

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

Held on March 19, 2020
Sacramento, California
West Covina, California

PRESENT:

Public Member: Ed Lowry, Chair
Management Member: Judith Freyman
Labor Member: Marvin Kropke
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
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician

MINUTES OF March 5, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the March 5, 2020 meeting.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
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.)

- Discussion regarding topics raised at the February 26, 2020 Stakeholder's Round Table:

ACTION: Due to the current National emergency and transition to teleworking and remote operation of business, it was decided to create a list of the topics raised at the round table discussion and distribute this to the Board for further discussion.

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 announced that Judi Freyman has been reappointed as a member of the Board for another term and was sworn in March 17, 2020.

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: Executive Officer Hapgood reported on the progress of developing alternatives for working under the Governor's orders to shelter in place for a period of time because of the Covid-19 virus pandemic.

STAFF REPORTS:

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

- REGULATIONS:

ACTION: No report.

- 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.)

- 1312486 BLACKWOOL, INC.
ACTION: Board discussed.

- 1133550 HANSFORD INDUSTRIES, INC. DBA VIKING STEEL
ACTION: Board discussed.

- 1231720 RIVERSIDE CITY FIRE DEPARTMENT
ACTION: Board discussed.

- 1320327 SOUTHERN CALIFORNIA EDISON
ACTION: Board discussed.

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.)

- 1395729 ANTONIO CORONA dba CENTRAL VALLEY UPHOLSTERY
ACTION: Board discussed.

- 1356215 VIKING INSULATION CO., INC.
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

- 1325655 AMERICAN LINEHAUL CORPORATION
ACTION: Denial issued.
 Moved: Judith Freyman.
 Second: Marvin Kropke.
 Vote: 3-0

1300039 EMERICARE, INC.
ACTION: Order Granting Reconsideration issued.
 Moved: Judith Freyman.
 Second: Marvin Kropke.
 Vote: 3-0

ORDERS DISMISSING APPEAL:

NONE

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1398487 SMITH & SONS DISASTER KLEENUP, INC.
ACTION: Board discussed.

1404796 XING CONSTRUCTION, INC.
ACTION: 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.

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

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 19, 2020

- 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.
- 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.
- 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 19, 2020

- 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.
- 1088791 TUTOR PERINI CORPORATION
Whether Employer violated safety orders pertaining to keeping equipment and spoils a safe distance from an excavation.
- 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. 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. LION FARMS, LLC, MCV075788 (1070258)
4. 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.)

- | | |
|---------|---|
| 1436165 | 1-888-4-ABATEMENT, INC. |
| 1320314 | AEROTEK |
| 1346622 | ALL AMERICAN LABOR SERVICE, INC. |
| 1342945 | ALTMAN SPECIALTY PLANTS, INC. |
| 1386096 | ANA LUISA CORONO LUNARES |
| 1424770 | ARNOP AMARAPHORNKUL |
| 1436765 | ART CARE INTERNATIONAL |
| 1392056 | ASSOCIATED CONSTRUCTION ENGINEERING, INC. |
| 1385652 | ATRIA SENIOR LIVING, INC. |
| 1368293 | AWAKENING VITALITY LLC |
| 1320773 | AZUL WORKS, INC. |
| 1406584 | BASORE PAINTING |
| 1407168 | BEO-MAG, INC. |
| 1348195 | BIG RED MACHINE SHOP, INC. |
| 1377400 | BLH CONSTRUCTION COMPANY |
| 1398420 | BODEGA LATINA CORPORATION |
| 1285742 | BUILDERS FIRSTSOURCE, INC. |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 19, 2020

1425659	C HAMMOND CONSTRUCTION
1337612	CAL SUPREMA CHEESE CO.
1308645	CAST-RITE CORP
1438685	CASTLE PLASTERING, INC.
1355656	CERTIFIED TIRES & SERVICE CENTERS, INC.
1426680	CHICO PAINTING, INC.
1435291	CJB COMMUNICATIONS INC.
1438930	COASTAL INNOVATIVE PRODUCTS, INC.
1189314	CONRE INC.
1366612	CONTI SOLAR
1416131	CONTROL AIR ENTERPRISES LLC
1309466	COOLING DYNAMICS HVAC, INC
1423649	COSTCO WHOLESALE CORPORATION
1419493	CRAIN WALNUT SHELLING, INC.
1394811	DALE CANFIELD CONSTRUCTION, INC.
1417285	DOLLAR GENERAL STORE #14306
1385257	EAST LAWN, INC.
1391086	EDF RENEWABLES
1441771	EDGEBANDING SERVICES, INC.
1431967	EMPLOYBRIDGE HOLDING COMPANY
1405731	EVERLASTING ENTERPRISES, INC.
1405281	FEDEX GROUND PACKAGE SYSTEM, INC.
1439909	FITTANTE & SON
1409139	FJ KNIGHT CONSTRUCTION, INC.
1452205	FREEDOM FOREVER LLC
1409177	FULL STEAM STAFFING
1337951	G J TE VELDE RANCH
1405705	GETTLER RYAN INC.
1403934	GHC OF AUBURN LLC / LIFE GENERATIONS HEALTHCARE
1424448	GOURMET'S FRESH PASTA
1418795	GRASSROOTS CAMPAIGNS, INC.
1359519	HALL MANAGEMENT, INC.
1396556	HAYKINGDOM, INC.
1382784	HIBACHI GRILL COUNTRY CLUB, INC.
1368974	HORIZONS CONSTRUCTION COMPANY INTERNATIONAL,
1338287	JENSEN MEAT COMPANY, INC.
1374191	JMB CONSTRUCTION, INC.
1451538	JOHN W LAWS CONSTRUCTION
1395179	K&S AIR CONDITIONING
1421265	KAISER PERMANENTE / KAISER FOUNDATION HOSPITALS
1279149	KIP INCORPORATED
1394867	L.P. MCNEAR BRICK CO., INC.
1437722	LA BOTTLEWORKS, INC.
1442050	LE PAFE, INC.
1385989	LYNWOOD UNIFIED SCHOOL DISTRICT
1391439	M BAKER MANAGEMENT

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 19, 2020

1411758 MAMA COZZAS ITALIAN INN, INC.
1418305 MARSHALL BROTHERS ENTERPRISES, INC.
1373184 MARTIN & MICHAEL CONSTRUCTION, INC.
1279262 MCGUIRE AND HESTER
1418654 MDS ENTERPRISES, INC.
1267050 MEYERS CONSTRUCTORS INC.
1393453 MICHAEL KORS (USA), INC.
1431265 MID-STATE SOLID WASTE AND RECYCLING SERVICES,
1308644 MIDWAY CONSTRUCTION
1419396 MORAN CANVAS PRODUCTS, INC.
1394604 MOTIV DESIGN GROUP, INC.
1361316 NEAL PORTLOCK CONSTRUCTION, INC.
1422656 NEW IMAGE LANDSCAPE COMPANY
1426678 NORCAL CB - FIRST ST, INC.
1280716 OLDCASTLE PRECAST, INC.
1252283 OMNIMAX GROUP, INC.
1350669 PACIFIC AG & VINEYARD, INC.
1408596 PACIFIC BORING, INCORPORATED
1398000 PACIFIC FARM MANAGEMENT, INC.
1360329 PARTNERS PERSONNEL MANAGEMENT SERVICES, LLC.
1270626 PEKING NOODLE CO., INC.
1426748 PHOENIX DESIGN SYSTEMS, INC.
1399179 PREMIER DISPLAYS & EXHIBITS, INC.
1425687 PREMIER FOOD CONCEPTS, LLC
1264908 PRO STRUCTURAL, INC.
1369973 RAMCAST ORNAMENTAL SUPPLY
1426014 RED LINE INSTALLATIONS, INC.
1391712 RED TOP JERSEYS DAIRY
1299097 RESICOM, INC.
1453361 RESSAC
1422642 ROSS DRESS FOR LESS, INC.
1433082 SALAZAR DRYWALL, INC.
1369171 SAN FRANCISCO FOODS, LLC
1434051 SCHMALL'S HATCHERY AND RANCH
1326939 SEARLES VALLEY MINERALS, INC.
1378823 SECA EQUIPMENT REMOVAL & DISMANTLING, INC.
1225907 SIBONEY CONTRACTING CO
1351439 SPECIALIZED MILLING
1434052 STAGNARO BROS. SEAFOOD, INC.
1349107 STATEWIDE ROOFING, INC.
1281912 SUN VALLEY RAISINS, INC.
1360913 SUPREME LANDSCAPE & TREE EXPERTS INC.
1265180 T W R ENTERPRISES, INC.
1425868 TABLE DE FRANCE
1268303 TESLA, INC.
1296310 THE HOME DEPOT USA INC SDC #5645

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
March 19, 2020

1363530	TIM LAWLOR CONSTRUCTION
1418041	TIMBERLINE ENGINEERING
1377904	TIMBERWORKS BUILDING CONTRACTORS, INC.
1450792	TIMMONS WOOD PRODUCTS, INC.
1374177	TRINITY FRAMING & CONSTRUCTION, INC.
1368595	ULTRA WELDING
1436948	VERO'S TREE SERVICE, INC.
1352131	VIEIRA AGRICULTURAL ENTERPRISES, LLC.
1411401	VILLA PARK ORCHARDS ASSOCIATION
1297309	WALT DISNEY PARKS & RESORTS U. S. INC.
1351598	WATER ASSOCIATES LLC
1381991	WAYNE J. SAND & GRAVEL, INC.
1375724	WESLAR, INC.
1282781	WILLIAM R ANDERSON

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

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 10:59 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 was adjourned at 11:01 a.m.