

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on August 4, 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
Kerry Lewis, Administrative Law Judge
Matthew Lugo, DIR Analyst, DIR Office of Director
Rocio Reyes, Assistant Chief Counsel, DOSH
Mark Licker, Staff Counsel, DOSH
Manuel Arambula, Staff Counsel, DOSH
Michelle Bethege, Staff Counsel, DOSH
Keith Mackenzie, Staff Counsel, DOSH
Lisa Wong, Staff Attorney, DOSH
Clara Hill-Williams, Staff Counsel, DOSH
Tuyet-Van Tran, Staff Counsel, DOSH
Bruce Wick, Risk Management Director, Housing Contractors of California

Minutes of July 21, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the July 21, 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 and Sam Lucas 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.

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: The proposed modifications are being remediated and prepared for posting on the OSHAB website. They will be then noticed and a 15-day comment period will be scheduled.

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 provided an overview of the Fed-OSHA meeting held on August 2, 2022.

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 telework stipend paperwork due August 15, 2022.

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 provided an update on the status of hearings and settlement conferences. Judge Reedy stated that one witness attended a hearing by coming to the Board office and using Board equipment to log into the hearing.

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

Action: Judge Sam Lucas 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: Bruce Wick thanked the Board for timely responses to his questions in the past.

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.)

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| 1410194 | Natural Pack, Inc.
Action: The Board discussed this petition. |
| 1370798 | Solar Optimum
Action: The Board discussed this petition. |

Orders Dismissing Appeal:

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| 1538859 | Barry Callebaut USA LLC
Action: The Board reviewed this Order. |
| 1554571 | BNX Shipping, Inc.
Action: The Board reviewed this Order. |
| 1447944 | Che Anthony Coho, an Individual
Action: The Board reviewed this Order. |
| 1512611 | Fourest Tree Service, Inc.
Action: The Board reviewed this Order. |
| 1445122 | Jason D. Watson
Action: The Board reviewed this Order. |

Orders Denying Leave To File Late Appeal:

There are no Orders Denying Leave to File Late Appeal scheduled for review.

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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| 1246527 | Cemex | Action: This Board affirmed their previous vote to remand this matter to Hearing Operations. |
| 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>
Action: The Board discussed this matter. |
| 1192534 | Shimmick Construction Company Inc. | <i>Whether the employer committed the violation alleged.</i> |
| 1303461 | SSA Terminals (Oakland), LLC DBA SSA Marine Terminals | <i>Whether Employer violated section 3212(a)(2)(A) as alleged.</i> |

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)

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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)
21. Ranch of the Golden Hawk, 22STCP02302 (1224802)

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.)

1497283	Air Conditioning Solutions, Inc.
1529509	ALS West Coast, Inc.
1489054	Alsico Hi Tec, Inc.
1565723	At&T Billing Southwest, LLC
1515469	Bay Area High Reach, Inc.
1547998	Bellagio Design Build
1566139	Best Buy Stores, L.P.
1502875	California Waste Solutions, Inc.
1342598	City of Los Angeles Public Works
1511659	Cliff Delima
1577687	CNR Bernal Construction, Incorporated
1556679	D/K Environmental
1355981	Del Amo Construction, Inc.
1415092	Denver Commercial Builders, Inc.
1524581	Diamond Elite Labor Services, Inc.
1554796	E & J Gallo Winery
1476493	Flash Plastering, Inc.
1507131	Food 4 Less Holdings, Inc.
1555285	G & B Farm Labor Contracting LLC

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1567181	Ghilotti Construction Company, Inc.
1470216	Hogan Mfg. Inc.
1551181	Homefront Enterprises
1484564	Integrated Pain Management Medical Group, Inc.
1546732	J & J Snack Foods Corp. Of California
1460108	Jt2 Inc.
1490465	Kaiser Foundation Hospitals
1549247	Kenneth E. Nielsen
1515796	Les Schwab Tire Centers Of California, LLC
1469482	Liquid Waste Management, Inc.
1516465	Livermore Senior Living Associates, L.P.
1547577	M & M Bakery Products, Inc.
1532331	Martinez Refining Company, LLC
1518532	MCK Enterprises, Inc.
1338312	Mclane-Suneast, Inc.
1529824	Mendoza Bros Harvesting
1491012	Mitra VI, LLC
1455022	Modoc Joint Unified School District
1502429	Murfey Company
1459996	National Distribution Centers LLC
1580329	Old Durham Wood, Inc.
1564755	Oneto Metal Products
1509784	Orion Petroleum Marketing, Inc.
1509377	Pacific Autism Center for Education (PACE)
1529575	Partners Personnel, LLC
1489286	Permanente Medical Group
1509199	Phillips 66 Company
1515060	Phillips 66 Company
1516012	Phillips 66 Company
1554696	Pregis Corporation
1512094	Prieto Automotive, Inc.
1460316	Providence Little Company Of Mary Medical Center,
1508879	Quality Custom Distribution Services, Inc. (QCD)
1564164	RCI Rack Conveyor Installation, Inc.
1369942	Rolling Tires and Wheels
1531550	Rusher Air Conditioning
1587867	Save Mart Supermarkets, Inc.
1570610	Shasta Tanks, LLC
1538401	Skanska USA Civil West California District, Inc.
1525689	Skanska USA Civil West California District, Inc.

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1196951	Sky Systems
1511137	Southern California Permanente Medical Group
1587268	SRS Distribution, Inc.
1521948	Stafford Meat Company, Inc.
1480866	State Of California, Department Of Corrections &
1557592	Storm Plastering, Inc.
1576567	Strahm Farms Inc.
1587887	Styro Shapes Lath Plaster & Foam
1499413	Target Corporation
1546740	Technical Steel Construction, Inc.
1519300	Total Green Landscaping
1554781	Trader Joe's Company
1576593	Trapac, LLC
1536427	Urogynecology Consultants Medical Corporation
1459938	Valley Waterproofing, Inc.
1465487	Vezer Industrial Professionals, Inc.
1542228	W.L. Rubottom Co.
1498861	Walgreen Co.
1570708	Watkins Tree Service, Inc.
1529821	West Coast Laboratories, Inc.
1575430	Woodland Hills Grocery Market, Inc.
1454306	Wyse Logistics, Inc.
1523248	XPO Logistics Freight, Inc.
1583570	Yaseth Silva Finish Carpenter, 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 11:14 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 11:15 a.m.