

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

Held on December 5, 2019

Sacramento, California

West Covina, California

PRESENT:

Ed Lowry, Chair

Judith Freyman, Member

Marvin Kropke, 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

MINUTES OF November 12, 2019 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes from November 12, 2019 meeting.

Move: Judith Freyman.

Seconded: Member Kropke.

Vote: 3-0.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

ACTION: The Board decided to schedule a discussion regarding the hearing calendar at the December 19, 2019 Board meeting.

OLD BUSINESS:

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

ACTION: The tentative date for the planned Appeals Board/Stakeholder round table discussion is February 26, 2020.

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 reported on his completion of 80 hours of Supervisor training.

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: Acting Executive Officer Hapgood reported meeting with the Federal OSHA representative Amber Rose.

ACTION: Lee Berlin updated the Board on the July 2020 deadline for the accessibility of documents posted on the OSHAB website.

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 reported that the package for the regulation changes has been sent to the Department of Finance for review.

2. 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.)

1213886 JACE VARGHESE
ACTION: The Board discussed.

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.)

1308948 GOLDEN STATE BORING & PIPE JACKING, INC.
ACTION: The Board discussed.

1402052 UNION PACIFIC RAILROAD
ACTION: The Board discussed.

1242676 UNITED PARCEL SERVICE, INC.
ACTION: The Board discussed.

1218807 PARK WEST RESCOM, INC.
ACTION: The Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1351916 BRAGG INVESTMENT COMPANY, INC.
ACTION: Denial of Petition issued.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Vote: 3-0

1290766 MILLENNIUM REINFORCING, INC.
ACTION: Petition taken under submission. Order issued.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Vote: 3-0

ORDERS DISMISSING APPEAL:

- 1262198 ADJ GROUP, LLC.
ACTION: The Board discussed.
- 1372880 JO WA, INC.
ACTION: The Board discussed.
- 1331340 U.S. PIPE AND FOUNDRY COMPANY
ACTION: The Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

- 1386802 CELERINO'S PALLETS, INC.
ACTION: The Board discussed.
- 1366264 SUMMERSET LANDSCAPE SERVICES
ACTION: The 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.)

- 1308968 AEG MANAGEMENT OAKLAND, LLC
Whether employer received the citations, and thus, whether there was good cause for a late appeal.
- 1200176 AEROTEK, INC. dba AEROTEK
Whether the employer established and implemented its IIPP as required.
- 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.

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- 1374985 C & A PETRA, INC.
Whether there was good cause for the late appeal.
ACTION: Remanded.
Moved: Judith Freyman, Seconded: Marvin Kropke.
Vote: 3-0
- 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.
ACTION: The Board discussed.
- 1206788 DPR CONSTRUCTION, INC. ET AL
Whether DOSH had jurisdiction. Whether the ALJ decision constituted an underground regulation.
- 1199473 FEDEX GROUND
Whether the employer's supervisor 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.
- 1251604 INTERLINE BRANDS, INC.
Whether Employer had provided adequate foot protection by means of administrative and engineering controls.
- 1173183 L & S FRAMING, INC.
Whether the stairway involved was a "stairwell." Whether the motion to amend citation was timely and for good cause.
- 1236440 PAPICH CONSTRUCTION COMPANY, INC.
Whether the Division proved exposure to Valley Fever.
- 1237932 SACRAMENTO COUNTY WATER AGENCY
Whether the Division proved a violation as cited.
ACTION: The Board discussed.

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- 1123110 SINCLAIR CONCRETE, INC.
Whether the widow of decedent employee had adequate notice of Employer's appeal of the OSHA citation.
- 1088791 TUTOR PERINI CORPORATION
Whether Employer violated safety orders pertaining to keeping equipment and spoils a safe distance from an excavation.

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. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)
3. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP., 34-2015-80002206 (12-R3D1-0781)
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., 14-R3D2-3707, 34-2016-80002345
7. W.A. RASIC COMPANY, INC., 13-R4D1-1422, 34-2016-80002454 (314863978)
8. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
9. KEY ENERGY SERVICE, LLC 12004280
10. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV, 34-2017-80002562, (1144056)

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11. ATKINSON CONSTRUCTION, LP (317386084)
12. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
13. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
14. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
15. BLUE DIAMOND GROWERS, (1040471)
16. UNITED PARCEL SERVICE, (1158285)
17. NORM WILSON & SONS INC., 19STCP00663 (1116151)
18. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
19. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
20. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
21. PERFORMANCE TEAM FREIGHT SYSTEMS, 19STCP 02154 (1183505)
22. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174
(1116529)
23. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
24. OWENS CORNING ROOFING & ASPHALT, LLC, 19STCP04117
(1063574)
25. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
26. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
27. STADCO, INC., 192TCP04944 (1142674)

APPELLATE COURT:

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
2. NOLTE SHEET METAL, INC., 16CE CG03592 (14-R6D8-2888 through 2783)
3. VENTURA COASTAL, F077267 (317808970)
4. HOME DEPOT, U.S.A. INC. DBA HOME DEPOT #6683, CIVDS1716416,
(1014901)

5. HOME DEPOT, U.S.A., INC. E070417 and RIC1710947 (1011071)
6. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910 (1111325)
7. LION FARMS, LLC, MCV075788 (1070258)
8. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)
9. PROCESS COOLING INTERNATIONAL 34-2019-80003220 (1232555)

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.)

1295529	A-1 EXPERT TREE SERVICE INC
1409896	A.M. CASTLE & CO.
1409561	AARON JOYCE ALCAIDE CAMAT
1298463	ACHEM INDUSTRY AMERICA, INC
1413932	ACTION SANITARY, INC.
1191621	ALAMILLO REBAR, INC.
1338177	ALBERTSON'S LLC.
1393817	ALPERT & ALPERT IRON & METAL, INC.
1332184	ALWAYS PROTECTIVE SERVICES
1395161	AMERICAN COOLING, INC
1341163	AMERICAN PREMIER HOMES AND/OR T & R PAINTING &
1306148	ANDES CONSTRUCTION INC.
1325695	ANGCHA, INC.
1257224	ASSOCIATED FEED AND SUPPLY CO.
1397592	BEN CARREIRO & SONS
1343451	BETTER BOOCH, LLC.
1399859	BROWN-PACIFIC, INC.
1415883	C REYNOLDS FOR MASONRY
1368297	CAHILL CONTRACTORS
1302768	CALIFORNIA ENVIRONMENTAL SYSTEM, INC.
1310858	CALIFORNIA TRUSFRAME, LLC.
1368769	CAMINO REAL FOODS, INC.
1285266	CHAMPAGNE LANDSCAPING AND NURSERY
1375702	CHEVRON USA., INC.
1424228	CHROMADEx, INC.
1238666	CITY OF BAKERSFIELD - POLICE DEPARTMENT
1401285	CLAUDIO ARZILLO
1385426	CLOVER VISUAL COMMUNICATIONS LLC
1408883	COPART, INC.
1370809	COSTCO WHOLESALE CORPORATION

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1206033	CRAIG WINTON
1423385	CUSTOM GOODS, LLC
1390601	DIENER'S ELECTRIC, INC.
1389101	DNE NURSERY INCORPORATED
1360806	DOLE FRESH VEGETABLES, INC.
1347025	DOMINO'S PIZZA STORE #8187
1368610	DONG JIN AMERICA, INC.
1348032	E & C LABOR SERVICES, INC.
1391407	EMERALD FASHION INC.
1398678	ENVIRONMENTAL CONTRACTING CORPORATION
1381068	EQUILON ENTERPRISES LLC
1286473	EXPO DYEING & FINISHING INC.
1258871	F M G, INC.
1369551	FARO SERVICES, INC.
1362798	FRESNO SIERRA CONTRACTORS, INC.
1398348	FULLERTON HEALTHCARE, INC. DBA ST. ELIZABETH
1338540	G & H FARMS, LLC.
1426892	GARDEN PASSAGES
1348102	GARZELLI FARMS
1305007	GLENDALE POLICE DEPARTMENT
1422344	GLOBAL PLASTICS RECYCLING, INC.
1335649	GLOBAL TEAM CORPORATION
1356130	GOT CONSTRUCTION
1386822	GRAMAJO PALLETS, INC.
1402989	HONEY'S AIR, INC.
1256655	HORT TECH, LLC.
1407151	INFINITY STRUCTURES, INC.
1400257	INNOVATIVE HOUSING SOLUTIONS, INC
1377649	J. MITCHELL CONSTRUCTION, INC.
1374189	JACK ARTHUR PAQUIN, AN INDIVIDUAL
1359478	JFB RANCH, INC.
1295862	JV INDUSTRIAL COMPANIES
316671544	KEY ENERGY SERVICES CALIFORNIA, INC.
1366255	KOSHER SUPER MEAT
1287885	LAPORTE CONSULTANTS CORP
1326993	LEONARD ROOFING, INC.
1192061	LEVEL 10 CONSTRUCTION LP
1365733	MAGNOLIA OF MILLBRAE, INC.
1324243	MARIN'S ROOFING
1319463	MARIO'S TREE SERVICE
1398462	MG PARTNERS, INC.
1410395	MUHAMMAD ASLAM CHOUDHRY, AN INDIVIDUAL
1424164	NATIONAL READY MIXED CONCRETE CO.
1368508	NEWHALL TEMPORARY STAFFING SERVICES, LLC
1374517	NEXUS CONSTRUCTION SERVICES, INC.
1354843	OLD PUEBLO RANCH

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1382467 P&R PAPER SUPPLY COMPANY, INC.
1429515 PACIFIC COAST PRODUCERS
1223724 PACIFIC GAS & ELECTRIC COMPANY
1351139 PALM SPRINGS DISPOSAL SERVICES
1431710 PANKU, INC.
1379440 R & J DONDERO, INC
1380109 RED IRON FABRICATORS, INC.
1279087 RESIDENTIAL DESIGN SERVICES
1398459 RIZO-LOPEZ FOODS, INC.
1193707 ROCKWELL DRYWALL
317203057 SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
1252700 SANTOS MONTEMAYOR FLC, INC.
1171141 SDPB HOLDINGS LLC
1315415 SEELEY UNION SCHOOL DISTRICT
1223718 SEMPER SOLARIS CONSTRUCTION, INC.
1205188 SEPULVEDA BUILDING MATERIALS
1422413 SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT, INC.
1387233 SONRAY SOLAR, INC.
1395191 ST. GEORGE DISTRIBUTION CORP.
1415710 STONE & QUARTZ FAB, INC.
1352460 TEAM FINISH INC.
1305365 THOMAS WELDING & MACHINE
1367264 TRINITY VALLEY CONSTRUCTION, INC.
1204271 TRIUMPH PROCESSING - EMBEE DIVISION INC.
1309820 UDDER-LY, INC.
1363944 UNITED RENTALS (NORTH AMERICA), INC.
1356218 W.S. EMERIAN TRUCKING, INC.
1313286 WALSH VINEYARDS MANAGEMENT, INC.
1365873 WELLPATH
1409883 WEST CENTRAL FOOD SERVICE, INC.
1341872 WESTSIDE HARVESTING, LLC.
1399593 WOLF LAKES PARK, INC.

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

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 12:41 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 12:42 p.m.