

**STATE OF CALIFORNIA  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS  
BOARD**

**MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**

Held on August 5, 2020

by: ZOOM

**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  
Kerry Lewis, Administrative Law Judge  
Christopher Jessup, Administrative Law Judge  
Kevin Bland, Ogletree, Deakins, Nash, Smoak & Stewart  
Bruce Wick, Risk Management Director, CALPASC  
Deborah Weidle, Ogletree, Deakins, Nash, Smoak & Stewart  
Jonathan Francisco (noted by electronic identifier, however caller was silent).

**MINUTES OF July 23, 2020 MEETING:**

*(Approve or amend minutes of previous Board meeting.)*

ACTION: Board approved minutes of the July 23, 2020 Board meeting.

Moved: Marvin Kropke

Seconded: Judith Freyman

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.)*

- Board to discuss implementation of Video Hearings.  
ACTION: Discussion was held regarding first hearing held on Zoom platform. The hearing was considered a success by all who commented. Judge Lewis updated the Board on scheduled training for the all judges.

**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: The chair plans to visit the Cal/OSHA Advisory Committee meeting on Thursday August 6 (via Zoom). He also reported that he, Patty Hapgood and Lee Berlin met with the representatives of Federal OSHA for the quarterly meeting. He reported our statistics for the second quarter and also explained the planning for video hearings.

**BOARD MEMBERS REPORTS:**

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

ACTION: Member Freyman and member Kropke reported that they are awaiting news from the rules committee, which is expected to vote on their confirmation August 5, 2020.

**EXECUTIVE OFFICER'S REPORT:**

*(Report regarding administrative matters.)*

ACTION: Interviews will be held next week by Zoom. New signage will be posted throughout the office with regards to COVID-19 requirements.

**STAFF REPORTS:**

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

- REGULATIONS:  
ACTION: Counsel Jackson updated the Board on status of new regulations.
- 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 and Bruce Wick expressed desire for the Zoom Board meetings to continue once in person meetings resume.

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.)*

- 1356645 ANTELOPE VALLEY COLLEGE  
ACTION: The Board discussed this decision.
- 1303461 SSA TERMINALS (OAKLAND), LLC.  
ACTION: The Board discussed this decision.
- 1303471 SSA TERMINALS (OAKLAND), LLC.  
ACTION: The Board discussed this decision.

**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.)*

- 1275101 JUAN CARLOS ARELLANO MEDINA DBA CYPRESS FLC  
ACTION: The Board discussed this matter. Not a matter for reconsideration.

**PETITIONS FOR RECONSIDERATION (Second Review):**

NONE

**ORDERS DISMISSING APPEAL:**

- 1323053 ARMSTRONG INTERIOR SPECIALTIES, INC.  
ACTION: The Board discussed this decision.

**ORDER DENYING LEAVE TO FILE LATE APPEAL:**

NONE

**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.*

- |           |  |
|-----------|--|
| 1272378   | ANDREW HARRISON BARNES<br>Whether Mr. Barnes was/is an employer.   |
| 1141604   | BOY RACER INC. DBA BURNING ANGEL<br>(EMPLOYER'S PETITION)<br>Whether adult film performers are employees or independent contractors.   |
| 1141604   | BOY RACER INC. DBA BURNING ANGEL<br>(DOSH'S PETITION)<br>Whether adult film performers are employees or independent contractors.   |
| 1246527   | CEMEX<br>Whether the settlement in this matter was procured by fraud.  |
| 316446855 | CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364-0367<br>Whether adult film performers are employees or independent contractors.  |
| 1206788   | DPR CONSTRUCTION, INC. ET AL<br>Whether the Division had jurisdiction. Whether the ALJ decision constituted an underground regulation.   |
| 1300039   | EMERICARE, INC. dba BROOKDALE NORTHRIDGE<br>Whether the employer's alternate means of guarding satisfied the requirements of the applicable safety order.<br>ACTION: Approved to issue DAR.<br>Moved: Marvin Kropke<br>Seconded: Judith Freyman<br>Vote: 3-0 |

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- 1199473 FEDEX GROUND  
Whether Employer's supervision of the workplace was reasonable.
- 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.
- 1135350 HILL CRANE SERVICE INC.
- 1251604 INTERLINE BRANDS, INC.  
Whether Employer had provided adequate foot protection by means of administrative and engineering controls.  
ACTION: The Board discussed this matter.
- 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.
- 1422951 LINEAGE LOGISTICS
- 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.

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- 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.
- 1251879 TARGET STORES, INC.
- 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. CHARLES PANKOW BUILDERS, LTD., 34-2015-8000221 (13-R4D1-1759)

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3. MCM CONSTRUCTION, INC., 34-2016-80002312 (13-R1D2-3851-3854)
4. SOLARCITY CORP., 34-2016-80002345 (14-R3D2-3707)
5. KEY ENERGY SERVICE, LLC (12004280)
6. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,  
34-2017-80002562, (1144056)
7. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
8. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632)
9. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
10. BLUE DIAMOND GROWERS, (1040471)
11. UNITED PARCEL SERVICE, (1158285)
12. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
13. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
14. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
15. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174  
(1116529)
16. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191  
(1059365)
17. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
18. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
19. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
20. STADCO, INC., 192TCP04944 (1142674)
21. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
22. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
23. 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 this topic. DARs are being posted to the OSHAB 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.)*

1204572	AERO PACIFIC CORPORATION
1314700	ALBERTSON'S COMPANY
1433988	AMERICAN SERVICES GROUP OF CALIFORNIA, INC.
1419922	ANZA MANAGEMENT COMPANY
1435011	BEST TILE, INC.
1303789	BOILER DYNAMICS
1318541	CAL AG RESOURCES, INC.
1454397	CALIFORNIA MEDICAL INNOVATIONS, LLC
1432010	CALIFORNIA UNITED MECHANICAL, INC.
1445382	CAMBLIN STEEL SERVICE, INC.
1377118	CARLSON LATH & PLASTER, INC.
1416957	CASINO LLC
1452939	CATALINA CYLINDERS, INC.



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1397343	CEM CONSTRUCTION GROUP, INC.
1423265	CENTRIC CONSTUCTION CO.
1461354	CHESAPEAKE FINISHING, INC
1372876	CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.
1039009	COFFMAN SPECIALTIES INC
1448272	COMMUNITY RECONSTRUCTION SOLUTIONS, INC.
1418671	COSTCO WHOLESALE CORPORATION
1424429	DELICATO VINEYARDS
1212421	DONEGAN PAINTING
1465713	E.V. RIFE ENTERPRISES, INC.
1457223	ELECTRIC TECH CONSTRUCTION, INC.
1278855	FEDEX FREIGHT
1471099	FIRST STUDENT INC.
1458838	FOTIS AND SON IMPORTS, INC.
1461689	GOODWILL INDUSTRIES OF SAN FRANCISCO,
1441085	GOODWILL OF SILICON VALLEY
1436934	HANOVER BUILDERS
1450287	HECTOR GUTIERREZ
1408168	HILLTOWN PACKING CO., INC.
1445111	HND GROUP, INC.
1307909	HY-MAX BUILDING CORP
1460401	IMPERIAL WOODS ENTERPRISE INC.
1434866	INTERNATIONAL WINDOW CORPORATION
1439626	JL CONSTRUCTION, INC.
1425301	JOHNSON'S QUALITY TREE CARE & LOGGING CO., LLC
1446452	KULWANT JHIKKA, AN INDIVIDUAL
1412992	MEEPOS MANAGEMENT CO.
1351450	MERCER, FRASER COMPANY
1431696	MIKE KELLY CONSTRUCTION, INC.
1354691	MISSION FOODS
1431350	NARMSIN ELHAMNIA

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1433249	NET ZERO DISASTER RESISTANT STRUCTURES, LLC
1398025	NEW ORANGE HILLS, INC.
1360499	OA LOGISTICS SERVICES, INC.
1426750	P.R. FARMS INCORPORATED
1452467	PAC SV LLC
1422674	PARAGON MECHANICAL, INC.
1459662	PHILLIP LEROY WILSON, AN INDIVIDUAL
1434380	PHILLIPS 66 COMPANY
1460323	PITMAN FAMILY FARMS
1435193	POLYCHEMIE, INC.
1442822	PROSET CONSTRUCTION, INC.
1343447	RC WENDT PAINTING, INC.
1359959	RED CEDAR STEEL SOUTHWEST
1419348	RW MURRAY, INC.
1386063	SALAZAR CONSTRUCTION CO. INC.
1304397	SCAFFOLD CONTRACTING SERVICES INC.
1297647	SCALED COMPOSITES, LLC
1437910	SHERAZ BROTHERS, INC.
1423471	SILVER CREEK CONSTRUCTION
1439655	SOUTH EAST EMPLOYEE LEASING SERVICES, INC.
1279821	SOUTHWEST LANDSCAPE, INC.
1410014	STERIGENICS INTERNATIONAL US LLC
1418458	STEVEN LEATHERBARROW MASONRY
1446024	SUMMIT BUILDERS
1454981	SUNLINE ENERGY INC
1463756	T. WALLACE CONSTRUCTION
1343800	TESLA, INC.
1454957	THE VILLAGE COLLECTION, INC.
1444063	TIMIRAN INC.
1201901	TITAN INDUSTRIAL METAL CORPORATION
1416501	TOO GOOD AUTO BODY, INC.

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1440376 TOTAL PLACEMENT SOLUTIONS, LLC  
1301428 TURN AROUND COMMUNICATIONS, INC.  
1375084 UNITED AG FORCE  
1457873 UNLEADED DESIGN SYSTEMS  
1449408 VISIONARY SLEEP, LLC  
1445123 WESTERN STATES CONSTRUCTION, INC.  
1218550 WM. BOLTHOUSE FARMS, INC.

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

**PERSONNEL:**

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 11:43 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 11:44 a.m.