

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on July 21, 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
Aaron Jackson, Industrial Relations Counsel
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Linette Davis, Ethics Officer and Senior Editor, DIR Office of the Director
Matthew Lugo, DIR Analyst, DIR Office of Director
Dan Lucido, Chief Counsel, DOSH
Rocio Reyes, Assistant Chief Counsel, DOSH
M. Doherty, a member of the public

Minutes of July 7, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the July 7, 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.)

Action: No report.

Old Business:

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

1. Discussion of hearing schedules and ALJ availability for the pilot program.

Action: Kevin Reedy updated the Board on progress regarding the pilot program for scheduling ALJ for hearings, which will begin September 1, 2022.

2. Update of DOSH eAttorney system interfacing with OASIS.

Action: Meghan Zapata updated the Board on the progress working with DOSH and Journal Technologies establishing the eAttorney program. A meeting is to be set between DOSH, OSHAB and Journal Technologies to answer questions regarding the process of transferring information.

3. Discussion and update concerning 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, and consideration of public comments received.

Action: Aaron Jackson presented and discussed several further proposed modifications to Board regulation 376. The modifications were designed to address several of the public comments received during the 45-day public comment period pertaining to the amendments to Board regulation 376. The Board approved the further proposed modifications, and gave instruction to notice and commence a 15-day comment period.

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 the highlights from the July 14, 2022 Cal/OSHA Advisory Committee meeting.

Board Members Reports:

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

Action: Judith Freyman discussed a report on a study done regarding COVID effects on employees in various industries.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood reported on hiring staff for positions currently open.

Staff Reports:

(Reports from the Supervising 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 current regulations. In addition, discuss whether any concerns exist regarding regulations.

Action: Aaron Jackson is in the process of reviewing the Regulations.

2. Discuss status of Video Hearings.

Action: Judge Kevin Reedy updated the status of hearings and settlement conferences.

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

Action: Judge Kevin Reedy updated the Board on cases involving COVID related citations.

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 comments made from the public.

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 are 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.)

1417616 Robert E. Sutton Company, Inc.
Action: The Board voted to deny the petition for Robert E. Sutton Company.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

Orders Dismissing Appeal:

1514420 ABM Industries, Inc.
Action: The Board voted to remand this appeal for ABM Industries to Hearing Operations.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1533229 Central Valley Meat Holding Company
Action: The Board reviewed this Order.

Orders Denying Leave To File Late Appeal:

1568241 Citistaff Solutions, Inc.
Action: The Board voted to reinstate the appeal for Citistaff Solutions.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1559454 CP Manufacturing, Inc.
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.

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| 1300984 | General Dynamics NASSCO
<i>Whether Employer committed the violations alleged.</i> |
| 1340591 | Lennar Corporation
<i>Whether Employer committed the violations alleged.</i> |
| 1291481 | Sierra Pacific Forest Products
<i>Whether Employer was in compliance with the cited safety order.</i> |
| 1155042 | Signal Energy LLC
<i>Whether Employer appropriately oversaw the actions of the subcontractors.</i> |
| 1192534 | Shimmick Construction Company Inc.
<i>Whether the employer committed the violation alleged.</i>
Action: The Board discussed this matter. |
| 1303461 | SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
<i>Whether Employer violated section 3212(a)(2)(A) as alleged.</i> |
| 1461476 | Walmart, Inc.
<i>Whether Walmart was an employer citable for the alleged violation.</i>
Action: The Board voted to issue a DAR.
Moved: Marvin Kropke
Seconded: Judith Freyman
Voted: 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 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. Davis Development Company, 34-2020-80003373 (1226084)
8. MWL Solutions, 34-2020-80003549 (1436014)
9. Hampton Tedder Electric, 34-2020-80003562 (1233597)
10. BMW West, LLC, 34-2021-80003574 (1399613)
11. Southern California Edison, 34-2021-80003580 (1320327)
12. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
13. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
14. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
15. RND Contractors, Inc., CIV SB 2119442 (1436785)
16. Sunview Vineyards of California, Inc. RG21111733 (1153101)
17. Hill Crane Service Inc., 34-2021-80003744 (1135350)
18. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)
19. Sierra Forest Products, VCU290996 (1291481)
20. USA Waste of California, Inc., 34-2022-80003841 (1384029)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)
2. Golden State FC, LLC, STK-CV-UWM-2021-004380 (1310525)
3. L & S Framing, Inc. S-CV-0046603 (1173183)

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.)

1517980	Alameda County Probation Department
1515476	Alila Farm Labor, LLC
1573193	All Around Renovations, Inc.
1544474	America Greenworld, Inc.
1555236	American Sheet Metal Partition
1540491	Armando Diaz Arredondo, an Individual
1524600	Automotive Racing Products, Inc.
1571425	B.R. Funsten & Co.
1565972	Bay Area Linen & Valet Service Center Inc.
1554359	Bella Kai Construction
1495680	Biagi Bros
1511885	Big 'B' Lumberteria, Inc.

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1477221	CA Forestry and Fire Protection
1501574	California Department of Corrections
1411313	California Waste Recovery Systems, LLC
1434405	Center-Line Construction, Inc.
1565098	Clark's Quality Roofing, Inc.
1540244	CMC Materials, Inc.
1271678	Consolidated Disposal Services, LLC
1592129	Crane Exteriors, Inc.
1554570	Custom Leathercraft Mfg., LLC
1553145	DPR Construction, Inc.
1535103	Fast 5 Huntington 4, LLC
1546648	Fontana Wood Treating, Inc.
1491738	Garrett J. Gentry General Engineering Inc.
1461465	Giumarra Vineyards, Corporation
1549041	Green Acres Meats, Inc.
1461746	J J & R Automotive Repair, LLC
1511373	Kaiser Foundation Hospitals
1541627	Kerr Corporation
1572794	Lazy Dog Restaurant & Bar
1559836	Leo Quiroz Tree Service And Landscaping
1437449	Liberta Homes
1577737	MB Homes Sonoma, LLC
1552014	Milestone Management (Ca) - Meadows, LLC
1573850	Modern Building Inc.
1532415	Mohajeri Inc.
1474264	Outdoor Keepers
1553801	Pacific States - Sukut - P31, A Joint Venture
1574266	Pacific States - Sukut - P31, A Joint Venture
1467641	Panda Restaurant Group, Inc.
1490793	Paragon Ventures, Inc.
1571050	Placer County Health and Human Services
1522771	R.N.V., Inc.
1521280	Rafael S. Garcia
1561864	Roofline, Inc.
1515618	Sacramento County Sheriff's Office
1553047	San Diego County Sheriff's Department
1564875	Silver Farm Labor, Inc.
1574062	Southern Inyo Healthcare District
1563634	Spectex Inc.
1549855	Stir Foods, LLC

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1545282	Superior Court of California, County of Sacramento
1506364	Sutter Valley Hospitals dba Sutter Roseville
1485170	Target Corporation
1540336	Tesoro Refining & Marketing Company LLC
1580235	The Pentagon Company
1555849	The Tac Room, LLC
1555067	Tom Brown Construction
1594276	Treasure Garden, Inc.
1231050	Tutor Perini Corporation
1504913	United Natural Foods, Inc.
1526612	Wermers Multi Family
1547701	WFS Express, Inc.
1515682	Windsor Hayward Estates, LLC
1537586	Workforce Enterprises WFE, Inc.
1533232	Younan, 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 11:48 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 11:49 a.m.