

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

Held on June 25, 2020

by:

Teleconference

PRESENT:

Judith Freyman, Management Member, Acting Chair
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
Chris Jessup, Administrative Law Judge
Kerry Lewis, Administrative Law Judge
Jacqueline Jones, Administrative Law Judge
Sam Lucas, Administrative Law Judge
Andrew Sommer, Attorney, Conn Maciel Carey LLP
Carl Paganelli, Attorney, DOSH

Ed Lowry, Public Member, Chair, Excused

MINUTES OF June 11, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the June 11, 2020 Board meeting as amended.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 2-0.

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.)

- Discussion of hearings conducted electronically.
ACTION: There was a discussion and update regarding holding Board hearings remotely by an electronic platform. The flexibility and effectiveness of the virtual hearing process was discussed. A training program is being developed and will be available once approval is granted on holding Appeal Board hearings by remote access.

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: No report.

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: No report.

STAFF REPORTS:

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

- REGULATIONS:
ACTION: The Board approved regulation packet to be sent to OAL. Now waiting OAL approval.
- 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.)

1135350 HILL CRANE SERVICE INC.

ACTION: Voted to reconsider on Board's own motion.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 2-0

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.)

1444529 SERGIO GONZALEZ

ACTION: Remanded.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 2-0

1418458 STEVEN LEATHERBARROW MASONRY

ACTION: Board discussed.

1251879 TARGET STORES, INC.

ACTION: Grant Petition for reconsideration.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 2-0

PETITIONS FOR RECONSIDERATION (Second Review):

NONE

ORDERS DISMISSING APPEAL:

1410404 A. OSEGUERA COMPANY, INC.
ACTION: Board discussed.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1385872 ALEGRIA REMODEL AND CONSTRUCTION, INC.
ACTION: Board discussed.

1422469 WAWONA FROZEN FOODS
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.

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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 25, 2020

- 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.
- 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 25, 2020

- 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.
- 1275087 QUALITY AG, INC.
Whether the ALJ correctly analyzed the issue presented.
- 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.
- 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.
- 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.

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

18. ENVIRONMENTAL CONSTRUCTION GROUP, 19STCP02405 (119260)
19. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
20. STADCO, INC., 192TCP04944 (1142674)
21. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
22. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
23. VINCENT TUOMEY, RG20061099 (1152851)

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)

OTHER ITEMS:

- Discussion on categorizing the Board's DARs and Denials on the DIR website.
ACTION: No report.

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.)

1439826	AARON AND DIANA BRADLEY, A PARTNERSHIP
1426384	AMERICAN WHITEWATER EXPEDITIONS, INC.
1392274	AMERICOLD LOGISTICS, LLC
1433722	AREA DEVELOPMENT, INC.
1356921	ASHBRITT, INC.
1362971	ATLAS MECHANICAL INC.
1423515	AUTOMOTIVE RACING PRODUCTS
1438703	BFP FIRE PROTECTION, INC.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 25, 2020

1437257	BRIGHTVIEW LANDSCAPE SERVICES, INC.
1425270	C&D KITCHEN AND BATH, INC
1318517	CA CORRECTIONS CCWF
1354789	CHARLES PANKOW BUILDERS LTD
1458368	CRM CO., LLC
1330777	DC CONSTRUCTION
1401731	DELTA PACKING COMPANY OF LODI, INC.
1376343	DKB, INC.
1344832	EE HALL, INC.
1382531	ELSON ELECTRIC HOLDINGS, INC.
1283595	ENVISION FOODS, LLC
1456926	ERIC TRAVIS CAWLEY, AN INDIVIDUAL
1419472	FIGAS CONSTRUCTION
1343785	FLAGSHIP FACILITY SERVICES, INC.
1444982	FURNITURE TECHNICS
1445301	GLENN PENISTEN
1435038	GOLDFAM, INC.
1441667	GRANITE GUYS, INC.
1376383	HAL HAYS CONSTRUCTION, INC.
1453461	J.J. GOURMET FOOD CORPORATION
1410920	JR STEEL REINFORCING CONSTRUCTION SERVICES, INC.
1373856	KELLY SERVICES, INC.
1442541	L & S LOCAL AND STATEWIDE PAINTING CONTRACTORS
1390445	LANDMARK STONE, INC.
1317100	LIMELIGHT CATERING, INC.
1456491	LONG'S CABINET SHOP INC.
1424588	LUNDAY-THAGARD COMPANY
1443560	MARIN AG LABOR SERVICES, INC.
1442341	MICKEY THOMPSON PERFORMANCE TIRES & WHEELS
1317703	MONTEREY PARKS DEPARTMENT
1413237	MOONLIGHT PACKING CORPORATION
1246124	MULTI-FAMILY PROPERTY SERVICES, INC.
1306852	NAVARRO TRANSPORT, INC.
1325349	NEXT LEVEL DOOR & MILLWORK, INC.
1417969	ONE WORLD BEEF, LLC
1369555	OSI INDUSTRIES, LLC
1422142	PRINCIPAL ROOFS SERVICES, INC.
1324359	RANCHO HARVEST, INC.
1368396	SACRAMENTO BREWING COMPANY LLC
1414307	SAKATA SEED AMERICA, INC
1438519	SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
1334259	SANHYD, INC.
1413737	SCHAPER CONSTRUCTION, INC.
1422005	SITESOL
1421342	SKANSKA USA CIVIL WEST CALIFORNIA DISTRICT INC.
1461669	SKS ENTERPRISES INC.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
June 25, 2020

1417640	SNAK KING CORP.
1423835	SPOSATO STAFFING AGENCY
1415100	SWARTZ AND VOSE CONSTRUCTION
1272392	SYNERGY TREE TRIMMING, INC.
1412963	TEKTON HOSPITALITY, LLC
1388506	THE G.B. GROUP, INC.
1363989	THE GB GROUP, INC.
1410698	THE METROPOLITAN WATER DISTRICT OF SOUTHERN
1458954	TOM YORK ENTERPRISES, INC.
1370054	TULARE COUNTY HOUSING AUTHORITY
1364922	ULINE, INC.
1152131	UNITED PRODUCTION FRAMING
1300329	USS CAL BUILDERS INC
1349008	WESLAR, INC.
1411520	WM. BOLTHOUSE FARMS, INC.

ACTION: All Administrative Law Judge Settlement Orders approved.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 2-0

PERSONNEL:

(Issues regarding staff)

ACTION: Discussion was held regarding personnel and the status of teleworking, any staff vacancies and the projection of reopening the office in the future.

The Closed Session was adjourned at 11:47 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 11:50.