

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

Held on April 30, 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
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
Kerry Lewis, Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Mario Grimm, Administrative Law Judge
Elizabeth Clarke, Attorney

MINUTES OF APRIL 16, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved draft minutes of the April 16, 2020 Board meeting.
Moved: Member Kropke.
Seconded: Judith Freyman.
Vote: 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.)

- Update review of February 26, 2020 stakeholder round table discussion.
ACTION: No report.

LEGISLATION:

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

ACTION: The Board discussed current news articles regarding AB5.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Lowry reported on attending a meeting with Agency and discussions held on conducting business under the Covid-19 restrictions.

BOARD MEMBERS REPORTS:

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

ACTION: Board members received notification that the confirmation period may be delayed due to the Covid-19 lock down restrictions.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Executive Officer Hapgood expressed gratitude for staff keeping up with the work flow while working from home.

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: Elizabeth Clarke asked questions regarding employees returning to work in a safe environment.

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.)

1304393 PET BROKERS, INC.
ACTION: The Board discussed.

1297346 ROADSAFE TRAFFIC SYSTEMS, INC.
ACTION: The 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.)

1256643 GIUMARRA VINEYARDS CORPORATION
ACTION: The Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1133550 HANSFORD INDUSTRIES, INC. dba VIKING STEEL
ACTION: The Board discussed.

1231720 RIVERSIDE CITY FIRE DEPARTMENT
ACTION: The Board discussed.

1280908 SIBONEY CONTRACTING CO
ACTION: The Board discussed.

1320327 SOUTHERN CALIFORNIA EDISON
ACTION: The Board discussed.

1061365 SPHERE ALLIANCE INC dba ADVANCED AIRCRAFT SEAL
ACTION: The Board discussed.

ORDERS DISMISSING APPEAL:

1178064 SEVEN ISLAND PAINTING, INC.
ACTION: The Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1423058 VISE COMPANY, INC.
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.
ACTION: DAR approved to issue.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Vote: 3-0.

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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 30, 2020

- 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.
- 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 30, 2020

- 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 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., 34-2015-80002204 (12-R3D1-0781) (315525790)
3. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002206 (11-2562 thru 2570) (313169724)
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. KEY ENERGY SERVICE, LLC 12004280
8. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV, 34-2017-80002562, (1144056)
9. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
10. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
11. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
12. BLUE DIAMOND GROWERS, (1040471)
13. UNITED PARCEL SERVICE, (1158285)
14. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
15. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
16. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)

17. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
18. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
19. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
20. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
21. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
22. STADCO, INC., 192TCP04944 (1142674)
23. 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.)

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.
1405607	BEYER SERVICES, LLC
1425503	BROWER MECHANICAL, INC.
1247132	CA CORRECTIONS VALLEY STATE PRISON
1406441	CERTAINTED CORPORATION
1437268	COAST PLATING, INC. VALENCE SURFACE

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 30, 2020

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.
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

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 30, 2020

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
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

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 12:06 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 12:07 p.m.