

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on February 3, 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  
Sam Lucas, Presiding Administrative Law Judge  
Aaron Jackson, Industrial Relations Counsel  
Elizabeth Clarke, Staff Attorney  
Vincent Mersich, Staff Attorney  
Meghan Zapata, Staff Services Manager  
Janis Jonas, Executive Secretary  
Christopher Jessup, Administrative Law Judge  
Les Murad, Administrative Law Judge  
Rheeah Avelar, Administrative Law Judge  
Lisa Prince, The Prince Law Firm  
Dan Lucido, DOSH Chief Counsel

**Minutes of January 20, 2022 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action:           The Board approved the minutes of the January 20, 2022  
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.)*

No report.

**Old Business:**

*(The appeals Board hears and/or discusses matters on a follow-up basis.)*

1. Update on 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.

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

2. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: The Board continued discussion on the topic of the DOSH eAttorney system interfacing with OSHAB's OASIS program.

**Legislation:**

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

Action: Elizabeth Clarke updated the Board on current Legislation.

**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. Ms. Hapgood also reported on a meeting held with the new Fed OSHA representative.

**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.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
February 3, 2022

2. Discuss status of Video Hearings.

Action: Judge Lucas and Judge Reedy reported on currently scheduled video hearings.

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

Action: Judge Lucas and 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: Lisa Prince brought before the Board concern regarding the practice of expediting certain cases. It was suggested that evaluating appeals on a case-by-case basis could be an alternative way of selecting appeals to be expedited

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.)*

1291481      Sierra Forest Products

Action: The Board 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.)*

- 1498777      M and N Consulting Inc., dba A-Line Messenger Service  
Action:      The Board contingently agreed to reinstate the appeal on the condition that the Employer files a verification in the next 7 to 10 days. If it is not verified the petition will be denied.  
Moved:      Marvin Kropke  
Seconded:    Judith Freyman  
Vote:        3-0
- 1224802      Ranch of the Golden Hawk  
Action:      The Board granted this petition.  
Moved:      Marvin Kropke  
Seconded:    Judith Freyman  
Voted:       3-0
- 1490346      S'top Roofing Company, Inc.  
Action:      The Board voted to issue denial.  
Moved:      Marvin Kropke  
Seconded:    Judith Freyman  
Voted:       3-0
- 1291481      Sierra Forest Products  
Action:      The Board discussed this Decision.

**Petitions for Reconsideration (Second Review):**

None

**Orders Dismissing Appeal:**

- 1379562      Dycora Transitional Health - Fresno LLC  
Action:      The Board discussed this Order.
- 1507363      JS Sacramento, Inc.  
Action:      The Board discussed this Order.
- 1512605      Mindlance Inc.  
Action:      The Board discussed this Order.

**Order Denying Leave To File Late Appeal:**

None

**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.*
- 1141604 Boy Racer Inc. DBA Burning Angel  
(Dosh's Petition)  
*Whether adult film performers are employees or independent contractors.*
- 1246527 Cemex  
*Whether the settlement in this matter was procured by fraud.*
- 1494822 Ciasom, LLC dba Advoque Safeguard  
*Whether Employer operated an industrial truck within appropriate limits.*
- 1332867 Guy F. Atkinson Construction, LLC  
*Whether the Division proved the alleged violation.*
- 1410726 Hathaway Dinwiddie Construction Co.  
*Whether the Division proved the alleged violation.*
- 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.*

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
February 3, 2022

- 1327187 Ontario Refrigeration Service, Inc.  
*Whether the Division proved the "serious" classification.*  
Action: The Board discussed this matter.
- 1155042 Signal Energy LLC  
*Whether Employer appropriately oversaw the actions of the subcontractors.*
- 1192534 Shimmick Construction Company Inc.  
*Whether the employer committed the violation alleged.*
- 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.*  
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)
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)

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
February 3, 2022

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. 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.

California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
February 3, 2022

4. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action:

**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.)*

1527875	13000 Victory Boulevard LLC
1444413	A. Vidovich Construction, Inc.
1512913	Air Products & Chemicals, Inc.
1421653	Arbor-Tech Tree Care, Inc.
1487546	Bevill Vineyard Management
1476250	Blue Mountain Construction Services, Inc.
1521639	Bob Jahn's Roofing, Inc.
1531571	Brad Nyman
1393063	Cal State Auto Parts
1483472	California Enterprises Employment, Inc.
1284153	Cannon Constructors
1546563	Cast Parts, Inc.
1455824	College of the Sequoias
1486729	Concrete Builders Group Inc.
1404384	County of San Luis Obispo, Public Works Department
1469848	CP Construction West Inc.
1478727	Doctors Medical Center, Inc.
1530265	Electro Switch Corp
1194493	Express Services, Inc.
1487977	Gordon Biersch Brewing Company
1481253	I-5 Rentals Inc.
1520264	John William Dykstra
1476258	Juan Martinez
1474956	Kaiser Foundation Hospital Ontario
1475605	Kaiser Foundation Hospitals Redwood City Medical
1516433	Kakuichi America, Inc.
1522950	KD Electric
1520472	Kloeckner Metals Corporation
1511221	Kohl's, Inc.
1460569	Lagorio Brothers, Inc.
1467702	Letner Roofing Co.



California Occupational Safety and Health Appeals Board  
Minutes of the Public Meeting and Closed Session  
February 3, 2022

1515045	Lineage Logistics, LLC
1498842	Loma Linda University Medical Center
1397717	Los Angeles Community College District
1530900	M & N Bodwell, LLC
1304615	Master Tree Service, Inc.
1505915	MFI Recovery Center
1495520	Muranaka Farms Inc.
1505658	National Cement Company of California, Inc.
1434271	Netto Ag Inc.
1476882	Northbay Medical Center
1519331	Pinnacle Pro Roofing
1471721	Pioneer Hi-Bred International, Inc.
1480202	Precision Castparts Corporation
1477002	Prime Healthcare Anaheim, LLC
1319455	R A Phillips Industries
1408268	San Diego Farms, LLC
1505530	Shannon Masonry Construction, Inc.
1555514	Super Center Concepts, Inc.
1533682	The Original Mowbray's Tree Service, Incorporated
1508942	Tinco Sheet Metal, Inc.
1481802	Tri-Valley Vegetable Harvesting, Inc.
1537569	Valley Fresh Foods, Inc.
1337876	WestPacc, Inc.
1466105	White Forest Nursery, Inc.
1478206	Wm O'Neill Lath and Plastering Corp.
1320141	Woodward HRT, 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 11:42 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 11:43 a.m.