

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

MINUTES OF THE PUBLIC MEETING & CLOSED SESSION

**Held on November 5, 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
Elizabeth Clarke, 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
John Pruett, (unidentified attendee from the public)

MINUTES OF OCTOBER 15, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the October 15, 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: Presiding Administrative Law Judge Clemons reported on hearings scheduled through the West Covina office. One scheduled video hearing was settled. Another video hearing is scheduled for next week but is expected to settle.

Presiding Administrative Law Judge Kevin Reedy and Administrative Law Judge Kerry Lewis reported on a video hearing from the Sacramento office. The hearing was completed in just over one day and procedurally went well and successfully over the Zoom platform.

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: Short discussion of Proposition 22 and AB 5.

BOARD MEMBERS REPORTS:

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

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Executive Officer Patricia Hapgood updated the Board on hiring a new Office Technician for the Sacramento Appeals Initiation group. Next week the Board will be interviewing for a Hearing Officer (West Covina) via Zoom.

Ms. Hapgood also briefly updated the Board on the current budget status.

STAFF REPORTS:

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

1. REGULATIONS:

ACTION: No report.

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

ACTION: Lee Berlin reported on experimenting with 'Google Translate'. The process was relatively easy. She

contacted Language Line, the company we use for telephonic translators. They also provide paper translation and will submit an estimate of cost to translate documents needed for the appeal process. Also discussed was options to translate the OSHAB webpage.

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

ACTION: Judge Kevin Reedy reported on current cases with COVID-19 related citations which have been appealed.

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.)

1176128 ROCKWELL DRYWALL INC.

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.)

1321676 JOHN LOCHER HARVESTING INC.

ACTION: This petition was held over for the November 19, 2020 Board meeting.

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

1442575 ARROW DRILLERS INC.

ACTION: The Board discussed this Order Dismissing Appeal.

1411950 FOREVER 21, INC.

ACTION: The Board discussed this Order Dismissing Appeal.

1446191 UNMUEANG KONGNAPA

ACTION: The Board discussed this Order Dismissing Appeal.

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
 Whether the ALJ Decision correctly analyzed the record in deciding Employer had committed the alleged violation.
- 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.

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- 1213886 JACE VARGHESE
Whether Employer has satisfied requirements of petition for reconsideration.
- 1290383 JAFEC USA, INC.
Whether the ALJ correctly decided the Employer was in violation of a safety order, as alleged.
- 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.
ACTION: The Board discussed this matter.
- 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.

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- 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.

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)

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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. 34-2020-80003465
(1308948)
20. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002204 (12-R3D1-0781) (315525790)
21. INTERLINE BRANDS, INC., CIVDS2021813 (1251604)

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)

OTHER ITEMS:

- Discuss categorizing the Board's DARs and Denials on the DIR website.
- Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

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.)

1450560	AARON J. TALAMANTES CONSTRUCTION
1482692	ABBOTT RANCH LLC
1428829	ALPHA DYNO NOBEL
1319465	ARTISTIC ARBOR GARDENS, INC.
1438733	BEAUMONT RV, INC.
1432231	BERNARDO L. FARIAS
1447932	BEST VALUE RECYCLING, LLC
1400596	CA TRANSPORTATION, DISTRICT 5
1465331	CAFORIO DEVELOPMENT GROUP, LLC
1321709	CALIFORNIA DEPARTMENT OF CORRECTIONS
1475922	CALIFORNIA MAJESTIC LANDSCAPE AND MAINTENANCE,
1421967	CALIFORNIA STATE UNIVERSITY, STANISLAUS
1361890	CALLEGUAS MUNICIPAL WATER DISTRICT
1455645	CARDENAS MARKET LLC
1470917	CATALYST FORWARD GROUP
1299973	CHAMPION WINDOWS, INC.
1428152	CHAU LAM
1467850	CITY OF BANNING POLICE DEPARTMENT
1375305	CITY OF REDDING
1439269	CLEAN HARBORS ENVIRONMENTAL SERVICES, INC
1432404	COMPLETE DEVELOPMENT & CONSTRUCTION COMPANY
1321948	CUSTOM FRESH HARVEST, INC.
1351137	DALEY'S DRYWALL AND TAPING, INC.
1445935	DONALD LANGERMAN
1483358	DUNCAN FAMILY FARMS
1411958	EL CAJON MANAGEMENT, INC.

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1450855	ERIKSSON TILE & STONE, INC.
1444897	ES ONE INC.
1404783	ETERNITY WINDOWS & DOORS, INC.
1450232	EXACT STAFF, INC.
1475602	FAR WEST FUNGI, INC.
1435729	FLEETWASH, INC.
1441288	FLUEGGE EGG RANCH 2, INC.
1396295	FOOD 4 LESS OF SOUTHERN CALIFORNIA, INC.
1457231	FRESHPOINT SOUTHERN CALIFORNIA, INC.
1474327	FULL STEAM STAFFING, LLC
1417600	GOOD SAMARITAN HOSPITAL
1338656	GRANDMAISON CONSTRUCTION, INC.
1448657	GRANITE TRANSFORMATIONS VENTURA, INC.
1438345	HENKELS & MCCOY, INC.
1264008	HOOVER TREATED WOOD PRODUCTS, INC.
1440180	HORIZON PERSONNEL SERVICES, INC.
1462925	HSIAO & MONTANO, INC.
1417693	IMMEDIATE RESOURCE GROUP, INC
1457081	INTERIOR WOOD SYSTEM INC.
1452729	IPPOLITO INTERNATIONAL, L.P.
1456235	ITARCA, INC.
1453716	J&J SNACKFOODS CORPORATION
1282784	J.W. PETERSON PAINTING, INC
1475122	KAUFMAN CONSTRUCTION INC.
1457821	KNN APPAREL INC
1177778	KS INDUSTRIES, L.P.
1399031	KTL MUSHROOM CORP. (USA)
1237900	LARGO CONCRETE, INC.
1366262	LAS VIRGENES MUNICIPAL WATER DISTRICT
1421654	LATITUDE 36 FOODS, LLC

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1444682	LATITUDE PHARMACEUTICALS INC.
1379504	LE POUF, LLC
1413631	LEPRINO FOODS COMPANY
1461030	LINE 204, LLC
1431684	MAC BROWN EXCAVATING, INC.
1429957	MARIANI NUT COMPANY
1467074	MARICH CONFECTIONERY COMPANY INC.
1402384	MARISCOS LAS GUERITAS LLC
1432467	MEGAN HALLER
1469812	METAROM USA LLC
1452975	MIZ APPAREL, INC.
1270658	N.M.N. CONSTRUCTION, INC.
1461114	NATURE JOY HARVEST LLC
1408830	NAVAJO RUG CLEANING CO. INC.
1447172	NORTH AMERICAN FIRE HOSE CORPORATION
1321268	PARADIGM BUILDERS, INC.
1465382	PARIS CROISSANTS & SONS, INC
1469121	PBC COMMERCIAL CLEANING SYSTEMS INC.
1431329	PEREZ PALLETS RECYCLED, INC.
1462931	PICK UP STICKS
1452974	PINK COCONUT APPAREL, INC.
1483250	PLANASA LLC
1476069	PREMIER EMPLOYEE SOLUTIONS
1392059	PRO-CRAFT CONSTRUCTION INC.
1476122	RACEWAY FORD, INC.
1381620	RAGO & SON, INC.
1429148	RAKESH KUMAR (SOLE OWNER)
1422136	RALEY`S
1327865	RETIREMENT HOUSING FOUNDATION
1425859	RUGBY HOLDINGS LLC

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1468064	S.D.S. INDUSTRIES, INC
1474964	SANTA MARIA ENERGY, LLC
1421305	SCI CALIFORNIA FUNERAL SERVICES, INC.
1314986	SECURITY PAVING COMPANY, INC.
1468177	SGB CUSTOM PAINTING
1280908	SIBONEY CONTRACTING CO
1288507	SIMPLIFIED LABOR STAFFING SOLUTIONS, INC
1388298	SIMPLIFIED LABOR STAFFING SOLUTIONS, INC.
1289680	SOUTHERN CALIFORNIA GAS COMPANY
1271027	SOUTHWEST INDUSTRIAL ELECTRIC
1350092	STANISLAUS FOOD PRODUCTS COMPANY
1447966	STAR MARBLE & GRANITE
1456455	STEWART HANDLING SYSTEMS, INC.
1444279	SULLY GREEN INC.
1242136	TALION CONSTRUCTION, LLC.
1418045	TANIMURA & ANTLE FRESH FOODS, INC.
1459387	THE HUMBOLDT COUNTY FARMS, INC.
1446451	THE LOPEZ GROUP CORPORATION
1460321	THERMAL-VAC TECHNOLOGY, INC.
1320790	TIMBER WORKS CONSTRUCTION, INC.
1228004	TITAN SHEET METAL, INC.
1304694	TRADESMEN INTERNATIONAL LLC
1274647	UNITED AIRLINES
1442088	UNITED ALLOYS & METALS, INC.
1476067	UNITED FACILITIES INC
1338688	UNITED PARCEL SERVICE, INC.
1472017	VALERO REFINING COMPANY - CALIFORNIA
1395381	VOTAW WOOD PRODUCTS, INC.
1490458	WAYNE PERRY, INC.
1386816	WESTCO IRON WORKS, INC.

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1431209 WONDERFUL PISTACHIOS & ALMONDS, LLC
1431548 YOUNG BROTHERS CONSTRUCTION COMPANY
1385418 ZAFRA, 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 11:57 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 11:58 a.m.