

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

Held on June 11, 2020

Teleconference

PRESENT:

Ed Lowry, Chair, Public Member
Judith Freyman, Management Member
Marvin Kropke, Labor 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
Chris Jessup, Administrative Law Judge
Kerry Lewis, Administrative Law Judge
Kevin Bland, Ogletree, Deakins, Nash, Smoak & Stewart
Heather Gribben, Ogletree, Deakins, Nash, Smoak & Stewart

MINUTES OF May 28, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the May 28, 2020 Board meeting as amended.
Moved: Judith Freyman
Seconded: Marvin Kropke
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.)

- Discussion of hearings conducted electronically.
ACTION: There was an update and continued discussion regarding implementing a method to conduct hearings electronically.

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 discussed the Agency's steps towards opening offices after the lifting of stay at home orders.

BOARD MEMBERS REPORTS:

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

ACTION: Member Judith Freyman reported on interview with the Senate Rules Committee.

Member Marvin Kropke reported on interview with the Senate Rules Committee.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Due to end of fiscal year the department has been asked to avoid ordering supplies and equipment.

STAFF REPORTS:

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

• **REGULATIONS:**

Board to vote on approval of rulemaking package regarding the amendments to sections 347, 359.1, 361.3, 372.2, 372.9 and 373 and submission of package to the Office of Administrative Law.

ACTION: Motion to give final approval for adoption of amendments to California Code of Regulations, title 8, sections 347, 359.1, 361.3, 372.2 and 373, and repeal of section 372.9, and to delegate authority to the Executive Officer to submit them, and the associated rulemaking package, to the Office of Administrative Law for final approval and filing with the Secretary of State, and to make non-substantive changes to the language, if necessary.

Moved: Judith Freyman

Seconded: Marvin Kropke

Vote: 3-0

- **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: Kevin Bland spoke to inspections and cases concerning covid-19 which he is aware.

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.)

1198572 QUINTANA CONSTRUCTION, INC.
ACTION: Denial approved.
Moved: Judith Freyman
Seconded: Marvin Kropke
Vote: 3-0.

PETITIONS FOR RECONSIDERATION (Second Review):

1101230 MTM BUILDERS, INC.
ACTION: Denial approved
Moved: Judith Freyman
Seconded: Marvin Kropke
Vote: 3-0

ORDERS DISMISSING APPEAL:

NONE

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1436614 SAPUTO CHEESE USA, 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.

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| 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. |

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- 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.
ACTION: Board discussed
- 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.
- 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.

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- 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.
- 1275087 QUALITY AG, INC.
Whether the ALJ correctly analyzed the issue presented.
- 1199064 SA RECYCLING
Whether employer established that, the alleged violation was abated at the time of inspection.
- 1320327 SOUTHERN CALIFORNIA EDISON
Whether the ALJ commit reversible errors of law and/or fact in ruling on each of the alleged violations.
- 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.
- 1384029 USA WASTE OF CALIFORNIA, INC.
Whether the Division proved the alleged violation.
- 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., 34-2016-80002345 (14-R3D2-3707)
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)
24. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
25. VINCENT TUOMEY, RG20061099 (1152851)

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)

OTHER ITEMS:

- Discussion on categorizing the Board's DARs and Denials on the DIR website.
ACTION: The Board discussed the topic of DARs and Denials on DIR website.

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.)

1449628	ALEXANDER V. PAPADIN, AN INDIVIDUAL
1379204	ALLEGIS GROUP, INC.
1318484	ALLIED UNIVERSAL SERVICES
1448269	AMELIA CATHERINE MEDAGLIA DIAZ & RALPH DIAZ
1289602	ANNA CORPORATION
1425537	ANTONIO & SONS TRUCKING
1408246	ARMANDO AGUILAR
1450280	ASIF IQBAL, AN INDIVIDUAL
1461432	AUS DECKING, INC.
1383554	BATTH FARMS INC
1457412	CAGLIA ENVIRONMENTAL LLC

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1430966	CALIFORNIA PRISON INDUSTRY AUTHORITY
1398327	CEN CAL BUILDERS AND DEVELOPMENT INC
1437882	CHRISTOPHER RANCH, LLC
1440980	CLAYTON AND SUE FISCHER, A PARTNERSHIP
1451162	CUSTOM BLINDS AND COMPONENTS, INC.
1455365	CUSTOM FOODS HOLDINGS, LLC
1456875	CUSTOM TUBE AND MANUFACTURING INCORPORATED
1425986	DAVIS & ROBERTS CONSTRUCTION, INC.
1431680	DIVINE PASTA COMPANY
1389889	ELITE POWER, INC.
1413747	ESPARZA ENTERPRISES, INC.
1419913	EUROTECH AUTO REPAIR CORP.
1439017	FORCE STEEL INC.
1302497	FORWARD AIR, INC.
1330289	FOSTER FARMS
1440748	FOUR STAR FRUIT INC
1464798	FRAGA'S SWEETHEART MOTORS
1368466	GLADIATOR UNLIMITED, INC
1434012	GOLDEN BRICK CONSTRUCTION, INC.
1327922	GOLDEN STATE FC, LLC
1449412	GREENSIDE, INC.
1399471	GUERO LATH AND STUCCO, INC.
1419132	HALL MANAGEMENT CORP.
1408956	HARRIS CONSTRUCTION CO.
1278251	HESTER ORCHARDS, INC.
1451164	IMPERIAL PREMIX LLC
1431608	JZB FARMING
1308125	K F STEPHENS, INC.
1456498	KEN NEILL AN INDIVIDUAL
1377326	KILFORD ENGINEERING, INC.
1429599	LIVE EYEWEAR, INC.
1399459	M D N BUILDERS
1442364	MARIN COUNTY ROOFING CO. INC.
1419136	MARSHALL ORCHARDS, INC.
1450597	MERCER FOODS, LLC.
1440369	MESSER LOGGING, INC.
1415700	MILLIE AND SEVERSON INCORPORATED
1472453	NORTH VALLEY DRYWALL
1424026	NORTHCAL CLEANING SERVICE
1419501	PACIFIC CYCLE INC.
1424881	PACIFIC SOUTHWEST LUMBER
1447616	PARKER PALM SPRINGS, LLC
1396579	PARTNERS PERSONNEL MANAGEMENT SERVICES, LLC
1304872	PRECISE AEROSPACE MANUFACTURING
1426594	QUINN GROUP, INC.
1437260	QUON YICK INTERNATIONAL, INC.

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1418665	RALPHS GROCERY COMPANY
1444084	RAM MODULAR HOMES, INC.
1363174	RANN VALDEZ STONE, INC.
1446446	ROSEMARYS LLC
1355970	RUSSELL CONSTRUCTION SERVICES, INC.
1376408	SAN DIEGO GRANITE, INC.
1375088	SANTA ANITA PARK
1423916	SIERRA PACIFIC INDUSTRIES
1357249	STEWART & JASPER ORCHARDS, INC.
1382025	SUPER SUDS LAUNDRY
1444313	TITLEIST CONSTRUCTION
1425471	TURLOCK FRUIT CO.
1440285	TURNER SECURITY SYSTEMS
1415948	TUTOR PERINI CORP.
1422781	UNIVERSITY MECHANICAL & ENGINEERING
1437219	WESTAMERICA COMMUNICATIONS, 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 11:35 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 11:36 a.m.