

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

**Held on May 14, 2020
Teleconference**

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
Rheeah Avelar, Administrative Law Judge
Katie Hagen, Director of Department of Industrial Relations

MINUTES OF April 30, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the April 30, 2020 meeting.
Moved: Marvin Kropke.
Seconded: Judith Freyman.
The vote was 3-0.

NEW BUSINESS:

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

- Discussion regarding modifying hearing procedures to address Coronavirus.
ACTION: Board discussed proposed modifications to hearing procedures resulting from the Coronavirus lock-down and quarantine. Options for holding hearings remotely were presented.

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 discussed meetings being held throughout the state regarding budget effects due to the current lockdown.

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: Chief Admin meeting was held May 13, 2020. Ms. Hapgood highlighted the plans discussed for reopening the office and staff returning to work in the future.

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.)

1267767 FRAMING BY SUPERIOR, INC.

ACTION: Board discussed.

1282512 ROLCOM, INC.

ACTION: Board discussed.

1251879 TARGET STORES, INC.

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.)

1384029 USA WASTE OF CALIFORNIA, INC.

ACTION: Granted.

Moved: Marvin Kropke.

Seconded: Judith Freyman.

Vote: 3-0.

1436004 LMC CONSTRUCTION, LLC

ACTION: Remanded to Hearing operations.

Moved: Marvin Kropke.

Seconded: Judith Freyman.

Vote: 3-0.

1426393 HOSPITALITY WOOD PRODUCTS

ACTION: Denial issued.

Moved: Marvin Kropke.

Seconded: Judith Freyman.

Vote: 3-0.

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1101230 MTM BUILDERS, INC.
ACTION: Board discussed.

PETITIONS FOR RECONSIDERATION (Second Review):

1256643 GIUMARRA VINEYARDS CORPORATION
ACTION: Denial issued.
Moved: Marvin Kropke.
Seconded: Judith Freyman.
Vote: 3-0.

ORDERS DISMISSING APPEAL:

NONE

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1422960 CHAMPION HOME BUILDERS, INC.
ACTION: Board discussed.

1427416 HENGLI GARDEN DESIGN, INC.
ACTION: Remanded to Hearing operations.
Moved: Marvin Kropke.
Seconded: Judith Freyman.
Vote: 3-0.

1436004 LMC CONSTRUCTION, LLC
ACTION: Board discussed.

1444529 SERGIO GONZALEZ
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.

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.
- 1300039 EMERICARE, INC. dba BROOKDALE NORTHRIDGE
Whether the employer's alternate means of guarding satisfied the requirements of the applicable safety order.
- 1199473 FEDEX GROUND
Whether Employer's supervision of the workplace was reasonable.
- 1308948 GOLDEN STATE BORING & PIPE JACKING, INC.
Whether the employer was in violation of injury and illness prevention plan requirements and lockout/tagout requirements as alleged.
- 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.

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- 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.
- 1173183 L & S FRAMING, INC.
Whether the stairway involved was a "stairwell." Whether the motion to amend citation was timely and for good cause.
- 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.
- 1237932 SACRAMENTO COUNTY WATER AGENCY
Whether the citation was correctly classified as serious. Whether the ALJ correctly denied Employer's Newbery defense.
ACTION: DAR issued.
Moved: Judith Freyman.
Seconded: Marvin Kropke.
Vote: 3-0
- 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.

- 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.
- 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.

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. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002204 (12-R3D1-0781) (315525790)
3. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,
34-2015-80002206 (11-2562 thru 2570) (313169724)
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., 34-2016-80002345 (14-R3D2-3707)
7. KEY ENERGY SERVICE, LLC (12004280)
8. SHIMMICK FCC IMPREGILO JOINT VENTURE DBA SFI, JV,
34-2017-80002562, (1144056)
9. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575

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10. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632
11. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
12. BLUE DIAMOND GROWERS, (1040471)
13. UNITED PARCEL SERVICE, (1158285)
14. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
15. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
16. NATIONAL RETAIL TRANSPORTATION, INC., 19STCP02623 (1200875)
17. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
18. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
19. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
20. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
21. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
22. STADCO, INC., 192TCP04944 (1142674)
23. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
24. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)

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)
5. ATKINSON CONSTRUCTION, LP, 34-2017-80002611, C091705
(317386084)
6. BRAGG CRANE, A158500, HG18930741 (1157108)

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.)

1310797	A TEICHERT & SON, INC.
1425892	A.J. FISTES CORPORATION
1462580	ARNEY CORBIN GEORGE JENKINS
1414860	ASBESTOS INSTANT RESPONSE, INC
1309972	BARONHR, LLC.
1445631	BARSTAD ELECTRIC, INC.
1258218	BASALITE CONCRETE PRODUCTS
1287897	BOB AND SUE VANELLA
1386803	BOTTLING GROUP, LLC
1422318	BRIGHTVIEW TREE CARE SERVICES, INC.
1361311	BRILL, INC.
1316471	C. OVERAA & CO.
1414031	CA-BOLCO CONSTRUCTION CO.
1378903	CALIFORNIA RANCH FOOD COMPANY, INC.
1399963	CANIVET CONSTRUCTION, INC.
1369262	CEN CAL BUILDERS & DEVELOPERS INC.
1407340	CERTIFIED MECHANICAL SERVICES, LLC
1449245	DEVIKA, INC.
1359537	DIRECT PLACEMENTS STAFFING, INC.
1421007	DURANT HARVESTING, INC.
1344087	EMERALD METAL PRODUCTS
1382499	FALCON BAYAREA SECURITY CORPORATION
1347909	FOSTER POULTRY FARMS
1305405	HARO'S CABINETS, INC.
1410091	J & J HEATING & AIR, INC.
1413729	JECO, INC.
1435033	JOSE D. NAVAS
1401756	KERN RIDGE GROWERS, LLC.
1213138	KIMCO STAFFING SERVICES
1438720	KLT PROPERTIES, LLC
1434997	KOA CCTV, INC.
1445689	KUELPER CONSTRUCTION, INC.
1460351	L&T STAFFING INC
1338269	LEHIGH HANSON
1373149	LOUNGE APPEAL, INC.
1372543	LUCINO'S GENERAL CONSTRUCTION, LLC
1428025	MADISON WINDOW PRODUCTS, INC.
1436155	MANNA DEVELOPMENT GROUP
1422358	MARK DANIELS
1430492	MENLO FOOD CORPORATION

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1396562	MILLER FAMILY WINE COMPANY, LLC
1393315	MOZZETTI TRUCKING INC.
1409133	PEOPLEREADY, INC.
1453467	POWERHOUSE SOLAR, INC.
1421006	PROSET CONSTRUCTION, INC.
1425971	R & R ROOFING & WATERPROOFING, INC.
1386718	RONAK GOR
1449016	RUBBERCRAFT CORPORATION OF CALIFORNIA LTD
1444582	SAUL PEREZ
1425693	SIERRA PACIFIC INDUSTRIES
1326130	SILVERLINE CONSTRUCTION, INC.
1387832	SINGLE EAGLE INC.
1261165	STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS
1411315	STILES TRUCK BODY & EQUIPMENT
1330921	SWEETWOOD FARM, INC.
1326316	TELESIS ONION, INC.
1408090	THE J PAUL GETTY TRUST
1457984	THE PACIFIC COOKIE COMPANY, INC.
1413720	THE PETERSON FAMILY
1424592	THE WINE GROUP, INC.
1441312	THOMPSONGAS LLC
1362091	TILLER CONSTRUCTORS PARTNERSHIP, INC.
1468114	TMSO, INC.
1422347	TRUEBLUE, INC.
1328464	US MINE CORPORATION
1314730	W. B. STARR, INC.
1333809	W.J. GRIFFIN, INC.
1333809	W.J. GRIFFIN, INC.
1431313	WIEFELS & SON II, INC.
1463354	WJLP COMPANY, 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 12:09 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 12:10 p.m.