vote to adopt changes to the proposed regulatory language for the Appeal Initiation regulations rulemaking, including amendments to sections 347, subdivisions (l) and (ff), 356, subdivision (a), 356.1, subdivision (a) and (c) presented today. Aaron Jackson advised the Board that Board rulemakings will need to be sent for state and federal review. This was moved by Marvin Kropke. It was seconded by Judith Freyman. The vote was 3-0.

2. Litigation Update

Action: Jeff Mojcher reported the legal unit is in discussion with counsel for United Parcel Services, Inc. (1116529) to prepare a stipulation to withdraw its Petition for Writ of Mandate, which was filed more than five years ago.

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.)

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Action: Attendee Ramesses Surban requested clarification on the motion to adopt changes to the proposed regulatory language for the Appeal Initiation regulations rulemaking.

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.)

1566709 United Production Farming, LLC
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.)

1701088 Busy Bee Painting, Inc. Contractor
Action: The Board voted to issue a denial.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

1235941 McCarthy Building Companies, Inc
Action: The Board voted to take this matter under submission.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

Orders Dismissing Appeal:

1680865 Bronco Roofing
Action: The Board discussed this matter.

1691883 Dawit Goitom Fessehaye
Action: The Board discussed this matter.

1685232 Development Solutions & Services Inc
Action: The Board discussed this matter.

1697807 Jim Marx Consulting Inc
Action: The Board discussed this matter.

1694011 Klassen Corporation
Action: The Board discussed this matter.

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- 1498256 Los Angeles County Sheriff's Department- Pitchess
Action: The Board discussed this matter.
- 1732936 National Builders & Services, Inc
Action: The Board discussed this matter.
- 1581350 Ortho Group, Inc
Action: The Board discussed this matter.
- 1625647 Padilla Construction Company
Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

- 1717277 La Canasta Produce
Action: The Board discussed this matter.

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.
- 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.

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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 (3RD PTY PFR)
Whether the motion for third party status was properly denied.

Action: The Board voted to issue a Decision After
Reconsideration.
This was moved by Judith Freeman.
It was seconded by Marvin Kropke.
The vote was 3-0.

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)?*

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.

1436480 Issue Statement for Concorn Farms
Whether there was good cause for the late appeal.

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.*

1355061 Republic Electric West, Inc.
*Whether fall protection requirements apply to the work. Whether the
IEAD was established. Whether penalties were duplicative.*

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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.
- Action: The Board voted to issue a Decision After Reconsideration.
This was moved by Marvin Kropke.
It was seconded by Judith Freeman.
The vote was 3-0.
- 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)

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3. Hill Crane Service Inc., 34-2021-80003744 (1135350)
4. USA Waste of California, Inc., 34-2022-80003841 (1384029)
5. Angelus Block Co., Inc., CIVSB2417796 (1113026)
6. Hamilton Iron Works, Inc., 24WM000100 (1497263)
7. Arana Residential and Commercial Painting, Inc. (1568252)

Action: The Board discussed this matter.

8. 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.)

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| 1691212 | 8490 Hospitality, Inc |
| 1590276 | Advance Construction Technology, Inc. |
| 1624456 | Advanced Roofing Systems Inc. |
| 1706189 | Aerotek |
| 1721295 | Ahmad Skouti |
| 1711280 | Albertsons LLC |
| 1491653 | Amtek Construction |
| 1724001 | Arch Staffing and Consulting |
| 1719062 | Armen Electric, Inc |
| 1577725 | Arvato Digital Services, LLC |
| 1591388 | Ashish Goyal |
| 1575184 | AZ-Tech Erectors, Inc |
| 1573259 | Bae Systems San Diego Ship Repair, Inc |
| 1573260 | Bae Systems San Diego Ship Repairs, Inc |
| 1621897 | Bar-S Food Co |
| 1689976 | Bass Lake Grill, LLC |
| 1680835 | Berkeley Cement, Inc |
| 1437245 | BHC Crane, LLC |
| 1573281 | Boulderscape, Inc |

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| 1570841 | Brink's Incorporated |
| 1514117 | BSA Framing, Inc |
| 1713674 | C.R. England Inc. |
| 1671041 | Castaneda Construction |
| 1676869 | Central Valley Concrete, Inc |
| 1597601 | City of San Diego, Public Utilities Department |
| 1752839 | Columbia Machine Works, Inc |
| 1710046 | Core-Mark International, Inc |
| 1630013 | Countrywide Mechanical Systems |
| 1540552 | Cream of the Crop AG Service, Inc. |
| 1713264 | Creative Kitchen Specialty Food Inc |
| 1508970 | D & D Laser Screed, Inc |
| 1614967 | Dragados/Flatiron Joint Venture, An |
| 1562832 | Duda Farm Fresh Food, Inc. |
| 1711951 | Dynamic Design Build Inc |
| 1732274 | Edward Ponce |
| 1704037 | Evans Hotels LLC |
| 1727000 | Ferris Painting, Inc. |
| 1718068 | Gabriel Container Co. Inc. |
| 1728751 | GM Harvesting LLC |
| 1545928 | Greenhouse System USA |
| 1673569 | Gruma Corporation |
| 1700382 | Highly Finishing, Inc |
| 1734292 | Icolor Printing and Mailing, Inc. |
| 1699238 | Jay's Painting Co |
| 1727855 | JD Miller Construction Inc |
| 1720053 | Juan Miguel Navarro Farias |
| 1577349 | Keiser Corporations |
| 1731674 | Kentucky Material Handling Systems, Inc. |
| 1758293 | Linmoore Fencing & Iron Works, Inc. |
| 1512059 | Los Angeles County Sheriff's Department |
| 1498256 | Los Angeles County Sheriff's Department – Pitchess |
| 1587993 | Louis Vuitton U.S. Manufacturing, Inc. |
| 1754870 | Lucchesi Builders, Inc |
| 1621304 | Mercury Insurance Services, LLC |
| 1720166 | Messer LLC |
| 1751138 | Oat Bakery LLC |
| 1659309 | OFR Inc. |
| 1702870 | Onpoint Industrial Services, LLC |
| 1727650 | Pacific Bell Telephone Company |
| 1424153 | Peaceful Valley Subcontractors, LLC |
| 1664003 | Phoenix Roofing Co. Inc |
| 1706515 | PIP Green, LLC |
| 1717147 | Poway Unified School District |
| 1712469 | Precision Wire Products |
| 1690756 | Process Instruments, Inc |

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| 1779673 | Producers Meat & Provision Inc. |
| 1733396 | Property Management Professionals LLC |
| 1728820 | PSF Trim, Inc |
| 1716776 | Red Sun Floor City Inc |
| 1737408 | Reedco Building Innovations, Inc. |
| 1738590 | Renewable Energy Partners, Inc |
| 1625349 | Rhyno Logistics, Inc |
| 1711605 | Royal West Drywall, Inc. |
| 1699580 | Rush Enterprises, Inc. |
| 1716426 | Sahakyan Enterprise, Inc |
| 1496416 | San Francisco Fire Dept |
| 1512583 | Save Mart Companies |
| 1592089 | Sonoma Cast Stone Corporation |
| 1499145 | Southern California Permanente Medical Group |
| 1687927 | Sweety Novelty, Inc. |
| 1672000 | Target Corporation |
| 1723652 | Tasteful Selections LLC |
| 1719140 | Teledyne Scientific and Imaging LLC |
| 1466745 | Tesla, Inc |
| 1648323 | The Brownie Baker, Inc. |
| 1718335 | The Greenlaw Grupe Jr., Operating Company |
| 1735925 | The Shooting Range, Inc |
| 1683216 | Tight Quarters, Inc |
| 1693682 | True Leaf Farms LLC |
| 1730862 | TW Services Inc |
| 1679225 | Twin Oaks Rehabilitation and Nursing Center |
| 1771056 | United Cerebral Palsy of Greater Sacramento Inc. |
| 1616527 | United Natural Foods, Inc. |
| 1529425 | United Parcel Service, Inc. |
| 1539795 | United Parcel Service, Inc |
| 1613735 | US Foods, Inc. |
| 1740655 | W.I.P Mechanical Inc. |
| 1503531 | Warner Gateway Company |
| 1662781 | West Coast Arborists, Inc. |
| 1689632 | Whiting Door Manufacturing Corp. |
| 1705653 | Yergat Packing Company, Inc |

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:04 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 11:05 a.m.