

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

Held on March 5, 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 February 20, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved the minutes of the February 20, 2020 meeting.
Moved: Judith Freyman.
Seconded: Member Kropke.
The vote was 3-0.

NEW BUSINESS:

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

ACTION: Confirmed 2020 second quarter Board meeting dates.

OLD BUSINESS:

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

ACTION: No report.

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 positive results from the Stakeholders' Round Table discussion held February 26, 2020 in Vacaville, California.

BOARD MEMBERS REPORTS:

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

ACTION: Judith Freyman had no report.

ACTION: Marvin Kropke commented on the positive outcome of the Stakeholders' Round Table discussion and expressed desire to hold similar events with the Stakeholders at least once a year.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Acting Executive Officer Patricia Hapgood updated the Board on the possibility of touring the Amazon warehouse in Sacramento. At this time, Amazon has suspended tours.

The accessibility project is going well and OSHAB is looking into the costs that may occur.

Ms. Hapgood reported on research completed on security issues during hearings.

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.

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.)

1205077 HANOVER R S CONSTRUCTION LLC
ACTION: 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.)

1300039 EMERICARE INC
ACTION: Board discussed.

1325655 AMERICAN LINEHAUL CORPORATION
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1226666 WASHINGTON ORNAMENTAL IRON WORKS, INC.,
DBA WASHINGTON IRON WORKS
ACTION: Order Granting Reconsideration issued.
Moved: Marvin Kropke.
Seconded: Judith Freyman.
Vote: 3-0

ORDERS DISMISSING APPEAL:

1392076 BYD COACH & BUS, LLC
ACTION: Board discussed.

1268863 FLOR OAXAQUENA, INC.
ACTION: Board discussed.

1369964 LEPRINO FOODS COMPANY
ACTION: Board discussed.

1061365 SPHERE ALLIANCE INC DBA ADVANCED AIRCRAFT SEAL
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1366828 ANDRES DOROTEO
ACTION: Board discussed.

1426864 PEDRO MIRELES
ACTION: Board discussed.

1432541 REED VAN HOUTEN
ACTION: Board discussed.

1395516 WEST VALLEY CONCRETE, INC.
ACTION: 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.)

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.

1374636 AMERI-KLEEN
Whether Employer showed good cause for late appeal.

1272378 ANDREW HARRISON BARNES
Whether Mr. Barnes was/is an employer.

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- 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.
ACTION: Board discussed.
- 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
- 1213886 JACE VARGHESE
Whether Employer has satisfied requirements of petition for reconsideration.

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- 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.
- 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.
ACTION: Board discussed.
- 1199064 SA RECYCLING
Whether employer established that, the alleged violation was abated at the time of inspection.
- 1237932 SACRAMENTO COUNTY WATER AGENCY
Whether the citation was correctly classified as serious. Whether the ALJ correctly denied Employer’s Newbery defense.
- 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. LION FARMS, LLC, MCV075788 (1070258)
4. 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.)

1415259	A-1 CAR WASH AND DETAIL, INC.
1435244	ABLE JANITORIAL SERVICES
1435989	ABM BUILDING AND INDUSTRY
1395043	ABM INDUSTRY GROUPS, LLC
1457477	AEROTEK, INC.
1401326	AGRO LABOR SERVICES, INC
1351586	ALBERTSON'S, LLC.
1430990	ALINE M GONZALEZ AND RAMON HERNANDEZ
1426315	ALTERNATIVE ENERGY SYSTEMS, INC.
1369920	ALTMAN SPECIALTY PLANTS, INC.
1387746	APEX BUILDING & RESTORATION, INC.
1373151	ARCADIA RECLAMATION, INC.
1416400	ARCON CONSTRUCTION, INC.
1394588	ARS AMERICAN RESIDENTIAL SERVICES OF CALIFORNIA,
1415422	BAKER PETROLITE LLC
1387571	BIAGI BROS. INC.
1392838	BOWMAN PLATING

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1436532 CALAVO GROWERS, INC.
1403395 CALIFORNIA STEELS INDUSTRIES, INC.
1249164 CHRISTOPHER ALAN CRARY
1415460 CITADEL PREMIUM DESIGN, INC.
1373747 CITY & COUNTY OF SAN FRANCISCO - DEPARTMENT OF
1381012 COSTCO WHOLESALE CORPORATION
1424540 COUNTRY VILLA PLAZA
1380600 COVENANT CARE ENCINITAS, LLC
1431579 D. W. MACK CO., INC
1396294 DAN SCHWENZFEIER
1405296 DEBRA GROVE
1354526 DIAMOND PEO, LLC.
1400999 FASHION NOVA
1444907 FOOTHILL CARE CENTER, INC.
1368593 FROMER, INC.
1417205 GLACIER COLD STORAGE, INC.
1439662 GOKSAN INC.
1446176 HAE SEONG, INC. DBA SGC JAPANESE RESTAURANT
1355641 HALL WINES, LLC
1234424 HARDY AND HARPER, INC.
1374997 HARRIS CONSTRUCTION SERVICES LLC
1408936 HAYDON CONSTRUCTION, INC.
1404712 HORIZON PERSONNEL SERVICES INC.
1396930 HR HERNANDEZ CONSTRUCTION, INC.
1414355 HYBRID 911
1344005 IRVINE RANCH WATER DISTRICT
1399395 J-SQUARED GENERAL CONTRACTORS
1438627 J.L. DIBENEDETTO, INC.
1425071 JDMC MEDINA CONSTRUCTION, INC
1411948 JEL CONSTRUCTION, INC.
1399222 JORGE BENUTO
1353152 KARIBA SHIPPING, LLC.
1256612 KEN G RAYBURN AND LANA M RAYBURN, A MARRIED
1254423 KEY ENERGY SERVICES
1407430 KEY MECHANICAL CO.
1407876 KHAI NGUYEN AN INDIVIDUAL
1403044 KLING FAMILY CONSTRUCTION
1279313 LESLIE HEAVY HAUL, LLC
1309838 LIGHTHOUSE FRAMING INC
1429443 MAZ PROPERTIES, INC.
1266331 MCDONALD'S
1388701 MCGUIRE TEAM, INC.
1406765 MENNONITE BRETHERN HOMES, INC.
1348103 MID VALLEY LABOR SERVICES, INC.
1370020 MID VALLEY LABOR SERVICES, INC.
1366275 OSMART GENERAL CONSTRUCTION, INC.

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1412711 OSTERKAMP TRANS. GROUP DEDICATED FLEET
1392383 PACIFIC BAY MASONRY, INC.
1411011 PACIFIC SOUTHWEST CONTAINER
1334321 PAINTING & DECOR INC.
1310200 PAT MCCARTHY CONSTRUCTION INC.
1393374 PERSONNEL STAFFING GROUP, LLC
1385496 PHILLIPS 66
1364782 PHILLIPS 66 COMPANY
1398484 PHILLIPS 66 COMPANY
1447083 PLUMAS PAINTING
1431691 PRIMULA MOZZARELLA, LLC-BAGNOLI ORIG. ORGANIC
1375714 PRL GLASS SYSTEMS, INC.
1326588 PRO FRAME BUILDERS, INC.
1412977 PROVIDING EXTERMINATING SOLUTIONS TODAY, INC.
1424583 QUAIL H. FARMS LLC
1416782 RALPH'S GROCERY CO.
1403711 RMG ENGINEERING, INC.
1292753 ROOF KING ROOFING INC.
1388510 SAHARA SCAFFOLD, INC.
1228484 SCHUFF STEEL COMPANY
1425688 SCOTT LEE RUDGE CONSTRUCTION, INC.
1401643 SD BISHOP RANCH LLC
1363045 SF MARKETS, LLC
1362066 SGD ENTERPRISES
1263026 SGL TECHNIC, INC.
1281425 SIERRA DESIGN & MANUFACTURING, LLC.
1422381 SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT, INC.
1435180 SODEXO AMERICA LLC
1245059 SOIL ENGINEERING CONSTRUCTION, INC.
1449044 SOON CHEOL HONG
1269603 SOUTH SHORE BUILDERS, INC.
1402988 SPANDAN PATEL
1442978 STATER BROS. MARKETS
1439922 STERNS PRODUCT DEVELOPMENT CORP.
1398676 STEVE WILLS TRUCKING AND LOGGING, LLC
1438586 SVC MANUFACTURING, INC.
1368290 SWANILLION, INC
1384051 T.B. PENICK & SONS, INC.
1420962 TAWA SERVICES, INC.
1192166 THOMAS BALSTROM
1360317 TOM CURRY ROOFING & WATERPROOFING, INC.
1413146 TRAMMELL CONSTRUCTION, INC.
1338329 TRIPLE J DIAMOND AG LABOR, INC.
1149878 UNITED PARCEL SERVICE
1397968 VICTORY VILLA LP
1379521 VOA INC.

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1361591 WEBER DISTRIBUTION WAREHOUSES, INC.
1400805 WESTERN CORRUGATED DESIGN
1430600 WOODSPUR FARMING, LLC
1371745 YOUNGS MARKET COMPANY EXPRESS
1290313 ZCL XERXES72

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 11:59 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 12:01 p.m.