

**State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS
BOARD**

CLOSED SESSION AGENDA

Government Code § 11126 (a), (c)(3), (e) and (f)

for

Thursday, April 30, 2020

9:30 a.m.

Teleconference Meeting

TO: Members of the California Occupational Safety & Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: April 17, 2020

RE: Closed Session of the Board to be held on April 30, 2020

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session. 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.

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.)

1304393 PET BROKERS, INC.

1297346 ROADS SAFE TRAFFIC SYSTEMS, INC.

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has 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.)

1256643 GIUMARRA VINEYARDS CORPORATION

PETITIONS FOR RECONSIDERATION (Second Review):

1133550 HANSFORD INDUSTRIES, INC. dba VIKING STEEL
1231720 RIVERSIDE CITY FIRE DEPARTMENT
1280908 SIBONEY CONTRACTING CO
1320327 SOUTHERN CALIFORNIA EDISON
1061365 SPHERE ALLIANCE INC dba ADVANCED AIRCRAFT SEAL

ORDERS DISMISSING APPEAL:

1178064 SEVEN ISLAND PAINTING, INC.

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1423058 VISE COMPANY, INC.

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.

1200176 AEROTEK, INC. dba AEROTEK
Whether Employer established and implemented its IIPP as required.

1272378 ANDREW HARRISON BARNES
Whether Mr. Barnes was/is an employer.

1141604 BOY RACER INC. DBA BURNING ANGEL
(EMPLOYER'S PETITION)
Whether adult film performers are employees or independent contractors.

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- 1141604 BOY RACER INC. DBA BURNING ANGEL
(DOSH'S PETITION)
Whether adult film performers are employees or independent contractors.
- 1246527 CEMEX
Whether the settlement in this matter was procured by fraud.
- 316446855 CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367
Whether adult film performers are employees or independent contractors.
- 1206788 DPR CONSTRUCTION, INC. ET AL
Whether the Division had jurisdiction. Whether the ALJ decision constituted an underground regulation.
- 1300039 EMERICARE, INC. dba BROOKDALE NORTHRIDGE
Whether the employer's alternate means of guarding satisfied the requirements of the applicable safety order.
- 1199473 FEDEX GROUND
Whether Employer's supervision of the workplace was reasonable.
- 1308948 GOLDEN STATE BORING & PIPE JACKING, INC.
Whether the cited Employer committed the alleged violations and whether the ALJ erred in evidentiary rulings.
- 1310525 GOLDEN STATE FC, LLC
Whether Employer provided appropriate foot protection under § 3385.
- 1235643 GRANITE CONSTRUCTION CO., INC/GRANITE INDUSTRIAL
Whether the Division proved exposure to Valley Fever.
- 1205077 HANOVER R S CONSTRUCTION LLC
- 1251604 INTERLINE BRANDS, INC.
Whether Employer had provided adequate foot protection by means of administrative and engineering controls.
- 1213886 JACE VARGHESE
Whether Employer has satisfied requirements of petition for reconsideration.

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- 1173183 L & S FRAMING, INC.
Whether the stairway involved was a “stairwell.” Whether the motion to amend citation was timely and for good cause.
- 1304615 MASTER TREE SERVICE, INC.
Whether the appeal was late and if so, was there good cause for the late appeal? Whether the employer’s motion to include additional citations be treated as a motion to amend the appeal.
- 1290766 MILLENIUM 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.
- 1236440 PAPICH CONSTRUCTION COMPANY, INC.
Whether the Division proved exposure to Valley Fever.
- 1199064 SA RECYCLING
Whether employer established that, the alleged violation was abated at the time of inspection.
- 1237932 SACRAMENTO COUNTY WATER AGENCY
Whether the citation was correctly classified as serious. Whether the ALJ correctly denied Employer’s Newbery defense.
- 1402052 UNION PACIFIC RAILROAD
Whether there was good cause for the late appeal.
- 1242676 UNITED PARCEL SERVICE, INC.
Whether the cited Employer had an effective IIPP and trained its employees as required.
- 1226666 WASHINGTON ORNAMENTAL IRON WORKS, INC., dba WASHINGTON IRON WORKS
Whether the Administrative Law Judge was correct in holding Employer had violated the safety orders as alleged in Citation 1, Item 1, and Citation 2.

LEGISLATION:

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. MARIA DE LOS ANGELES COLUNGA DBA MERCED FARM LABOR, 15CV-00945 (08-R2D1-3093 through 3098)
2. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002206 (12-R3D1-0781)
3. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
4. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
5. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
6. KEY ENERGY SERVICE, LLC 12004280
7. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV, 34-2017-80002562, (1144056)
8. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
9. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
10. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
11. BLUE DIAMOND GROWERS, (1040471)
12. UNITED PARCEL SERVICE, (1158285)
13. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
14. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
15. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
16. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)

17. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
18. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
19. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
20. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
21. STADCO, INC., 192TCP04944(1142674)
22. PRESTIGE PAINTING, 37-2019-00066143 (1367265)

APPELLATE COURT:

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
2. VENTURA COASTAL, F077267 (317808970)
3. LION FARMS, LLC, MCV075788 (1070258)
4. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)
5. ATKINSON CONSTRUCTION, LP, 34-2017-80002611, C091705
(317386084)

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.)

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| 1375093 | AEROTEK, INC. |
| 1356474 | AFFLUENT STAFFING, LLC. |
| 1381445 | ANCHOR DISTRIBUTING, INC. |
| 1316450 | ANGELES CONTRACTOR, INC. |
| 1422345 | APEX CONVEYOR SYSTEMS |
| 1426896 | ARDENT CARE LLC |
| 1321057 | ART & SON CONSTRUCTION, INC. |
| 1228759 | ASA GROUP CONSTRUCTION INC |
| 1399807 | BASIL R. BESH, M.D., INC. |

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1405607 BEYER SERVICES, LLC
1425503 BROWER MECHANICAL, INC.
1247132 CA CORRECTIONS VALLEY STATE PRISON
1406441 CERTAINTEED CORPORATION
1437268 COAST PLATING, INC. VALENCE SURFACE
1361343 CORAL REEF ENTERPRISES, INC.
1439789 CORK SUPPLY USA, INC.
1445015 COUNTRY SWEET PRODUCE, INC.
1283067 DANIEL ELLIOTT
1441881 EMPLOYBRIDGE HOLDING COMPANY
1449598 EMPLOYBRIDGE LLC
1449598 EMPLOYBRIDGE LLC
1412699 ERIC EDWARD TOVAR-PLUMMER, AN INDIVIDUAL
1385330 EXCALIBUR WELL SERVICES CORPORATION
1405728 FARM MANAGEMENT, INC.
1420284 FEDEX EXPRESS
1288202 FFC INC
1424496 GARFIELD CAR WASH
1392701 GIB HINDS MANURE SPREADING
1447202 GIBRALTAR CONVALESCENT HOSPITAL, INC.
1407679 GLENDALE CLASSIC CAR WASH, INC.
1400293 GRANITE CONSTRUCTION COMPANY
1427830 GRAY CABINETS & MILLWORK, INC.
1425263 HALL MANAGEMENT CORP.
1334671 J & M, INC.
1275900 J DREYFUSS & ASSOCIATES INC
1394404 JEFF WYMAN, AN INDIVIDUAL
1412052 JOEY RESTAURANT (WOODLAND HILLS), INC.
1431347 JTS MODULAR, INC.
1413003 L.T.S. ENTERPRISES, INC.
1424443 LAWRENCE ROLL UP DOORS, INC.

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1342377 LEHIGH SOUTHWEST CEMENT COMPANY
1441624 LES SCHWAB TIRE CENTERS OF CALIFORNIA, INC.
1342610 LORENTZ BRUUN CONSTRUCTION, INC.
1300823 MERCER, FRASER COMPANY
1413709 MOONLIGHT PACKING CORPORATION
1428020 MOTHER EARTH LANDSCAPE
1387554 MSS CONSTRUCTION, INC.
1405105 NATIONAL CABLE SERVICES, INC.
1438206 ONEHALLOWEENNIGHT, INC.
1414837 PARADOX PICTURES, LLC
1313006 PARSONS BROS ROCKERIES CALIFORNIA INC.
1396302 PATRICK LYNCH
1440592 PAUL WARD
1413918 POLYCHROME CONSTRUCTION, INC.
1400864 PRO TEK CONSTRUCTION, INC.
1419505 PRO-TEK MANUFACTURING, INC.
1416218 PROMOTEX INC.
1427709 PUCHEU BROS. RANCH, INC.
1350791 READY ROAST NUT COMPANY
1354477 RMR CONSTRUCTION COMPANY
1401325 SCHLOSSER FORGE COMPANY
1386070 SCOTTISH RITE TEMPLE ASSOCIATION OF OAKLAND,
1428364 SEQUOIA ROOFING, INC.
1440582 SERVICE CONNECTION, INC.
1451151 SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE
1213159 SPEP AQUISINON CORP DBA SIERRA PACIFIC
1390101 SUDEEP SINGH FAMILY LIMITED LIABILITY LIMITED
1360993 T&R LUMBER COMPANY
1289089 TC CONSTRUCTION COMPANY INC.
1309837 TESLA, INC.
1408789 TOP IT OFF BOTTLING, LLC

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1372702	TORRES GENERAL, INC.
1403666	UNITED AIRLINES
1405730	UNITED RENTALS, INC.
1416469	VIRGINIA PARK FOODS, LLC
1452616	WALMART, INC.
1252901	WASTE MANAGEMENT OF CALIFORNIA, INC.
1451185	WILLO CUSTOM CABINETS, INC.
1349793	WORLD CLASS PAINTING, INC.
1274088	XPO LOGISTICS

PERSONNEL:

(Issues regarding staff.)

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