

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

MINUTES OF THE PUBLIC MEETING & CLOSED SESSION

Held on October 1, 2020

on 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
Sam Lucas, Administrative Law Judge

MINUTES OF September 17, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the September 17, 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.

OLD BUSINESS:

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

- Board to discuss progress on implementing Video Hearings.

ACTION: Kevin Reedy held a mock hearing for training. Judge Clemons also held a mock training. ALJs are in training. Three hearings are scheduled in October. Kerry Lewis will sit in on the first hearing for each

judge as back up assistance for using technology.
Stakeholder training is scheduled for October 1, 2020.
Three more sessions are schedule in effort to reach
as many stakeholders as possible.

LEGISLATION:

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

ACTION: The Board discussed recent legislation and upcoming Bills. The Board also discussed a memo prepared by Counsel Autumn Gonzalez regarding AB685.

CHAIRPERSON'S REPORT:

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

ACTION: Chair Lowry spoke to reports in the news regarding Covid19.

BOARD MEMBERS REPORTS:

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

ACTION: Member Freyman reported on last Standard Board's meeting and their effort to adopt an emergency regulation regarding Covid19 cases.

Member Kropke spoke to the Disneyland layoffs due to COVID19.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Acting Executive Officer Patricia Hapgood reported on updating OASIS.
New hires update. HOI interviews will be scheduled soon. Legal Unit Limited Term Attorney should be approved soon.

STAFF REPORTS:

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

1. REGULATIONS:

ACTION: Counsel Jackson updated the Board on current status on most recent Regulation packet.

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2. Discuss the creation of, and availability of, OSHAB documents created in other languages.

ACTION: Lee Berlin reported on research regarding number of contacts received by the Board needing foreign language assistance. The Board uses language assistance on average nine times a month. Costing on average \$87 a month. There is also a service used for in person interpreters for hearings and that service has not been needed in 2020.

Counsel Jeff Mojcher reported on research on other agencies and their use of other language. Ms. Berlin and Mr. Mojcher both found Spanish to be the most used as a second language. Small percentages of other languages were found to be used.

It was suggested that the Board look into Google Translate to help translate the OSHAB website and documents.

3. Discuss recent appeals filed which are related to the current COVID-19 Pandemic.

ACTION: There was a discussion on cases related to COVID19 and tracking these cases. The Board's desire is to review these cases in a timely matter.

4. 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: 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.)

NONE

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

1432476 GOODWILL INDUSTRIES OF SOUTHERN CALIFORNIA
ACTION: The Board discussed this matter.

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
Whether Mr. Barnes was/is an employer.

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- 1332715 APTCO, LLC
- 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.
- 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.
- 1213886 JACE VARGHESE
Whether Employer has satisfied requirements of petition for reconsideration.

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- 1290383 JAFEC USA, INC.
- 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.
- 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.
- 1303461 SSA TERMINALS (OAKLAND), LLC DBA SSA MARINE TERMINALS
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 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.

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- 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.

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)
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)
19. GOLDEN STATE BORING & PIPE JACKING, INC. (1308948)

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. 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.)

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| 1304201 | 5M CONTRACTING, INC. |
| 1422487 | A.M. AG ENTERPRISE, INC. |
| 1333609 | ABC SUPPLY CO. |
| 1433089 | ACS STAFFING, INC. |
| 1425711 | ACTIVE PROTECTIVE SERVICES |
| 1475849 | ACV LOGISTICS LLC |
| 1473207 | ADVANCE QUALITY HAZMAT INDUSTRIES (AQHI), INC. |
| 1449742 | ALLWEATHER LANDSCAPE MAINTENANCE INC. |
| 1448362 | ALTAMIRA LABOR SERVICES, INC. |

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1407373	AMERICAN INCORPORATED
1441747	ANHEUSER-BUSCH INC.
1393471	CA DEPARTMENT OF STATE HOSPITALS - PATTON
1441464	CA WATER RESOURCES
1441742	CALIFORNIA CENTER FOR THE ART, ESCONDIDO
1273286	CALIFORNIA SHEET METAL WORKS, INC.
1436288	CAN AM ELECTRIC, INC.
1431332	CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.
1456485	CORVETTE PARTS, INC.
1461103	CROWN BAKERY INC.
1449421	CRUSHFOODS INC
1460437	DALOU CORPORATION
1436921	DENNY'S
1473977	DOC'S CONSTRUCTION & HANDYMAN SERVICE
1360827	EPIC SHEET METAL, INC.
1455366	ESPARZA ENTERPRISES, INC.
1477535	FARIA DAIRY INC.
1461728	FIVE STAR ROOFING, INC.
1394236	GARAVENTA ENTERPRISES INC.
1434884	GEARY & LESLIE REA
1477828	GENESIS SPROUTS, INC.
1443221	GOLDSTAR ROOFING INC.
1394258	HARP ENTERPRISES
1422091	HENLE CONSTRUCTION & RENOVATIONS, INC
1454770	HT WINDOW FASHIONS CORPORATION
1468508	J'S MAINTENANCE SERVICE INC
1449415	JOSEPH AND DIANE CARDENAS, A PARTNERSHIP
1398653	JT2 INC.
1441917	JV RECYCLING, INC.
1462628	KANN ENTERPRISES INC
1456112	KARAN BAKHSHI

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1265728	KURIOS TOWING & STORAGE
1480497	MANUEL MORRIS DAIRY
1381224	MARIAK INDUSTRIES, INC.
1300058	MARTINEZ STEEL CORPORATION
1440981	MEHAR SEKHON HOTEL GROUP, LLC
1298690	MERICAL INCORPORATED
1444382	MORGAN DEVELOPMENT, INC.
1444389	NEWMAN BROS. OF CALIFORNIA, INC.
1481318	NEXT WAVE COMMUNICATIONS LLC
1426016	NORCAL MASONRY BUILDERS, INC.
1460439	ONE STOP AVIATION, INC.
1397567	PACIFIC SPICE COMPANY, INC.
1471836	PACIFIC WIRED INC.
1470407	PROFESSIONAL PACKERS & FORWARDERS, INC.
1347338	QUALITY TREE SERVICE
1338178	REPLANET, LLC
1479425	RICHARD SWANSON INC.
1251468	SAXCO INTERNATIONAL, LLC.
1415250	SIMPSON SAND BLASTING AND SPECIAL COATINGS, INC.
1398413	SOCAL FRAMING, INC.
1430968	SONDANCE PAINTING, INC.
1452844	STANDARD OIL GROUP
1445701	TIPCO ENGINEERING INC.
1463466	TORKIAN CONSTRUCTION, INC.
1464943	TORKIAN CONSTRUCTION, INC.
1453915	TRI MARINE FISH COMPANY
1458707	UNIVERSITY INN CHICO, LLC
1317400	UTILITY TREE SERVICE, LLC.
1463598	VANIK ABELIAN
1478102	VARNER AND SON INCORPORATED

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1403691 WAWONA FROZEN FOODS
1473550 WELLINGTON FOODS, 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 12:15 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 12:16 p.m.