

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), (e) and (f)
For
Teleconference Meeting
Thursday, May 14, 2020
9:30 a.m.

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

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: May 1, 2020

RE: Closed Session of the Board to be held on May 14, 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.)

1267767	FRAMING BY SUPERIOR, INC.
1282512	ROLCOM, INC.
1251879	TARGET STORES, 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.)

1384029	USA WASTE OF CALIFORNIA, INC.
1436004	LMC CONSTRUCTION, LLC
1426393	HOSPITALITY WOOD PRODUCTS
1101230	MTM BUILDERS, INC.

PETITIONS FOR RECONSIDERATION (Second Review):

1256643	GIUMARRA VINEYARDS CORPORATION
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ORDERS DISMISSING APPEAL:

NONE

ORDERS DENYING LEAVE TO FILE LATE APPEAL:

1422960	CHAMPION HOME BUILDERS, INC.
1427416	HENGLI GARDEN DESIGN, INC.
1436004	LMC CONSTRUCTION, LLC
1444529	SERGIO GONZALEZ

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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 1, 2020

- 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.
- 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 employer was in violation of injury and illness
prevention plan requirements and lockout/tagout
requirements as alleged.
- 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.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 1, 2020

- 1205077 HANOVER R S CONSTRUCTION LLC
Whether the ALJ committed reversible error in evidentiary rulings regarding the alleged injury and illness prevention plan violation and the forklift operations violations
- 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.
- 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.
- 1320327 SOUTHERN CALIFORNIA EDISON
Whether the ALJ commit reversible errors of law and/or fact in ruling on each of the alleged violations.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 1, 2020

- 1061365 SPHERE ALLIANCE, INC. dba ADVANCED AIRCRAFT SEAL
Whether the Division had jurisdiction to cite the employer.
- 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 ALJ was correct in holding the employer
violated the injury and illness prevention plan
requirements, the injury log (recordkeeping) requirement,
and the machinery operational limitations, as alleged in
the citations.

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)

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 1, 2020

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)
6. BRAGG CRANE, A158500, HG18930741 (1157108)

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.)

1310797	A TEICHERT & SON, INC.
1425892	A.J. FISTES CORPORATION
1462580	ARNEY CORBIN GEORGE JENKINS
1414860	ASBESTOS INSTANT RESPONSE, INC
1309972	BARONHR, LLC.
1445631	BARSTAD ELECTRIC, INC.
1258218	BASALITE CONCRETE PRODUCTS
1287897	BOB AND SUE VANELLA
1386803	BOTTLING GROUP, LLC
1422318	BRIGHTVIEW TREE CARE SERVICES, INC.
1361311	BRILL, INC.
1316471	C. OVERAA & CO.
1414031	CA-BOLCO CONSTRUCTION CO.
1378903	CALIFORNIA RANCH FOOD COMPANY, INC.
1399963	CANIVET CONSTRUCTION, INC.
1369262	CEN CAL BUILDERS & DEVELOPERS INC.
1407340	CERTIFIED MECHANICAL SERVICES, LLC
1449245	DEVIKA, INC.
1359537	DIRECT PLACEMENTS STAFFING, INC.
1421007	DURANT HARVESTING, INC.
1344087	EMERALD METAL PRODUCTS
1382499	FALCON BAYAREA SECURITY CORPORATION
1347909	FOSTER POULTRY FARMS
1305405	HARO'S CABINETS, INC.
1410091	J & J HEATING & AIR, INC.
1413729	JECO, INC.
1435033	JOSE D. NAVAS

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 1, 2020

1401756	KERN RIDGE GROWERS, LLC.
1213138	KIMCO STAFFING SERVICES
1438720	KLT PROPERTIES, LLC
1434997	KOA CCTV, INC.
1445689	KUELPER CONSTRUCTION, INC.
1460351	L&T STAFFING INC
1338269	LEHIGH HANSON
1373149	LOUNGE APPEAL, INC.
1372543	LUCINO'S GENERAL CONSTRUCTION, LLC
1428025	MADISON WINDOW PRODUCTS, INC.
1436155	MANNA DEVELOPMENT GROUP
1422358	MARK DANIELS
1430492	MENLO FOOD CORPORATION
1396562	MILLER FAMILY WINE COMPANY, LLC
1393315	MOZZETTI TRUCKING INC.
1409133	PEOPLEREADY, INC.
1453467	POWERHOUSE SOLAR, INC.
1421006	PROSET CONSTRUCTION, INC.
1425971	R & R ROOFING & WATERPROOFING, INC.
1386718	RONAK GOR
1449016	RUBBERCRAFT CORPORATION OF CALIFORNIA LTD
1444582	SAUL PEREZ
1425693	SIERRA PACIFIC INDUSTRIES
1326130	SILVERLINE CONSTRUCTION, INC.
1387832	SINGLE EAGLE INC.
1261165	STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS
1411315	STILES TRUCK BODY & EQUIPMENT
1330921	SWEETWOOD FARM, INC.
1326316	TELESIS ONION, INC.
1408090	THE J PAUL GETTY TRUST
1457984	THE PACIFIC COOKIE COMPANY, INC.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted May 1, 2020

1413720	THE PETERSON FAMILY
1424592	THE WINE GROUP, INC.
1441312	THOMPSONGAS LLC
1362091	TILLER CONSTRUCTORS PARTNERSHIP, INC.
1468114	TMSO, INC.
1422347	TRUEBLUE, INC.
1328464	US MINE CORPORATION
1314730	W. B. STARR, INC.
1333809	W.J. GRIFFIN, INC.
1333809	W.J. GRIFFIN, INC.
1431313	WIEFELS & SON II, INC.
1463354	WJLP COMPANY, INC

PERSONNEL:

(Issues regarding staff.)

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