

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS
BOARD**

MINUTES OF THE PUBLIC MEETING & CLOSED SESSION

Held on August 20, 2020

On Zoom

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
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

MINUTES OF August 5, 2020 MEETING:

(Approve or amend minutes of previous Board meeting.)

ACTION: Board approved minutes of the August 5, 2020 Board meeting.
Moved: Judith Freyman
Seconded: Marvin Kropke
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.)

- Board to discuss progress on implementing Video Hearings.

ACTION: The Board continued its discussion of interim measures to ensure business continuity through the use of video hearings. The ALJs are currently working on internal training on the Zoom platform, and the Board discussed opportunities for stakeholder

training, including creating a mock video hearing and an instructional video that could be posted to the OSHAB website.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board.)

ACTION: A discussion was held on current legislation.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chair reported on attending the Department's Advisory Committee meeting.

BOARD MEMBERS REPORTS:

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

ACTION: Member Freyman received confirmation on her appointment.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters.)

ACTION: Acting Executive Officer Hapgood reported on attending the Department's Advisory Committee meeting, the Agency's Admin meeting and the Agency's Chiefs meeting.

STAFF REPORTS:

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

- REGULATIONS:

ACTION: Chief Counsel Mojcher updated the Board on posting the approved regulations.

- 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.)

- 1332715 APTCO, LLC.
ACTION: The Board discussed this decision.
- 1278237 INTERNATIONAL LINE BUILDERS, INC.
ACTION: The Board discussed this decision.
- 1290383 JAFEC USA, INC.
ACTION: The Board discussed this decision.

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.)

- 1322702 CASUAL PERFORMANCE, INC.
ACTION: Approved to issue denial of petition for reconsideration.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

PETITIONS FOR RECONSIDERATION (Second Review):

- 1275101 JUAN CARLOS ARRELLANO MEDINA DBA CYPRESS FLC
ACTION: The Board approves to issue an order to the division to issue refund.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

ORDERS DISMISSING APPEAL:

- 1341947 ACME ANYTHING
ACTION: The Board discussed this matter.

ORDER DENYING LEAVE TO FILE LATE APPEAL:

1432009 HORIZON PERSONNEL SERVICES INC.
ACTION: Remanded to hearing operations.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

1432467 MEGAN HALLER
ACTION: Remanded to hearing operations.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

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.

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- 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.
- 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.
- 1135350 HILL CRANE SERVICE INC.
- 1251604 INTERLINE BRANDS, INC.
Whether Employer had provided adequate foot protection by means of administrative and engineering controls.
ACTION: The Board discussed this matter.
- 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.
- 1422951 LINEAGE LOGISTICS
- 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.

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- 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.
- 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.
- 1251879 TARGET STORES, INC.
- 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. BARNARD IMPREGILO HEALY, JV, (317134021), CPF 17-515575
7. R N R CONSTRUCTION, INC., (1092600) 34-2017-80002632)
8. ASHLEY FURNITURE INDUSTRIES, 34-2017-800002750, (1016514)
9. BLUE DIAMOND GROWERS, (1040471)
10. UNITED PARCEL SERVICE, (1158285)
11. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
12. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
13. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174
(1116529)
14. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191
(1059365)
15. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
16. ACCO ENGINEERED SYSTEMS, INC.,RG19042824 (1195414)
17. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
18. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
19. 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.

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.)

1441026	ABOVE ALL CONSTRUCTION, INC.
1420260	ACES COLLISION CENTER, INC.
1467414	ALAMO INDUSTRIES, INC.
1426550	ALPHA STAFFING SERVICES, INC.
1429937	AMBER EVENT PRODUCTION
1374636	AMERI-KLEEN, INC.
1464725	AMRUT CONSTRUCTION LLC
1385495	ANHEUSER-BUSCH COMMERCIAL STRATEGY, LLC
1443375	ANTELMO LUCAS
1343457	AUBIN INDUSTRIES, INC.
1473407	AUS DECKING, INC.
1466192	B.T. BROS. INC.
1445297	BESTUCCO INC.
1405301	BESTWAY RECYCLING COMPANY, INC.
1260229	CALIFORNIA PREMIER ROOFSCAPES
1474398	CAMILO LOPEZ INC
1368766	CCM
1440628	CITY AND COUNTY OF SAN FRANCISCO
1356469	CITY OF LOS ANGELES
1245460	CLOVIS LAKES ASSOCIATES, LLC.
1392672	COSTCO WHOLESALE CORPORATION
1432395	CUSTOM DISPLAY SOLUTIONS
1452833	DALE BAKER CONSTRUCTION
1429939	DINUBA LUMBER COMPANY, INC.

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1408949	DIVERSIFIED CPC INTERNATIONAL
1340951	DOUBLE LUCKY, INC.
1420249	DSJ ENTERPRISE, INC.
1426363	ESPARZA ENTERPRISES, INC.
1421326	FAITH FARMING, LLC
1452485	FARANAK NOZARI, AN INDIVIDUAL
1455562	FILIPPI'S PIZZA GROTTTO
1311110	GEOCON WEST, INC.
1436616	GOLDEN STATE CONSTRUCTION & FRAMING, INC.
1280740	GOLDEN STATE ENTERPRISES, LLC.
1446414	GREEK MARBLE, INC.
1341161	GREEN VALLEY CORPORATION
1374783	GRUMA CORPORATION
1434056	HARBER COMPANIES, INC.
1432802	IMAGINE APPAREL, INC.
1418057	IMMEDIATE RESOURCE GROUP
1461790	JAMES E. ROBERTS-OBAYASHI CORPORATION
1438253	JAVCO AIR, INC.
1448251	KANG KANG FOOD COURT
1456473	LEONARD'S MOLDED PRODUCTS, INC.
1442815	LOCK-RIDGE TOOL COMPANY, INC.
1465399	M&M WEST COAST CONSTRUCTION, INC.
1335201	MARK BEAMISH WATERPROOFING, INC
1433986	MC MODE, INC.
1418806	MILLCREEK CONSTRUCTION GROUP, INC.
1441773	MIR CO
1445290	MOON DANCE GROUP, INC.
1444322	MP MANUFACTURER CORP.
1436938	MULTI MECHANICAL INC.
1427503	NORCAL RAMJACK LLC
1388174	O'CONNOR LAGUNA HILLS MORTUARY
1284055	P. W. STEPHENS ENVIRONMENTAL, INC.
1441450	PANELIZED STRUCTURES, INC
1422498	PLOWBOY LANDSCAPES, INC.
1474619	QUAIL RUN FARMING COMPANY, LLC
1449720	R AND A ATWAL FARMS LLC
1472717	RED RIVER CONTRACTING INC.
1422432	REM CONSTRUCTION, INC.
1425506	RICO FARM LABOR, INC.
1400237	S.E. HARRISON CONSTRUCTION

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1377948	SANTA FE ROOFING, INC
1402263	SILVESTRE'S MECHANICAL COMPANY, INC.
1367610	SOLARM, INC.
1454940	STOCKHAM CONSTRUCTION, INC.
1406040	TAUB DESIGNS
1356916	TETRA TECH, INC.
1452502	THE LAWSON ROOFING CO., INC.
1432473	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
1464141	TORRES FENCE CO., INC.
1463084	TRI-STAR OFFICE MOVING, INC.
1445260	U-HAUL CO. OF CALIFORNIA
1458970	UNITED STAFFING ASSOCIATES, LLC
1368559	UNIVERSAL TRAILERS, INC.
1396760	VILLA'S ROOFING COMPANY, INC.
1437256	WALKER FOODS INC.
1415252	WEST COAST CONSTRUCTION SERVICES
1176742	WEST TECH CONTRACTING INC.
1439938	WESTSIDE AG II, INC.
1441906	WESTSIDE AG II, INC.
1461295	WILLIS CONSTRUCTION CO. 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 12:16 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 12:22 p.m.