

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on January 22, 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
Rheeah Yoo Avelar, Administrative Law Judge
Aaron Jackson, Chief Counsel
Elizabeth Clarke, Staff Counsel
Vincent Mersich, Staff Counsel
Karen Halbo, Staff Counsel
Scott Pease, Operations Manager
Maria Rios, Legal Analyst
Anne Marie Plascencia, Senior Legal Typist
Christine Vandermeer, Senior Legal Typist
Beth Reiken, Executive Secretary
Dan Lucido, Chief Counsel, DOSH
Rocio Reyes, Assistant Chief Counsel, DOSH
Dinora Perez, Staff Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
David Wiseman, Staff Counsel, Cal Fire
Bruce Wick, Risk Management Director, Housing Contractors of California
Fred Walter, Attorney, Conn Maciel Carey LLP
Lisa Prince, Lisa Prince Law

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), paragraph (2), and Board member Judith Freyman will be participating remotely pursuant to Government Code Section 11123.2, subdivision (j), paragraph (1).

Request for remote attendance:

Member Marvin Kropke made a motion requesting to attend the February 5, 2025 and February 19, 2025, board meetings remotely, pursuant to Government Code section 11123.2, subdivision (j)(2)(A).

This motion was seconded by Judith Freyman.

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The Board voted to approve Marvin's remote attendance request 3-0.

Minutes of January 8, 2025, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of January 8, 2025 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: Patricia Hapgood will follow up with Director Hagen for DIR approval.

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

Action: Scott Pease prepared a memorandum providing an analysis of stakeholders' comments and recommended actions to address stakeholders' concerns. The Board intends to share the memorandum with-stakeholders

Legislation:

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

Action: Elizabeth Clarke reported there are currently no new Assembly Bills of interest to the Board, but welcomed any information from the public on bills the Board should be monitoring

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. His reappointment will go to the Senate for approval.

Board Members' Reports:

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

Action: Marvin Kropke voiced his thanks and appreciation to the firefighters and all the incoming donations that are assisting with the displaced families in Southern California. In particular, he expressed his gratitude for the help coming from Mexico and Canada. David Wiseman, Staff Counsel with Cal Fire, said he would pass on the Board's gratitude to those who deserve it most within Cal Fire. Judith Freyman posed a question about the compatibility of the firefighters' equipment between countries.

Judith Freyman shared she is happy there continues to be improvement in health and safety standards.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Ed Lowry and Patricia Hapgood met with Director Hagens, whose attention has turned to the Southern California fires. At this time, Director Hagen didn't have any news to share with Ed and Patricia. Ed and Patricia are meeting with Fed OSHA the first week of February.

There are two students starting with OSHAB next month to assist in the appeals initiation unit.

Interviews for the new ALJ position will take place the last week of January. It will take 4-6 weeks to onboard a new ALJ once interviews are completed.

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: Presiding Judge Sam Lucas thanked Patricia Hapgood and Scott Pease for the great candidates they have found for the

new ALJ position. He also discussed the COVID report showing the number of cases is leveling off.

Karen Halbo is waiting on information from the Office of Regulatory and Legislative Affairs for the economic and fiscal analysis for the Appeal Initiation regulations rulemaking.

Action: Vincent Mersich congratulated new Chief Counsel Aaron Jackson on his promotion.

2. Litigation Update

Action: Aaron Jackson reported on two Superior Court cases. 1.) Angelus Block Co. Inc (1113026), which is scheduled for a hearing at the end of March 2.) Arana Residential and Commercial Painting, Inc. (1568252) We expect the case to be dismissed on procedural issues, but they have filed a new writ petition.

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: Attendee Fred Walter expressed his concerns that appeals are taking too long to be docketed. His colleague has 10 files currently awaiting docketing since October. He also recommends the login page for OASIS be revised so one can see what is typed into the password section to allow for errors to be corrected.

The Board advised they would look into both of these issues and get back to Mr. Walter.

Action: Attendee David Wiseman will pass along all of the Board's appreciation to the firefighters at Cal Fire.

Action: Attendee Lisa Prince seconded Fred Walters concerns regarding the docketing delays.

Action: Attendee Bruce Wick shared his appreciation for all the firefighters working to contain the fires in Southern California.

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.)

1371328 Hot Line Construction, Inc
Action: Board Discussed this matter

1692964 L & S Framing, Inc:
Action: 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.)

1454931 Tesla, Inc.
Action: The Board voted to issue an Order Taking the Petition for Reconsideration Under Submission
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

1633352 Amarjit Kandola
Action: The Board voted to issue an Order of Remand.
This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

Orders Dismissing Appeal:

1574520 Oretga Family Stow Lake Company, LLC.
Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

1744412 W.R. Meadows of Southern California
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

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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.
- 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.
- 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.

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- 1486257 Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.
- 1235941 McCarthy Building Companies, Inc.
Whether the Division proved exposure to Valley Fever.
- 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.
- Action: The Board discussed this matter
- 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 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.
- 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.

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. Angelus Block Co., Inc., CIVSB2417796 (1113026)
6. Hamilton Iron Works, Inc., 24WM000100 (1497263)
7. Arana Residential and Commercial Painting, Inc. (1568252)
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.)

1564761	Arvato Digital Services, LLC
1511576	BLC- Brookdale Place of San Marcos, LP.
1753429	Del Sol Harvesting Inc.
1611456	Dolgen California, LLC
1749458	Eagle Point Security
1748814	F & F Contracting, Inc.
1598808	F.D.S. Manufacturing Company
1707435	FL Victory, LLC
1476106	Fluor Flatiron Balfour Beatty Dragados DBJV
1633665	Fremont Unified School District
1576770	Hard Rock Concrete, Inc
1748943	Healthcare Services Group, Inc.

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1711498	HITEX Dyeing and Finishing, Inc.
1658093	IDEXX Distribution, Inc.
1616035	Innovative Construction Solutions
1504635	Integrity General Engineering Contractors, Inc.
1528962	Kaiser Foundation Hospitals
1575188	Lane Security Joint Venture
1772557	Pacific Coast Drywall LLC
1561652	Phillips 66 Company
1726809	Prime Now LLC
1636654	Reyff Electric Company
1737663	Sierra Pacific Industries, Inc
1731950	Turlock Irrigation District
1537558	United Parcel Service, Inc
1719964	United States Pipe and Foundry Company, LLC
1765475	Value Vinyl Extrusions Inc
1732537	VCA Inc. Encina Veterinary Medical Center
1697234	Zanker Road Resource Management LLC

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

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:25 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 11:26 a.m.