

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on May 19, 2022
Sacramento, California
West Covina, California
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, Supervising Judge
Sam Lucas, Supervising Judge
Aaron Jackson, Industrial Relations Counsel
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Rheeah Yoo Avelar, Administrative Law Judge

Minutes of May 5, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the May 5, 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. Discussion of hearing schedules and ALJ availability pilot program.

Action: The Board discussed the occasional need to substitute Administrative Law Judges before a hearing begins and the protocols used.

Old Business:

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

1. Update 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: The Public Meeting to accept comments on the changes to Regulation 376 is scheduled for June 16, 2022.

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

Action: Ed Lowry updated the Board of his discussion with Jesse Ruiz from Journal Technologies regarding the process and procedures in creating the interface between DOSH's new system and OSHAB's OASIS.

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: Chair Lowry reported that the Department of Industrial Relations Employee Awards Ceremony was held and OSHAB's Counsel Aaron Jackson was awarded a Silver award.

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 reported on the interviews held for the Office Technician permanent and limited term positions.

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 one video hearing held which had an issue with feed-back during the proceeding. It was discovered to be caused by the device one of the parties were using. Once the problem was isolated, the hearing continued.

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

Action: Judge Lucas reported on the current appeals related to COVID.

4. Litigation update:

Action: Chief Counsel, Jeff Mojcher updated the Board 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: There were no public comments at this meeting.

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.)

1340561 Lennar Corporation

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.)

1549282 F C Landscape, Inc.
Action: The Board voted to deny this petition.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Voted: 3-0

Orders Dismissing Appeal:

1402729 Butch Pope Engineering, Inc.
Action: The Board reviewed this Order.

1515466 PCC Aerostructures ADI
Action: The Board reviewed this Order.

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeal.

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.

1332867 Guy F. Atkinson Construction, LLC
 Whether the Division proved the alleged violation.
Action: The Board discussed this matter.

1410726 Hathaway Dinwiddie Construction Co.
 Whether the Division proved the alleged violation.

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- 1224802 Ranch of the Golden Hawk
Whether the household domestic service exception applies to the tree trimming involved in this matter.
Action: The Board voted to issue a DAR on this matter.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1291481 Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.
- 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.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.
Action: The Board voted to issue an Order Requesting Further Briefing.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 1416143 Webcor Builders, Inc.
Whether the ALJ properly granted Employer's appeal due to the Division's failure to timely comply with a prehearing conference order.
Action: The Board voted to Remand to Hearing Operations
Moved: Judith Freyman
Seconded: Ed Lowry
Vote: 2-0 (Marvin Kropke abstained)

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.)

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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)
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. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
17. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
18. RND Contractors, Inc., CIV SB 2119442 (1436785)
19. Sunview Vineyards of California, Inc. RG21111733 (1153101)
20. Hill Crane Service Inc., 34-2021-80003744 (1135350)
21. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)
22. Sierra Forest Products, VCU290996 (1291481)
23. USA Waste of California, Inc., 34-2022-80003841 (1384029)

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: No report.

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.)

1404370	3H Custom Farming Inc.
1471843	Acara Solutions, Inc.
1466453	Ace Insulation, Inc.
1244230	ALCO Iron & Metal Co.
1464395	Alpha Building Company
1544462	Apex Enterprises, Inc.
1456104	Apollo Wood Recovery Inc.
1441611	Artistic Stone Kitchen and Bath, Inc.
1481321	Autumn Hills Health Care Center
1470264	Barnard Bessac Joint Venture
1381497	Benavides Construction Services
1281898	Berber Foods Manufacturing Inc.
1558902	Better Nutritionals LLC
1519558	Bitchin' Sauce, LLC

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1350121	Burford Farming Company, LP
1550506	Bushwhackers Tree Service
1512375	CA Corrections and Rehabilitations - Deuel
1541941	CA State Assembly
1491456	Challenger Car Wash
1357612	City of Fairfield
1497963	Core-Mark International, Inc.
1563682	Cortech, LLC
1366566	Costco Wholesale Corporation
1500845	County of Marin
1555460	Culinary Innovation, LLC
1481574	Daniel C Salas Harvesting, Inc.
1510902	Decker Electric Company, Inc. Electrical
1528308	Decker Electric Company, Inc. Electrical
1409288	Dependable Pool Service, Inc.
1358208	Doctors Medical Center, Inc.
1475159	Driftwood Hayward Operating Company, LP
1544403	Edelbrock Foundry, LLC
1565969	Engineered Polymer Solutions, Inc.
1517452	Esparza Enterprises, Inc.
1563915	Evolution Racewerks
1331363	F. D. S. Manufacturing Company
1320331	Fincco Services Incorporated
1325347	Future2 Labs Health Services, Inc.
1520800	Grapevine Enterprises, Inc.
1487776	Grocery Delivery E-Services Usa Inc.
1159639	Hayden Industrial Products LLC
1502627	Healthright 360
1517739	Height Street Skilled Care
1521501	Hermsmeyer Painting Company Incorporated
1566605	Hernandez Contractor, Inc.
1560820	Hooven & Co., Inc.
1502873	Hot Line Construction
1550277	I.S.A. Contracting Services, Inc.
1552831	IDEXX Distribution, Inc.
1502473	Janus Corporation
1501486	JLP Landscape Contracting, Inc.
1581544	Jordano's, Inc.
1486113	Kaiser Foundation Health Services, Inc.
1507437	Kaiser Permanente Los Angeles Medical Center

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1526446	Kraft Heinz Company
1231652	Laguna Farms, LLC
1508675	Leslie's Poolmart, Inc.
1486434	Lineage Logistics (Preferred Freezer LLC "Big Bear")
1399809	Los Angeles Unified School District, Maintenance
1568723	Los Hermanos Meat Market, Inc.
1547933	Lucchesi Builders, Inc.
1505660	Manada Roofing, Inc.
1504145	Marathon Industries, Inc.
1547484	Mary's Pizza Shack
1491147	Mercer Fraser Company
1339138	Mike Lowrie Trucking, Inc.
1369686	Mr. Crane, Inc.
1546885	Murphy's Markets, Inc.
1511891	Nadhan Inc.
1548010	Nielsen Citrus Products Co., Inc.
1579273	Pacific Crane Maintenance Company, LLC
1513642	Pacifica Companies LLC
1553276	Peopleready, Inc.
1498825	Poway Sign Company LLC
1515040	Quality Naturally Foods, Inc.
1513732	Reyes Coca-Cola Bottling, LLC
1535886	Rodriguez FLC
1552968	San Jose Healthcare System, LP
1416762	Securitas Security Services USA, Inc.
1418020	Securitas Security Services USA, Inc.
1397161	Skanska USA Civil West California District Inc.
1506594	Skyline San Jose Operating Company, LP
1558642	SP Plus Corporation
1295248	Staffmark Investment LLC
1526571	Stonelake Masonry, Inc.
1482180	Sun Fresh Harvesting Inc.
1567465	Sun Pacific Farming Cooperative, Inc.
1547906	Sutter Health-California Pacific Medical Center
1507155	Sutter Medical Group, a California Corporation
1551076	Teledyne Defense Electronics, LLC
1461789	The Langlois Company
1486127	The Original Mowbray's Tree Service Incorporated
1518078	The Peterson Family
1504824	Tutor Perini Corporation and O & G Industries, Inc.

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1561418	Us Merchants
1457428	Utiliquet LLC
1524212	Wag Hotels, Inc.
1446431	Westland Services Inc.
1556089	Whitestone Pacific
1558453	Xtreme Manufacturing, LLC

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 11:32 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 11:33 a.m.