

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on March 17, 2022**  
**on the Zoom platform**

**Present:**

Ed Lowry, Chair, Public Member  
Judith Freyman, Management Member  
Marvin Kropke, Labor Member  
Patricia Hapgood, Acting Executive Officer  
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  
Kerry Lewis, Administrative Law Judge  
Christopher Jessup, Administrative Law Judge  
Rheeah Avelar, Administrative Law Judge  
Jacqueline Jones, Administrative Law Judge  
Jennie Culjat, Administrative Law Judge  
Bruce Wick, Risk Management Director, Housing Contractors of California  
Lisa Wong, DOSH Attorney  
Michelle Bethge, DOSH Attorney  
Mark Licker, DOSH Attorney  
Rocio Reyes, Assistant Chief Counsel, DOSH  
Manuel Arambula, DOSH Attorney  
Karen Tynan, Attorney, Ogletree Deakins  
Deborah Bialosky, DOSH Attorney

**Minutes of March 3, 2022 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action:           The Board approved the minutes of the March 3, 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.)*

1. Oral Arguments: 1141604 Boy Racer Inc. DBA Burning Angel

Action: Oral Arguments were heard in the case mentioned above. Each side had 10 minutes to present their argument. There was time allowed for questions posed by the Board.

Attorney Mark Licker presented for the Division and Karen Tynan from Ogletree Deakins represented Boy Racer Inc.

**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: No report.

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

Action: No report.

**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: Patricia Hapgood updated the Board on preparation for in-person Board Meetings and installing video screens in Board Room and Library.

**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 updated the Board on current video hearings.

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

Action: No report.

4. Litigation update:

Action: No report.

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.)*

There were no Decisions scheduled for review.

**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.)*

There were no Petitions for Reconsideration scheduled for review.

**Orders Dismissing Appeal:**

1478375 Professional Asbestos Removal Corporation  
Action: The Board reviewed this Order.

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

1498721 KND Development 54, LLC  
Action: The Board reviewed 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: Oral Arguments were heard under New Business.

1141604 Boy Racer Inc. DBA Burning Angel  
(DOSH Petition)  
*Whether adult film performers are employees or independent contractors.*  
Action: Oral Arguments were heard under New Business.

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 Millennium 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.*

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- 1327187 Ontario Refrigeration Service, Inc.  
*Whether the Division proved the "serious" classification.*  
Action: The Board voted to issue DAR  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 1224802 Ranch of the Golden Hawk  
*Whether the household domestic service exception applies to the tree trimming involved in this matter.*
- 1291481 Sierra Pacific Forest Products  
*Whether Employer was in compliance with the cited safety order.*  
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 voted to issue DAR as amended.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0
- 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)
23. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)

**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: The Board discussed cases with citations related to COVID-19.
4. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.  
Action: No report.

**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.)*

1444325	13 Point Brewing Company, LLC
1469095	A&E Arborist Tree Care, Inc.
1494808	A. Teichert & Son, Inc.
1437431	Acco Engineering Systems, Inc.
1510268	Albertson's Holdings, LLC
1516609	Allcali Products, Inc.
1473366	Asbestos Services, Inc.
1424536	Ays Hospitality, Inc.
1382615	Bay Valve Service & Engineering LLC
1484561	Brosamer & Wall, Inc.
1513646	Buddy Bar Casting Corporation
1541131	Cable Tech Corp
1511421	Carlton Senior Living, LLC
1332189	Charter Communications, Inc.
1328780	Clark & Sons Contracting Corp.
1403296	Columbia Electric, Inc.
1514133	Credit Union of Southern California
1545006	Crown Painting, Inc.
1443556	Ecobay Services

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1321150	Employerbridge, LLC
1504630	Future Ford, Inc.
1504633	Future Nissan, Inc.
1450284	Hobby Lobby Store #784
1482948	Home Depot U.S.A., Inc.
1524582	Inter-Con Security Services
1498560	J.T. Thorpe
1349890	L & S Framing, Inc.
1378127	Lusardi Construction Co.
1472307	LW Construction Inc.
1497023	Mauritson Farms, Inc.
1515268	Midpen Housing Corporation
1487717	Millbrae Care Center, LLC
1510093	Naftoon, Inc.
1555284	Nor Cal Fast Foods, Inc.
1389107	Palm Springs Unified School District
1332490	Rentokil North America, Inc.
1525730	Reyes Coca-Cola Bottling, LLC
1499642	Rite-Way Meat Packers, Inc.
1466986	Roche Molecular Systems, Inc.
1496882	Santa Clara County Elmwood Correctional
1496216	Santa Clara County Sheriff's Office
1491468	Sea Coast Subway Corp
1480561	Signature Coast Holdings LLC
1253596	Silicon Valley Crane, Inc.
1425652	Steel City Scaffold
1490791	Synergi LLC
1455954	Terranova Ranch, Inc.
1528486	Tesla Energy Operations, Inc.
1237921	Tony Reed Construction, Inc.
1516822	Trinity Timber, Inc.
1227454	Wall Constructors Inc.
1469714	Walmart, Inc.
1429571	Walmart, Inc. Store #2119
1499884	Waste Management Recycling and Disposal Services
1507000	Waterworks Technology, Inc.
1492139	Watsonville Community Hospital
1365238	West Coast Arborists, Inc.
1560278	West Valley Construction Company, Inc.
1405719	Western National Builders



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1514495	Western Wine Services, Inc.
1474039	Willoughby Brothers, LLC
1318785	Yukon Plastering, 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 11:49 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 meeting adjourned at 11:50 a.m.