

State of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on April 23, 2025
Sacramento, California
Zoom Platform

Present:

Ed Lowry, Public Member, Chair
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Kerry Lewis, Presiding Administrative Law Judge
Sam E. Lucas, Presiding Administrative Law Judge
Aaron Jackson, Chief Counsel
Jeffrey Mojcher, Chief Counsel Emeritus
Vincent Mersich, Staff Counsel
Karen Halbo, Staff Counsel
Scott Pease, Operations Manager
Maria Rios, Legal Analyst
Anne Marie Plascencia, Senior Legal Typist
Beth Reiken, Executive Secretary
Denise Cardoso, Assistant Chief Counsel, DOSH
Javier Castro, Staff Counsel, DOSH
Kathryn Woods, Staff Counsel, DOSH
Lisa Wong, Staff Counsel, DOSH
Ina Fitzgibbon, Office of Director, DIR
Bruce Wick, Risk Management Director, Housing Contractors of California

Notice of remote attendance:

As required by Government Code Section 11123.5, subdivision (d), notice is hereby given that Board member Marvin P. Kropke will be participating remotely pursuant to Government Code Section 11123.2, subdivision (j), paragraph (2), and Board member Judith Freyman will be participating remotely pursuant to Government Code Section 11123.2, subdivision (j), paragraph (1).

Request for remote attendance:

Member Marvin Kropke made a motion requesting to attend the May 7, 2025 and May 21, 2025 board meetings remotely pursuant to Government Code section 11123.2, subdivision (j)(2)(A).
This motion was seconded by Judith Freyman.
The Board voted to approve the remote attendance request 3-0.

Minutes of April 9, 2025, Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board voted to approve the minutes as amended for the April 9, 2025, meeting.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 23, 2025

This was moved by Marvin Kropke.
It was seconded by Judith Freyman.
The vote was 3-0.

New Business:

(The Appeals Board hears and discusses new reports presented by staff.)

1. Discussion regarding processing and handling of verification of abatement forms by both the Appeals Board and the Division.

Action: Aaron Jackson described the issues presented to him from Fred Walter. Bruce Wick suggested an informal survey to identify the root of the issue.

Old Business:

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

1. Discuss the newly prepared informational stakeholder videos (re “How to File an Appeal”) and discuss whether to post on OSHAB’s website. In addition, discuss whether the Board should explore any other avenues to publicize the availability of these videos to stakeholders.

Action: Patricia Hapgood and Scott Pease met with the media office to discuss making a promotional flyer. A draft will be presented to them soon for review.

Legislation:

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

Action: Karen Halbo provided status on the following assembly bills:
AB586, AB694, AB845, AB136, AB1371, AB1424, AB1515,
SB20, AB1181.

Chairperson’s Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

Action: Ed Lowry will be out of the country next week but doesn’t expect to miss any board meetings.

Board Members’ Reports:

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

Action: Marvin Kropke asked if anyone had heard if the board would be affected by anything going on Federally. There were not any updates.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: In Patricia Hapgood's absence, Scott Pease reported the two new Office Technicians (OT) Candidates have accepted their job offers and will start on 5/5/2025. The Associated Governmental Program Analyst (AGPA) position will need to be reposted. Remodeling and updates to the Sacramento office will include audio and electrical updates. Remodeling plans for the West Covina office have been signed off by Patricia Hapgood and Sam E. Lucas and have been sent to the Director of DIR for approval. They are talking with the facilities unit to renew the lease at the Sacramento office.

Staff Reports:

(Reports from the Supervising ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss and may take action on proposals for new regulations or proposals for modifications to, or repeal of, existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: Karen Halbo has submitted the regulation packet for the Prehearing and Hearing regulations rulemaking. It was accepted by the Director's Office, Office of Legislation and Regulatory Affairs. At the next board meeting, she intends to include a Memorandum regarding the Appeals Initiation Regulations rulemaking documents.

Action: Aaron Jackson provided the following updates: Angelus Block Co., Inc. (1113026) was heard in Superior Court on March 28, 2025, and has been taken under submission, the Board is working on responding to writs in the matters of the Geo Group, Inc. (1609228), Uber Technologies, Inc. (1594663), and EmployBridge LLC (1499137). There are hearings coming up on June 3, 2025, and July 22, 2025, in the matters of Baldi/Arana Residential and Commercial Painting, Inc. (1568252) and Waterproofing and Roofing Solutions, Inc. (1690885), respectively.

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 comments will be entertained during discussion of each agenda item of the open meeting.)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 23, 2025

Action: The Board heard members of the public on matters including Cal OSHA which has promoted Tuyet-Van T. Tran and Lisa Brokaw as new attorney supervisors. Lauren Ocadiz accepted the position for Attorney III.

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 of Administrative Law Judges.

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.)

1660546 AMP United, LLC

Action: The Board voted to issue a Denial of the Petition for Reconsideration.
This motion was moved by Marvin Kropke.
It was seconded by Judi Freyman
The vote was 3-0

1763124 Michael Muhareb dba Old Mill Café

Action: The Board voted to issue a Denial of the Petition for Reconsideration.
This motion was moved by Judi Freyman.
It was seconded Marvin Kropke
The vote was 3-0

Orders Dismissing Appeal:

1590035 Canoo Technologies, Inc

Action: The Board discussed this matter.

1600532 DeYoung Power Systems, Inc.

Action: The Board discussed this matter.

1634914 Evolution Hospitality, LLC, GF Carneros Tenant, LLC.
Subsidiaries of Aimbridge Group Holdings, LP

Action: The Board discussed this matter.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 23, 2025

1728192 Westech Systems, LLC
Action: The Board discussed this matter.

Orders Denying Leave to File Late Appeal:

1657003 PK Mechanical System Inc.
Action: The Board discussed this matter.

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 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.

- 1431672 A. Teichert & Son, LLC
Whether the cited employer was in violation of lockout/tagout requirements.
- 1473644 Amazon.com Services, LLC
Whether the employer's training program was in compliance with the applicable safety order.
- 1466722 Bragg Investment Company, Inc.
Whether the Employer violated the crane operating safety order as alleged while repositioning a crane at a construction site.
- 1647115 Concord Farms, Inc.
Whether there was good cause for the late appeal.
- 1420923 Drill Tech Drilling & Shoring, Inc.
Whether the Employer failed to enforce its IIPP as required.
Whether the Employer violated the lockout/tagout requirements of section 3314 as alleged.
- 1488312 Indiana Finish Line, Inc.
Whether the cited employer established procedures adequate to protect employees from COVID-19.
- 1436480 Interline Brands, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 23, 2025

Whether the employer violated foot protection standards.

1371294 KPRS Construction Services, Inc.
Whether the employer violated section 1632 as alleged? Whether the ALJ's ruling that the Division did not meet its burden of proof regarding the employer's IIPP was correct.

1486257 Kroger Company
Whether the cited employer adequately trained employees regarding workplace hazards.

Action: The Board discussed this matter.

1692964 L & S Framing, Inc.
Whether Employer committed the violations alleged in the citations, including alleged violations of section 1704, subdivision (f) [failure to adopt a compliant Code of Safe Practices]; section 1704, subdivision (b)(2) [failure to ensure that nailers and staplers were operated in accordance with manufacturer's recommendations], and section 1704, subdivision (g), 1509, and section 3203 [inadequate safety training on the use of nailers and staplers].

1235941 McCarthy Building Companies, Inc.
Whether the Division proved exposure to Valley Fever.

1549611 Metcalf, Inc.
Whether Employer committed the violations alleged in the citations, including alleged violations of section 3203, subdivision (a)(6) [failure to correct an unsafe condition]; section 1621, subdivision (b) [failure to provide toeboards on scaffolding]; and (3) section 3276, subdivision (e)(15)(B) [safe use of ladders], and whether Employer established its affirmative defense.

1355061 Republic Electric West, Inc.
Whether fall protection requirements apply to the work. Whether the IEAD was established. Whether penalties were duplicative. Whether the Employer exercised reasonable diligence. Whether it was an error to reduce the classification of the violations and reduce the penalties.

1760736 RJS Electric
Was the ALJ's Order Denying Late Appeal correctly decided?

Action: The Board voted to issue a Decision After Reconsideration and an Order of Remand. This motion was moved by Marvin Kropke. It was seconded by Judi Freyman.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 23, 2025

The vote was 3-0

- 1465119 Sun Belt Rentals
Whether certain information accepted into evidence was inadmissible hearsay, and whether the evidence supports a finding that Employer violated sections 3203 and 3328, as alleged.
- 1475491 Sutter Bay Hospitals dba Mills-Peninsula Medical Center
Was the ALJ correct in granting Employer's appeals of the citations alleging violations of section 342, subdivision (a) and section 5199, subdivision (i)?
- 1454931 Tesla Inc.
Whether the ALJ properly affirmed the citations and, if so, whether Employer committed a serious accident-related violation of section 3328, subdivision (a).
- 1486176 Tutor Perini Corporation and O&G Industries, Inc.
Whether the Employer committed a serious accident-related violation of section 3328, subdivisions (a)?

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. Davis Development Company, 34-2020-80003373 (1226084)
2. USA Waste of California, Inc., 34-2022-80003841 (1384029)
3. Angelus Block Co., Inc., CIVSB2417796 (1113026)
4. Hamilton Iron Works, Inc., 24WM000100 (1497263)
5. Arana Residential and Commercial Painting, Inc. (1568252)
6. Western Oilfields Supply Company, 24WM000169 (1498595)
7. Waterproofing and Roofing Solutions, Inc., 24STCP03693, (1690885)
8. The Geo Group, Inc., 25WM000023 (1609228)
9. Uber Technologies Inc (1594663)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 23, 2025

Appellate Court:

1. General Dynamics NASSCO (1300984)

Other Items:

There are no Other Items.

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.)

| | |
|---------|---|
| 1752468 | 2H Farms LLC |
| 1723722 | A & E Construction Services |
| 1746292 | A Mechanical Systems, Inc. |
| 1759757 | Al's Automotive, Inc |
| 1675026 | Amazon.com Services LLC |
| 1761631 | Ameriguard Security Services, Inc. |
| 1766469 | Apple Markets, Inc |
| 1502158 | Arborworks, Inc. |
| 1721164 | Arctic Glacier U.S.A., Inc. |
| 1730194 | Arena Staffing |
| 1635198 | Arvato Digital Services LLC |
| 1687588 | B.L. Price Co., Inc. |
| 1733753 | Beaumont-Cherry Valley Water District |
| 1765753 | Bellisi Design and Millwork |
| 1666608 | Big Indie Candy, Inc. |
| 1759710 | Blazona Concrete Construction, Inc. |
| 1730839 | Boonstra Construction Inc. |
| 1789027 | Butte County Rice Growers Association |
| 1780002 | CA Transportation |
| 1682156 | Cal Fire Riverside County Fire Department |
| 1787531 | California Franchise Tax Board |
| 1680685 | City of Beverly Hills Fire Department |
| 1637137 | Costco Wholesale Corporation, Store #488 |
| 1770400 | Crawford Bros., Inc. |
| 1753389 | Daneco Electric, LLC |
| 1519491 | Davey Resource Group, Inc. |
| 1638625 | Dolgen California, LLC |
| 1757782 | Doughtronics, Inc. |
| 1635473 | Duke Pacific Inc |
| 1591404 | Dwayne Nash Industries, Inc. |
| 1659598 | Eastridge Workforce Solutions |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 23, 2025

| | |
|---------|--|
| 1605124 | Eco Logic Brands, Inc. |
| 1745854 | Ellingson, Inc. |
| 1757200 | Falck Northern California Corp. |
| 1641789 | Fred Leyendekker |
| 1690062 | Fresh Up Enterprises, Inc. |
| 1694135 | Gilwin Co. Inc. |
| 1711803 | Henkel US Operations Corporation |
| 1740980 | J Coates Builders, Inc |
| 1793240 | Jones/Covey Group Incorporated |
| 1618658 | L&W Supply Corporation |
| 1601775 | Lopez Contractors, Inc. |
| 1571046 | Los Angeles Department of Water and Power |
| 1764662 | LVE Construction, Inc. |
| 1638214 | Mann Packing Co., Inc. |
| 1667516 | Martin Marietta Southern California Aggregates |
| 1730890 | Mendocino Forest Products |
| 1768666 | Metal Manufacturing Company, Inc. |
| 1773498 | Modoc County |
| 1598701 | Montebello Container Company, LLC |
| 1752798 | NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA |
| 1496780 | Norman Industrial Materials, Inc. |
| 1449883 | Northstar Contracting Group, Inc. |
| 1609724 | Nutrien AG Solutions |
| 1739239 | Oliver & Company, Inc |
| 1652290 | Pacific Structures, Inc. |
| 1766308 | Phillips 66 Company |
| 1724963 | Pipeline Carriers, Inc |
| 1697159 | Powers Construction & Engineering, Inc. |
| 1765833 | Prestige Striping Services, Inc. |
| 1771147 | Pulgarcito Querido Restaurant |
| 1640191 | Pulmuone Foods USA, Inc. |
| 1507549 | Ralph's Grocery Company |
| 1755351 | Reliant Electrical Service, Inc. |
| 1777131 | Reyes Coca-Cola Bottling L.L.C. |
| 1794939 | Reyes Coca-Cola Bottling, L.L.C. |
| 1737158 | Rotoco, LLC |
| 1530810 | Saarman Construction, LTD. |
| 1788650 | Sacred Tree 365 LLC |
| 1721766 | San-Mar Construction Co., Inc. |
| 1776919 | Scorpion Scaffolding Inc |
| 1552122 | Sharp Memorial Hospital |
| 1743751 | Shenzhen New World Group Co., LTD |
| 1771668 | Shiv Investment LLC |
| 1781880 | Shoreline Builders, Inc. |
| 1737782 | Sierra Grande Roofing, Inc. |
| 1583567 | SSA Terminals (Oakland), LLC |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 23, 2025

| | |
|---------|---|
| 1534514 | State of California, Dept. of Social Services |
| 1748250 | Superior Tile and Stone Works Inc |
| 1779756 | Sylvester Roofing Company Inc. |
| 1759030 | T M Duché Nut Co, Inc |
| 1761040 | The Cleaner Earth Company Inc. |
| 1798906 | The Scripps Research Institute |

Action: The Board discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

The Closed Session adjourned at 11:02 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 Board meeting was adjourned at 11:03 a.m.