

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

**Held on February 6, 2020
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 January 23, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved the minutes of the January 23, 2020 meeting.
Moved: Judith Freyman.
Member Kropke seconded.
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.)

ACTION: Discussion on the February 26, 2020 Stakeholder Roundtable Discussion.
Discussion on categorizing the Board's DARs and Denials on the DIR website.

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 meeting with the Sacramento based California Occupational Safety and Health Appeals Board's Administrative Law Judges and will set a date to meet with the West Covina based Administrative Law Judges.
Chair Lowry also reported attending the Federal OSHA meeting along with Patricia Hapgood and Lee Berlin.

BOARD MEMBERS REPORTS:

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

ACTION: Member Judith Freyman reported speaking with the appointment office. She is awaiting news regarding her reappointment.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Patricia Hapgood, the Acting Executive Officer, reported the DIR Human Resource Department is requiring employees near or above the 640 maximum vacation/annual leave balance to prepare a plan that will reduce their balance.

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 he has been in touch with the DIR Finance Department regarding the Regulation packet. There is not a projected date of completion of the finance 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.)

1165502 KS INDUSTRIES, L.P
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.)

1152851 VINCENT TUOMEY
ACTION: The Board discussed.

1226084 DAVIS DEVELOPMENT COMPANY, INC.
ACTION: The Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1404976 233 DIESEL CLUB, LLC
ACTION: Denial to issue.
Moved: Judi Freyman.
Seconded: Marvin Kropke.
Vote: 3-0

1255331 CREATIVE COMMUNICATION TECHNOLOGIES, INC.
ACTION: Denial to issue.
Moved: Judi Freyman.
Seconded: Marvin Kropke.
Vote: 3-0

- 1395180 JONES, LANGE AND LASALLE
ACTION: Denial to issue.
Moved: Judi Freyman.
Seconded: Marvin Kropke.
Vote: 3-0
- 1165335 KRISTOPHER DEANMARCHANT DBA MARCHANT SITE
DEVELOPMENT
ACTION: Denial to issue.
Moved: Judi Freyman.
Seconded: Marvin Kropke.
Vote: 3-0
- 1199064 SA RECYCLING
ACTION: Order Granting Reconsideration to issue.
Moved: Judi Freyman.
Seconded: Marvin Kropke.
Vote: 3-0

ORDERS DISMISSING APPEAL:

NONE

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.

- 1200176 AEROTEK, INC. dba AEROTEK
Whether Employer established and implemented its IIPP as required.

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- 1374636 AMERI-KLEEN
Whether Employer showed good cause for late appeal.
- 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.
- 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.
- 1308948 GOLDEN STATE BORING & PIPE JACKING, INC.
Whether the cited Employer committed the alleged violations and whether the ALJ erred in evidentiary rulings.
- 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

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- 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.
- 1386789 MARIANO MORENO & ARCELIA TOSTADO, INDIVIDUALLY
Whether Employer showed good cause for late 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.
- 1237932 SACRAMENTO COUNTY WATER AGENCY
Whether the citation was correctly classified as serious. Whether the ALJ correctly denied Employer’s Newbery defense.
- 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.
- 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.

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. OLDCASTLE PRECAST, INC. (34-2017-80002522) 1025083
8. KEY ENERGY SERVICE, LLC 12004280
9. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
10. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
11. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
12. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
13. BLUE DIAMOND GROWERS, (1040471)
14. UNITED PARCEL SERVICE, (1158285)
15. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
16. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
17. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
18. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
19. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
20. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)

21. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
22. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
23. STADCO, INC., 192TCP04944 (1142674)
24. PRESTIGE PAINTING, 37-2019-00066143 (1367265)

APPELLATE COURT:

1. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
2. VENTURA COASTAL, F077267 (317808970)
3. UPS GROUND FREIGHT, INC. DBA UPS FREIGHT, BS171910 (1111325)
4. LION FARMS, LLC, MCV075788 (1070258)
5. WALSH/SHEA CORRIDOR CONSTRUCTORS, BS172720 (1093606)

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.)

1331151	ABLE IRON WORKS, INC.
1356432	ADVANCE SERVICES, INC.
1444111	ALLIED PLUS LOW VOLTAGE
1285093	AMERICAN LABOR POOL INC
1405603	ANAHEIM DOOR INCORPORATED
1386057	ANGELES CONTRACTOR, INC.
1192762	ATLAS CONSTRUCTION SUPPLY, INC
1426587	BLAZING STRUCTURE STEEL, INC.
1399029	BRALLIER FINE WOODWORKING, INC
1223768	BRS ROOFING, INC.
1374985	C & A PETRA INC.
1196599	CA DEPT OF FORESTRY & FIRE PROTECTION
1338696	CA FORESTRY AND FIRE PROTECTION
1125974	CAL-CITY CONSTRUCTION, INC.
1412156	CALLEGUAS MUNICIPAL WATER DISTRICT
1261697	CAPAY ORGANIC
1390638	CARTEL ELECTRONICS, INC.
1276911	CHAMPION HOME BUILDERS INC
1380548	COMMUNICATION TECH SERVICES, INC.
1258197	COUNTY OF LOS ANGELES PARKS AND RECREATION
1369873	COVI CONCRETE CONSTRUCTION, INC.

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1279600 CVS HEALTH
1363052 DAWIT GOITOM FESSEHAYE
1410013 DOG DAYZ OF CALIFORNIA
1428021 EDWARD HARINGA, AN INDIVIDUAL
1269714 FIRST CHOICE FLOORING
1264318 FLASH PLASTERING, INC.
1231748 GHIRARDELLI CHOCOLATE COMPANY
1265863 GHIRARDELLI CHOCOLATE COMPANY
1287581 GRANITE CONSTRUCTION COMPANY
1296629 HAWAIIAN GARDENS CASINO
1393052 HENRY SALAZAR
1356394 HERRON CONSTRUCTION, INC.
1398796 HPS MECHANICAL, INC.
1324279 HUNT CONSTRUCTION GROUP, INC.
1370045 HUNTERS POINT BREWERY, LLC
1332044 ITT - AEROSPACE CONTROLS
1283887 JAKELA INC.
1389783 JALAL JAHROMI GHASVARIAN, AN INDIVIDUAL
1329234 JD2 INCORPORATED
1411921 JOEL GARCIA, AN INDIVIDUAL
1393625 KAISER FOUNDATION HOSPITALS
1419723 KENCO CONTRACTING
1411945 LANA DESIGN INCORPORATED
1199972 LANCASTER BURNS CONSTRUCTION, INC.
1398108 LAZ PARKING CALIFORNIA, LLC
1321767 LEPRINO FOODS, INC.
1343033 LINEAGE LOGISTICS ICM, LLC.
1306917 LIQUID GRAPHICS INC
1349839 LOS ANGELES ENGINEERING, INC.
1432643 LUCIANO DIAZ BERNABE
1408915 MARCOS PADILLA
1422394 MARTIN RANGEL FUERTE
1288727 MERIT FRAMING
1405109 MIDSTATE CONSTRUCTION CORPORATION
1422379 MILLERS GRAFFIX
1416505 NEW GENERATION HARVESTING CORPORATION
1417214 NGUYEN HITEK, INC
1311515 O'BRIEN STEEL ERECTORS
1361897 OAK HARBOR FREIGHT LINES, INC.
1391683 P.W. STEPHENS ENVIRONMENTAL INC.
1397723 PEDRO ONIVEROS VALERIA AYALA, AN INDIVIDUAL
1401330 PETERSON TRACTOR COMPANY
1207700 PLASTIC EXPRESS
1347333 POPCORNOPOLIS, LLC.
1387716 PRISM PAINTING & WALL COVERING INC.
1264013 QUEMETCO, INC

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1264013	QUEMETCO, INC
1411690	R+R CAMPA CONSTRUCTION
1332182	R. & J. JOY, INC. DBA JOY ENGINEERING
1297495	RAFAEL MUNOZ
1400427	RAS ENTERPRISE, INC.
1429477	REITER BERRY FARMS, INC.
1442881	REYNALDO'S MEXICAN FOOD MANUFACTURER, INC.
1412214	RIVERSIDE SANITARIUM, LLC
1436158	ROLL-A-SHADE
1385269	ROOFING & SOLAR CONSTRUCTION, INC.
1419507	S-K RANCH MANAGEMENT, LLC
1374521	SEFNCO COMMUNICATIONS INC.
1391082	SERVICE SYSTEMS ASSOCIATES
1419761	SKY RIDER EQUIPMENT COMPANY, INC.
1336412	SOUTHERN CONTRACTING CO.
1415746	SOUTHWEST GENERATION OPERATING COMPANY
1426709	SUN CITY PALM DESERT COMMUNITY ASSOCIATION
1382943	SYNEAR FOODS USA, LLC
1366409	TESLA, INC.
1378357	TESORO REFINING & MARKETING COMPANY LLC
1432542	THE FAB SHOP, INC.
1287501	TRIBUNE DIRECT MARKETING, LLC.
1252332	UNITED CONTINENTAL HOLDINGS INC
1271048	UNITED PARCEL SERVICE
1295266	UNITED RENTALS NORTH AMERICA, INC.
1399086	UNIVERSAL ALLOY CORPORATION
1380804	VONS BREAD PLANT
1402893	WASOCO INC.
1376403	WHALING PACKAGING CO.
1326117	WM HEALTHCARE SOLUTIONS, INC.

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

PERSONNEL:

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 12:30 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 and closed the Open Session. The meeting was adjourned at 12:31 p.m.