

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

**Held on April 2, 2020
Teleconference**

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
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 19, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the March 19, 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.)

ACTION: No report.

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 the appointment of a new DIR Director, Katrina Hagen. There was then a discussion on procedures the Board is using during the Covid-19 lock down.

BOARD MEMBERS REPORTS:

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

ACTION: Member Freyman updated the Board on the confirmation of her appointment by the Senate Rules Committee.

ACTION: Member Kropke thanked the Board's staff for their efforts in adapting to the working arrangements due to the Covid-19 lock down.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Acting Executive Officer Hapgood explained the work schedule for the Board during the Covid-19 lock down. Most of the Board's staff is teleworking. Sacramento has two employee's splitting each day so that mail and deliveries are covered. The West Covina office has 3 or 4 employees rotating days so that there is one person in the office each day to cover mail and deliveries.

STAFF REPORTS:

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

• REGULATIONS:

ACTION: Counsel Jackson reported that the Regulation package is waiting for signature at the DIR finance office.

• LITIGATION UPDATE:

ACTION: Chief Counsel Mojcher reported on current court cases. It is uncertain if courts will accept oral

arguments by telephone during this medical emergency lock down.

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.)

- | | |
|---------|--|
| 1375070 | CARLTON FORGE WORKS
ACTION: Board discussed |
| 1256643 | GIUMARRA VINEYARDS CORPORATION
ACTION: Board discussed. |
| 1195278 | NUSIL TECHNOLOGY, LLC
ACTION: Board discussed. |
| 1210439 | SASCO
ACTION: Board discussed. |
| 1384029 | USA WASTE OF CALIFORNIA, INC.
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.)

- | | |
|---------|--|
| 1205077 | HANOVER R S CONSTRUCTION LLC
ACTION: Board discussed. |
|---------|--|

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

PETITIONS FOR RECONSIDERATION (Second Review):

1395729 ANTONIO CORONA dba CENTRAL VALLEY UPHOLSTERY
ACTION: Denial issued.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Vote: 3-0

1356215 VIKING INSULATION CO., INC.
ACTION: Denial issued.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Vote: 3-0

ORDERS DISMISSING APPEAL:

1280236 ACKER RESOURCES
ACTION: Board discussed.

1207946 FRANCISCO BAUTISTA
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1399753 ERIC DEAN LARSON, AN INDIVIDUAL
ACTION: Board discussed.

1385041 PC, INC.
ACTION: Board discussed.

1430956 TRANSWORLD INTERNATIONAL CONVERSION
ACTION: Board discussed.

1416217 VEG FRESH FARMS
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.
- 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 cited Employer committed the alleged violations and whether the ALJ erred in evidentiary rulings.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 2, 2020

- 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.
- 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.,
34-2015-80002204 (12-R3D1-0781) (315525790)
4. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002206 (11-2562 thru 2570) (313169724)
5. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221
(13-R4D1-1759)
6. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
7. SOLARCITY CORP., 14-R3D2-3707, 34-2016-80002345
8. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
9. KEY ENERGY SERVICE, LLC 12004280

10. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
11. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
12. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
13. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
14. BLUE DIAMOND GROWERS, (1040471)
15. UNITED PARCEL SERVICE, (1158285)
16. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
17. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
18. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
19. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
20. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
21. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
22. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
23. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
24. STADCO, INC., 192TCP04944(1142674)
25. 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.)

1391062	99 CENTS ONLY STORES, LLC.
1423488	ALLEN CONSTRUCTION, INC.
1405678	ALTA LOMA SCHOOL DISTRICT CARNELIAN ELEMENTARY
1371027	ANGELUS BLOCK CO., INC.
1360448	ANTHONY KIM
1376395	ARCON CONSTRUCTION CORPORATION
1439529	AWESOME DOUGHNUT, LLC
1434053	BECKMANN'S OLD WORLD BAKERY, LTD
1418985	BIG BOUNCE AMERICA, LLC
1441424	BLACKWIDOW LLC
1350991	BODEGA LATINA CORPORATION
1453097	BOETHING TREELAND FARMS, INC.
1428335	BRIGHTVIEW LANDSCAPE SERVICES, INC.
1419822	C&SD CONSTRUCTION, INC
1387059	CA DEPARTMENT OF VETERAN AFFAIRS
1437445	CABINET OUTSOURCE, INC.
1386290	CALAVERAS COUNTY PUBLIC WORKS
1297879	CALIFORNIA HUMAN DEVELOPMENT CORPORATION
1268283	CITRUS HARVEST, INC.
1392024	CITY OF LOS ANGELES DEPARTMENT OF RECREATION &
1313046	COLORADO FARMS LLC
1390443	COLUMBIA STEEL, INC.
1374643	COMPASS GROUP USA, INC.
1401157	COSTCO WHOLESALE
1396171	CUESTA CONSTRUCTION CO.
1442371	D & E CONSTRUCTION, INC.
1439959	DAN PARISH LTD
1423760	DEMETRIO FLORES ZETIN, AN INDIVIDUAL
1403348	DOLE FRESH VEGETABLES, INC.
1419724	EL PELADO, LLC
1321741	ESSENDANT CO.
1423943	FERRELLGAS PARTNERS, L.P.
1406372	G.L. WOODWORKING, INC
1400563	GEODIS LOGISTICS LLC
1417711	GEREMIA POOLS
1393332	GOLD COAST TREE SERVICE, INC.
1426394	GREAT HIRE, INC.
1410979	GUERRERO ROOFING CORP.
1288706	H&H GROUP ERRONEOUSLY CITED AS PIXIOR, LLC
1402111	HELIX AUTO CENTER INC.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 2, 2020

1257360 INTERNATIONAL GLACE, INC.
1398325 JETT HARVEST, INC.
1418558 JOJO ENTERPRISES, INC.
1305026 JUAN TORRES CONSTRUCTION INC
1287275 LA TAPATIA TORTILLERIA, INC.
1415150 LANDMARK MEDICAL SERVICES, INC.
1218772 LSC COMMUNICATIONS
1374682 M.S. AEROSPACE INC.
1337877 MADLAND TOYOTA-LIFT, INC.
1415544 MARUZEN OF AMERICA, INC.
1386702 MAXIMINIO SILVEIRA DAIRY
1449906 MBC MATTRESS CO., INC.
1405979 MERIT ALUMINUM, INC.
1421631 MILLER-JONES MORTUARY & CREMATORY, INC.
1416811 MT. DIABLO UNIFIED SCHOOL DISTRICT
1446232 MYBURGER & CO., INC.
1420759 NEVADA BARRICADE AND SIGN COMPANY, INC.
1422173 NUIIMAGE WINDOWS & DOORS INC.
1371719 OA LOGISTICS SERVICES, INC.
1377121 OCEAN ELEVEN, INC
1402221 ONNI CONTRACTING (CALIFORNIA) INC.
1421012 OSMOSE UTILITY SERVICES, INC.
1407841 PACIFIC CRANE MAINTENANCE COMPANY LLC
1393174 PACIFIC FOUNDATION, INC.
1439507 PARADISE CHEVROLET CADILLAC
1430971 PEOPLEREADY, INC.
1384969 PETCO ANIMAL SUPPLIES STORES, INC.
1430163 PPS PACKAGING COMPANY
1387087 PROFESSIONAL ASBESTOS REMOVAL CORPORATION
1408482 RESTPADD, INC.
1438207 RM PALLETS, INC.
1443756 RODNEY KENNETH COOLEY
1451636 SAN BERNARDINO CITY UNIFIED - GEORGE BROWN
1323215 SAN FRANCISCO PUBLIC UTILITIES COMMISSION
1438698 SECCOMBE HOMES, INC.
1439856 SHASTA BEVERAGES, INC.
1361308 SILVERLINE CONSTRUCTION INC.
1390433 SILVERLINE CONSTRUCTION, INC.
1450946 SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT, INC.
1393998 SPS TECHNOLOGIES LLC
1356688 SUB-ZERO EXCAVATING, INC.
1424914 SUNWEST MILLING, INC.
1393179 TEMECULA VALLEY DRYWALL, INC.
1252732 THE DAVEY TREE EXPERT COMPANY
1398427 TIMBERWORKS CONSTRUCTION, INC.
1372864 UC DAVIS

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 2, 2020

1359868	VALLARTA FOOD ENTERPRISES, INC.
1412562	VALLEY PRESTIGE FARM LABOR, INC.
1394205	VILLA PARK LANDSCAPE
1384201	VILORIA CONSTRUCTION, INC.
1446216	WHJSK INVESTMENT, INC.
1410089	WILLITTS EQUIPMENT & ENGINEERING CO. LNC.
1346115	WOODWARD HRT., INC.
1412153	XPO LOGISTICS FRIEGHT, INC.

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 11:39 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 11:40 a.m.