

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**

**Held on February 20, 2020
Sacramento, California
West Covina, California**

PRESENT:

Ed Lowry, Chair
Judith Freyman, Member
Marvin Kropke, Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Autumn Gonzalez, Industrial Relations Counsel
Andia Farzaneh, Attorney
Janis Jonas, Management Services Technician

MINUTES OF February 6, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved the minutes of the February 6, 2020 meeting.
Moved: Judith Freyman.
Member Kropke seconded.
The vote was 3-0.

NEW BUSINESS:

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

- Addressing office security for staff and equipment.

ACTION: The Board discussed potential security measures to implement and preparedness efforts to take, to insure safety during hearings.

OLD BUSINESS:

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

- February 26, 2020 Roundtable Discussion

ACTION: The Board discussed final preparations for the Stakeholders' Roundtable Discussion planned for February 26, 2020.

- Discussion on categorizing the Board's DARs and Denials on the DIR website.

ACTION: The Board discussed categorizing DARs and Denials on the DIR website.

LEGISLATION:

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

ACTION: No report.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Lowry informed the Board of several Labor issue appointments made by Governor Newsom.

Chair Lowry shared information learned from attending a meeting at the State Secretary's office.

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: Acting Executive Officer Patricia Hapgood updated the Board on the progress of accessibility of documents posted to the website. Documents needing to be outsourced for formatting have been identified.

STAFF REPORTS:

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

- REGULATIONS:
ACTION: Counsel Aaron Jackson informed the Board that the regulation package has been passed by the Department of Finance and is waiting for a signature.
- LITIGATION UPDATE:
ACTION: Chief Counsel Mojcher reported 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 public comments.

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.)

NONE

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.)

1226666 WASHINGTON ORNAMENTAL IRON WORKS INC.
ACTION: The Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1226084 DAVIS DEVELOPMENT COMPANY, INC.
ACTION: Denial to issue.
 Moved: Judi Freyman.
 Seconded: Marvin Kropke.
 Vote: 3-0

1152851 VINCENT TOUMEY
ACTION: Denial to issue.
 Moved: Judi Freyman.
 Seconded: Marvin Kropke.
 Vote: 3-0

ORDERS DISMISSING APPEAL:

1365913 BACK TO BACK SERVICE & TIRES, LLC
ACTION: The Board discussed.

1165931 IAN CZIRBAN
ACTION: The Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1395729 ANTONIO CORONA
ACTION: The Board discussed.

1304615 MASTER TREE SERVICE, INC.
ACTION: The Board to take under reconsideration under own motion.
Moved: Judith Freyman.
Second: Marvin Kropke.
Vote: 3-0

1422470 THOMPSON BUILDERS
ACTION: The Board discussed.

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.

1374636 AMERI-KLEEN
Whether Employer showed good cause for late appeal.

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

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- 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.
- 1199473 FEDEX GROUND
Whether Employer's supervision of the workplace was reasonable.
ACTION: The Board discussed.
- 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.
- 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.
- 1386789 MARIANO MORENO & ARCELIA TOSTADO, INDIVIDUALLY
Whether Employer showed good cause for late 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.
ACTION: The Board discussed.
- 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.
- 1123110 SINCLAIR CONCRETE, INC.
Whether the widow of decedent employee had adequate notice of Employer’s appeal of the OSHA citation.
ACTION: Issue DAR.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Vote: 3-0
- 1088791 TUTOR PERINI CORPORATION
Whether Employer violated safety orders pertaining to keeping equipment and spoils a safe distance from an excavation.
ACTION: The Board discussed.
- 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.

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. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
3. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002206 (12-R3D1-0781)
4. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)
5. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
6. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
7. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
8. KEY ENERGY SERVICE, LLC 12004280
9. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
10. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
11. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
12. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
13. BLUE DIAMOND GROWERS, (1040471)
14. UNITED PARCEL SERVICE, (1158285)
15. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
16. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
17. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)

18. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
19. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
20. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
21. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
22. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
23. STADCO, INC., 192TCP04944 (1142674)
24. 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. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910 (1111325)
4. LION FARMS, LLC, MCV075788 (1070258)
5. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)

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.)

1145146	AAA ROOFING BY GENE, INC
1375902	AERO ELECTRIC CONNECTOR INC.
1413487	AEROTEC ALLOYS, INC.
1262166	AGRILAND INCORPORATED
1405976	AIR PRODUCTS AND CHEMICALS, INC.
1358341	AIR SYSTEMS, INC
1248996	AJM PACKAGING CORPORATION
1432285	AKSHAR INC.
1442048	ALLIANCE PAINTING & DECORATING, INC.
1314400	AMCAL GENERAL CONTRACTORS, INC.
1357588	AMERICAN COOLING, INC.
1228086	ANDERSON LOGGING
1297866	ANGELUS BLOCK CO., INC.
1336597	ARE DESIGN BUILDERS, INC.

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1097707 ATKINSON/WALSH A JOINT VENTURE AND ATKINSON
1354011 ATRIA MANAGEMENT COMPANY, LLC.
1323406 AVAR CONSTRUCTION INC
1409532 BAVARO FARMING COMPANY, INC.
1420850 BELLEVUE MEMORIAL PARK
1269110 BRIGHT EVENT RENTALS, LLC
1354152 BUDDHIST TZU CHI FOUNDATION
1275691 BUILD GROUP, INC.
1266137 C & K CUSTOM SAW & MILLS, INC.
1376406 CA CORRECTIONS AND REHABILITATION
1417660 CA STATE HOSPITALS (DSH) ATASCADERO
1434666 CALIFORNIA BUILDING & ROOFING SUPPLY CORP.
1447086 CAPAY FARMS, INC.
1412890 CASA CANELA, INC.
1343362 CASA HERRERA, INC.
1407060 CHCM, INC.
1437127 CMC RESCUE, INC.
1403383 COLD STORAGE MANUFACTURING, INC.
1413963 COLLEGE HOSPITAL, INC., COLLEGE HOSP. GROUP, INC.
1427329 COMBUSTION ASSOCIATES, INC.
1415524 CONVEYOR & STORAGE SOLUTIONS, INC.
1368878 COSTCO WHOLESALE CORP. DBA COSTCO DEPOT
1385003 CREEKSIDE FARMING COMPANY, INC.
1417298 DB MOTELS, INC.
1155475 DEL MONTE FOODS, INC.
1229816 DU CROS ELECTRICAL CONTRACTING & DESIGN INC.
1389742 E.W. BOYKIN CONSTRUCTION COMPANY
1373182 FASTENER TECHNOLOGY CORPORATION
1169911 FLORENCE AUTO PARTS, INC.
1387665 FOREST LAWN MORTUARY
1398314 FULL STEAM STAFFING, LLC
1407476 FULL STEAM STAFFING, LLC
1305649 GANDOLA'S LANDSCAPE & LAWN CARE INC
1344845 GOLDEN STATE FC, LLC.
1426270 GREGORY A. KUPPER
1382871 HALEY BROS, INC.
1347052 HAYKINGDOM INC.
1389893 HEARTLAND STEEL PRODUCTS WEST LLC
1381665 HN CONSTRUCTION SERVICES
1426910 HOLLANDIA FARMS NORTH, INC.
1381942 HOUSING AUTHORITY OF THE COUNTY OF MERCED
1445995 HUNNYS RESTAURANTS, INC.
1312302 I LINK MANAGEMENT
1399145 INFINIUM AIR, INC.
1361839 J G BOSWELL COMPANY
1275552 J.W. MCCLENAHAN CO.

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1155353 JM EQUIPMENT COMPANY, INC.
1322937 JOE HEIDRICK ENTERPRISES, INC.
1446280 JORGE ROMERO
1435643 JOSEPH L. CHIRIACO, INC.
1383712 KATHLEEN RYAN
1420285 KENTUCKY MATERIAL HANDLING SYSTEMS, INC.
1378705 KW STEEL, INC.
1401004 LANDSEA HOLDINGS CORPORATION
1396931 LANGETWINS, INC.
1409669 LKQ CORPORATION / LKQ NORTHERN CALIFORNIA
1417224 MAGNUS HOSPITALITY MANAGEMENT, INC.
1411480 MARIE CALLENDER'S, INC.
1351812 MODERN HR, INC.
1373134 MORRELL'S ELECTRO PLATING, INC
1378910 NAUTILUS GROUP, INC
1226741 NES EQUIPMENT & SERVICE CORPORATION
1409171 NEW IMAGE LANDSCAPE COMPANY
1234266 NIELSEN FARMS, INC.
1313401 NORMAN JACOBSON REALTY RESOURCES, INC.
1415779 NSI SERVICES, INC
1420231 OAK HARBOR FREIGHT LINES, INC.
1350091 OLD DOMINION FREIGHT LINE, INC.
1353104 OLIMPO GONZALEZ MARISCAL
1275717 PACIFIC STEEL GROUP
1290783 PBA LTD
1431064 PRATHER DRYWALL & PLASTERING, INC.
1394483 PREMIER STEEL STRUCTURES, INC.
1377974 PURE HOME REMODELING
1366766 QUIKRETE INTERNATIONAL INC.
1363386 R & B FARM SERVICES
1292758 R D OLSON CONSTRUCTION INC
1400527 RANCHO WEST LANDSCAPE, INC.
1368768 REYES COCA COLOA BOTTLING, LLC.
1438901 ROBERT COLBURN ELECTRIC, INC.
1337902 SAFELITE FULFILLMENT, INC.
1382280 SAN FRANCISCO OPERA
1418023 SAN GABRIEL STAFFING SERVICES, LLC
1426899 SB CLOSETS LLC
1299738 SCAFFOLD SOLUTIONS INC
1426889 SCHMIDBAUER LUMBER, INC.
1277795 SDLOFTS INC. DBA
1419326 SEABRIGHT SOLAR
1423956 SECARD POOLS & SPAS
1191741 SHZ DEVELOPMENT INC
1206870 SIEMENS POSTAL PARCEL AND AIRPORT LOGISTICS, LLC
1210984 SKY HARBOR FULLERTON LLC

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1364516	SMURFIT KAPPA NORTH AMERICA, LLC.
1420539	SOLTA DEVELOPMENT LLC, CLONTARF MANOR
1299162	STAFFMARK INVESTMENTS, LLC.
1378288	STILES CUSTOM METAL, INC.
1412206	SUTTER HEALTH
1309103	TESLA, INC.
1339346	TIME OUT PIZZA & FUN CENTER
1416623	U-HAUL
1403402	UNITED LABOR SERVICES, INC.
1413381	V I S E COMPANY, INC.
1412337	VAN RYN BROTHERS
1377962	VEST, INC.
1438201	VINA GOLD ALMOND HULLING & DRYING, LLC
1315943	WEST COAST ARBORISTS, INC.
1431284	WILLIAM EUGENE ZIMMER, AN INDIVIDUAL
1407312	WOOD SERVICE PALLETS, INC.

ACTION: All Administrative Law Judge Settlement Orders approved.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Voted: 3-0

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 12:48 p.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 was adjourned at 12:49 p.m.