

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

MINUTES OF THE PUBLIC MEETING & CLOSED SESSION

Held on September 3, 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
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 August 20, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the August 20, 2020 Board 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 during open session. During closed session an inquiry was made regarding the availability of Board documents in languages other than English, and it was agreed that the matter would be added to the next agenda for discussion.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

- ACTION: Board to discuss progress on implementing Video Hearings:

Presiding Administrative Law Judge Kevin Reedy updated the Board regarding training for judges and staff members using the zoom platform. The Board

reaffirmed the selection of holding hearings remotely while restrictions are in place due to the current pandemic.

LEGISLATION:

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

ACTION: Board discussed current status of AB2043.

CHAIRPERSON'S REPORT:

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

ACTION: No report.

BOARD MEMBERS REPORTS:

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

ACTION: Member Marvin Kropke received notice of approval of his appointment.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Acting Executive Officer Hapgood updated the Board on current staff hiring and reviewed current appeal volume statistics.

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.
- PRA REQUEST:
ACTION: Chief Counsel Mojcher reported on PRA request from Ogletree Deakins. He also provided some legal counsel regarding process of gathering documents and privilege issues during closed session.

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.)

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.)

1328184 AMERICAN SECURITY FORCE INC.
ACTION: Denial to be issued.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1303461 SSA TERMINALS (OAKLAND), LLC DBA SSA MARINE
TERMINALS (Consolidated w/ 1303471)
ACTION: Grant submission for reconsideration.
Moved: Ed Lowry
Seconded: Marvin Kropke
Vote: 3-0

1303471 SSA TERMINALS (OAKLAND), LLC DBA SSA MARINE
TERMINALS (Consolidated w/ 1303461)
ACTION: This case was inadvertently added to the
agenda.

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

NONE

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1457804 ATV INC
 ACTION: Remand to hearings operation.
 Moved: Marvin Kropke
 Seconded: Judith Freyman
 Vote: 3-0

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
 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.

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- 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.
- 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.
Whether Employer violated the safety orders as alleged.
- 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.
- 1422951 LINEAGE LOGISTICS
Whether Employer's motion to amend its appeal should be granted.
- 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.
- 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.
Whether the employee suffered a serious injury as defined by statute and regulation.
- 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.

ACTION: Board discussed this matter.

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.)

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)
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. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
7. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632)
8. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
9. BLUE DIAMOND GROWERS, (1040471)
10. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
11. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
12. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
13. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191 (1059365)
14. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
15. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
16. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
17. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
18. 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 changes to 342(a). No concerns were raised to the changes made to the regulation.
- Discussion on categorizing the Board's DARs and Denials on the 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.)

1433096	2 LYLY, INC.
1431065	5 STAR POOL PLASTER, INC.
1339820	ADESA INTERNATIONAL, LLC.
1446836	ALL COMMERCIAL LANDSCAPE SERVICE
1352096	AMERICAN CONSTRUCTION MNGMT. & ENGINEERING,
1395425	AMERICAN INDUSTRIAL FLOORING, INC.
1461164	AVILA'S CONSTRUCTION, INC.1407673 B&M BUILDERS,
1426584	B&M BUILDERS, INC.
1425608	BEADOR CONSTRUCTION COMPANY, INC.
1390051	BMC WEST LLC
1462235	BUILDERS GREEN REMODELING, INC.
1321654	BURRTEC WASTE INDUSTRIES, INC.
1458579	BUTTE COUNTY RICE GROWERS ASSOCIATION
1443731	CA DEPT OF CORRECTIONS & REHABILITATION
1325325	CA FORESTRY & FIRE PROTECTION
1270609	CANG NGUYEN
1340021	CHEMICAL WASTE MANAGEMENT, INC.
1440998	CHEVRON U.S.A. INC.
1451908	CLOVER & COBBLER LLC

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1326142	CMC STEEL FABRICATORS INC.
1463450	CORESTAFF SUPPORT SERVICES, INC.
1219953	CORRPRO COMPANY, INC.
1403969	D & L FARMS
1428036	DAMATO ASSOCIATES, INC.
1423396	DELANO FARMS COMPANY
1328096	DSS COMPANY
1476239	DUANE NASH INDUSTRIES INC.
1452197	EFFORTLESS INVESTMENTS MGT. LLC
1434589	EMPLOYBRIDGE HOLDING COMPANY
1342261	ESTERLINE TECHNOLOGIES CORPORATION
1422365	EXBON DEVELOPMENT, INC.
1447936	FRED DAVID INTERNATIONAL USA, INC.
1449417	GOURMET MUSHROOMS, INC.
1451133	INDUSTRIAL WOOD PRODUCTS INC.
1359527	J'S PIPELINE, INC.
1449258	J.A.M. INDUSTRIES INC.
1368268	JOON CHO
1460057	JULIAN CONSTRUCTION, INC.
1476253	KERNEN CONSTRUCTION
1405288	LA PAZ LAGUNA BP, LLC
1425106	LASSEN VINEYARDS, INC
1398356	LOTUS HOTEL INC
1467391	M.C.I. FOODS INC.
1325974	MARRIOTT HOTEL SERVICES, INC. DBA IRVINE MARRIOTT
1416823	MB COATINGS, INC.
1326148	MCRT NORTHERN CALIFORNIA CONSTRUCTION, LP.
1407743	MENDOZA AG SERVICES INC.
1320662	MOUNTVIEW OPERATIONS, LLC
1456488	MSL INDUSTRIES, INC
1403921	NESTLE USA, INC.
1351429	NOWHERE SANTA MONICA, INC.
1456799	O. W. LEE CO. INC.
1360129	P.W. STEPHENS ENVIRONMENTAL, INC.
1469428	PACIFIC ALLOY CASTING COMPANY, INC.
1382838	PAUL SARDONIA BUILDERS, INC.
1468504	PREMCO FORGE, INC.
1399900	PREMIUM TRANSPORT STAFFING, INC.
1374077	PRIME CONDUIT, INC.
1442069	PRO-TECH MATS INDUSTRIES, INC.
1477018	RED LINE INSTALLATIONS, INC.
1434712	RONALD MICHAEL SCHARTAU
1473544	RPLANET EARTH LOS ANGELES LLC
1366248	SAINT FRANCIS MEDICAL CENTER
1401608	SALINAS FARM LABOR CONTRACTOR, INC.
1396122	SANTA FE AGGREGATES, INC.

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1398686	SEBASTIAN ROOFING
1430206	SECURITAS SECURITY SERVICES USA, INC.
1445040	SELEX INC.
1411829	SIERRA PACIFIC INDUSTRIES
1254824	SITE ONE LANDSCAPE SUPPLY LLC
1295528	SONOMA VALLEY FOODS, INC.
1463999	STEVEN SENEMAR
1276849	SUPERIOR GROCERS
1464510	SUPERIOR SEAMLESS GUTTER, INC.
1420859	SURF THRU, INC.
1380271	SUTTER BAY MEDICAL FOUNDATION
1425690	T & R PAINTING & DRYWALL
1452967	THE BEST SEWING GARMENTS, INC.
1450446	THELMA'S MORNING CAFE INC.
1416036	TITANIUM SMART, LLC.
1355767	TMEIC CORPORATION
1455664	TRINITY FRAMING & CONSTRUCTION, INC.
1449021	UNIVERSITY OF SOUTHERN CALIFORNIA
1466133	WEATHER GUARD ROOFING
1426755	WESTERNER PRODUCTS OF YUMA, INC.
1436787	Z-PERFORMANCE COMPLETE AUTOMOTIVE & MUFFLERS

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 12:07 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 12:08 p.m.