

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on January 6, 2022
on Zoom platform

Present:

Ed Lowry, Chair, Public Member
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Elizabeth Clarke, Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Kerry Lewis, Administrative Law Judge
Jennie Culjat, Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Dan Lucido, DOSH Chief Counsel
Bruce Wick, Risk Management Director, HCC

Minutes of December 16, 2021 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the December 16, 2021 Board meeting.
Moved: Marvin Kropke
Seconded: 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. Consideration of regulatory amendments to the Board's rules of practice and procedure to govern, address and permit Board hearings via telephone or videoconference, including consideration of proposed amendments to Board regulation 376.

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Action: Aaron Jackson updated the Board on progress of writing the notice and the regulatory amendments to the Board regulation 376.

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: Acting Executive Officer Patricia Hapgood updated the Board on new staffing.

Staff Reports:

(Reports from the presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss whether there are any proposals for new regulations or proposals for modifications to existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: No report.

2. Discuss status of Video Hearings.

Action: Judge Reedy reported on currently scheduled video hearings.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: Judge Reedy discussed the current filing of appeals relating to the COVID pandemic.

4. Litigation update:

Action: Chief Counsel Jeff Mojcher reported on current court cases.

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 comment will be entertained during discussion of each agenda item of the open meeting.)

Action: The Board received public comments.

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.)

1362970 Carioscia Corporation
Action: The Board reviewed and discussed this Decision.

1224802 Ranch of the Golden Hawk
Action: The Board reviewed and discussed this Decision.

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.)

1410726 Hathaway Dinwiddie Construction Co.
Action: The Board voted to grant this Petition and accept an Amicus brief.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

1192534 Shimmick Construction Company Inc.
Action: The Board voted to grant this Petition.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

Petitions for Reconsideration (Second Review):

None

Orders Dismissing Appeal:

- 1474610 Happy Boy Farms
Action: The Board reviewed and discussed this Order.
- 1498777 M and N Consulting Inc., dba A-Line Messenger
Action: The Board reviewed and discussed this Order.

Order Denying Leave To File Late Appeal:

- 1477436 California Department of Corrections
Action: The Board reviewed and discussed this Order.
- 1499137 Employbridge Holding Company
Action: The Board reviewed and discussed this Order.
- 1490346 S'top Roofing Company, Inc.
Action: The Board reviewed and discussed this Order.

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 so as 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.

- 1141604 Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
Whether adult film performers are employees or independent contractors.
Action: The Board discussed this matter.
- 1141604 Boy Racer Inc. DBA Burning Angel
(Dosh's Petition)
Whether adult film performers are employees or independent contractors.
Action: *The Board discussed this matter.*
- 1246527 Cemex
Whether the settlement in this matter was procured by fraud.

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- 1494822 Ciasom, LLC dba Advoque Safeguard
Whether Employer operated an industrial truck within appropriate limits.
- 1290766 Millenium Reinforcing
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients
Whether the Employer committed the alleged violations.
Action: The Board discussed this matter.
- 1327187 Ontario Refrigeration Service, Inc.
Whether the Division proved the "serious" classification.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1509967 United Pumping Service, Inc.
Whether the citations were issued timely.
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services
Whether the Employer committed the alleged violations.
Action: The Board discussed this matter.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.

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. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, CPF 17-515575, (317134021)

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3. Ashley Furniture Industries, 34-2017-800002750 (1016514)
4. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
5. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
6. Process Cooling International, 34-2019-80003220 (1232555)
7. Prestige Painting, 37-2019-00066143 (1367265)
8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)
11. BMW West, LLC, 34-2021-80003574 (1399613)
12. Southern California Edison, 34-2021-80003580 (1320327)
13. L&S Framing, Inc., SCV-0046603 (1173183)
14. Granite Construction, 34-2021-80003634 (1235643)
15. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
16. Golden State FC, LLC dba Amazon Fulfillment, STK-CV-UWM-2021-0004380 (1310525)
17. USA Waste of California, Inc. dba Blue Barrel Disposal Services, 21STCP01729 (1384029)
18. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
19. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
20. RND Contractors, Inc., CIV SB 2119442 (1436785)
21. Sunview Vineyards of California, Inc. RG21111733 (1153101)
22. Hill Crane Service Inc., 34-2021-80003744 (1135350)

Appellate Court:

1. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
2. Interline Brands, Inc., CIVDS2021813 (1251604)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.

Action: No report.

2. Categorizing the Board's DARs and Denials on the DIR website.

Action: No report.

3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

Action: Cases with citations related to COVID-19 were discussed.

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.)

1498336	AG Force LLC
1288694	AKM Fire, Inc.
1476002	Amazon.Com Services Inc.
1278587	ASA Group Construction, Inc.
1499572	Big J Produce Sales
1429466	Black Diamond Blade Company
1491465	Breakfast Club LLC
1502663	Califia Farms, LLC
1481578	California Prison Industry Authority
1510242	City of Hope National Medical Center
1398308	Conceptual Management Inc.
1489590	Conejo Hardwoods, Inc.
1293907	Crown Energy Services, Inc.
1515674	Dasco Commercial Construction, Inc.
1492499	Del Pacifico Farm Labor Services, Inc.
1474119	Eco Bay Services, Inc.
1447842	Ferma Corporation
1490787	Gibraltar Convalescent Hospital Inc. / Del Mar Care
1503594	Golden Gate Bell, LLC
1524528	Gradetek, Inc.
1483179	Grocery Outlet Bargain Market

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1479906	Hayward Sisters Hospital
1491402	Holland Brothers Construction, Inc.
1510760	Joseph Crown Construction and Development, Inc.
1503947	K-Deer La, Inc.
1230624	La City Animal Services
1453611	Los Angeles County Registrar - Recorder/County
1508559	Los Angeles County Sheriff
1488389	Mannington Mills, Inc.
1487509	Marcos Renteria AG Services, Inc.
1454053	McWane, Inc.
1453879	Mirage Builders, Inc.
1531904	New Life Vinyl, Inc.
1329137	New-Indy Oxnard, LLC
1355394	NGS Holdings, Inc.
1475925	OSL Construction, Inc.
1321161	Pacific Utility Installation, Inc.
1441738	P J Cleveland, LLC
1230163	Process Cooling International
1448474	Raymond Handling Solutions
1308619	Roberto Rojas Jr., Individually
1514882	SF MTA
1494043	Snyder Langston
1493603	Sonoco Products Company
1475643	South Bay Tree Care, Inc.
1470261	Superior Electrical, Mechanical & Plumbing, Inc.
1419918	Taylor-Listug, Inc.
1494045	Trademark Construction
1477528	Tranquility Inc.
1452727	Transform Sr. Holding Management LLC
1404675	Trees, LLC
1474359	United Landscape Resources, Inc.
1328044	United Parcel Service, Inc.
1486311	Valledor Holding, Inc.
1479537	Vintage Tree Care Inc.
1506722	Wal-Mart Inc.
1495914	Waste & Recycling Services, Inc.
1337433	West Builders, Inc.
1480327	West Creek Builders, LLC
1509378	Western Colloid, S.C., Inc.
1469509	Whiteside Construction Corporation

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1491464 Winco Foods, LLC
1486132 Wright Tree Service of the West Inc.

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

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 11:39 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 meeting adjourned at 11:40 a.m.