

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

**MINUTES OF THE PUBLIC MEETING & CLOSED SESSION**

**Held on November 19, 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  
Aaron Jackson, Industrial Relations Counsel  
Autumn Gonzalez, Industrial Relations Counsel  
Andia Farzaneh, Attorney  
Elizabeth Clarke, Attorney  
Lee Berlin, Staff Services Manager  
Janis Jonas, Management Services Technician

**MINUTES OF OCTOBER 28 AND NOVEMBER 5, 2020 MEETINGS:**

*(Approve or amend minutes of previous Board meeting.)*

ACTION: Board approved minutes of the October 28 and  
November 5, 2020 Board meetings.  
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: Administrative Law Judge Kevin Reedy updated the  
Board on hearings being held by video platform.

**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 Ed Lowry discussed articles read regarding court cases.

Chair Lowry also reported on attending the Advisory Committee meeting.

Chair Lowry updated the Board on a meeting with Federal OSHA representative Amber Rose.

**BOARD MEMBERS REPORTS:**

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

ACTION: Member Judith Freyman discussed emergency regulation drafted by the Standards Board.

Member Marvin Kropke did not have a report. He did compliment the Appeals Board staff for the work they are doing, especially during the COVID-19 pandemic.

**EXECUTIVE OFFICER'S REPORT:**

*(Report regarding administrative matters.)*

ACTION: Executive Officer Patricia Hapgood reported on current budget status and proposed changes for the next fiscal year.

**STAFF REPORTS:**

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

1. Discuss whether there are any proposals for new regulations or proposals for modifications to existing regulations. In addition, discuss whether any concerns exist with existing regulations.

ACTION: No report.

2. Discuss the creation of, and availability of, OSHAB documents created in other languages.

ACTION: Lee Berlin updated the Board on the ongoing research in making documents available in other languages.

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3. Discuss recent appeals filed which are related to the current COVID-19 pandemic.

ACTION: Board discussed the status of docketing cases with citations related to COVID-19.

4. 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.)*

NONE

**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.)*

1321676 JOHN LOCHER HARVESTING INC.  
ACTION: Board denied this petition.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

1436014 MWL SOLUTIONS, INC.  
ACTION: Board denied this petition.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

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- 1474264      OUTDOOR KEEPERS  
ACTION:      Board granted this petition for reconsideration.  
                 Moved: Marvin Kropke  
                 Seconded: Judith Freyman  
                 Vote: 3-0
- 1080515      SHIMMICK CONSTRUCTION COMPANY, INC.  
ACTION:      Board denied this petition.  
                 Moved: Marvin Kropke  
                 Seconded: Judith Freyman  
                 Vote: 3-0

**PETITIONS FOR RECONSIDERATION (Second Review):**

NONE

**ORDERS DISMISSING APPEAL:**

- 1408754      MR. TACO FRESH MEXICAN GRILL LLC  
ACTION:      The Board discussed this order.
- 1417900      SONIC INDUSTRIES, INC.  
ACTION:      The Board discussed this order.

**ORDER DENYING LEAVE TO FILE LATE APPEAL:**

- 1397958      AMERICA'S BEST, INC.  
ACTION:      The Board discussed this order.

**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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- 1332715     APTCO, LLC  
              Whether the ALJ Decision correctly analyzed the record in deciding Employer had committed the alleged violation.
- 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.  
  
              ACTION:     The Board discussed this matter.
- 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.  
  
              ACTION:     The Board discussed this matter.
- 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.  
              Whether Employer violated the safety orders as alleged.

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- 1213886 JACE VARGHESE  
Whether Employer has satisfied requirements of petition for reconsideration.
- 1290383 JAFEC USA, INC.  
Whether the ALJ correctly decided the Employer was in violation of a safety order, as alleged.
- 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  
Whether Employer's motion to amend its appeal should be granted.
- 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: The Board discussed this matter.
- 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.  
ACTION: The Board discussed this matter.
- 1061365 SPHERE ALLIANCE, INC. dba ADVANCED AIRCRAFT SEAL  
Whether the Division had jurisdiction to cite the employer.
- 1303461 SSA TERMINALS (OAKLAND), LLC DBA SSA MARINE TERMINALS  
Whether Employer violated section 3212(a)(2)(A) as alleged.

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- 1251879      TARGET STORES, INC.  
Whether the employee suffered a serious injury as defined by statute and regulation.
- 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.

**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)

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9. BLUE DIAMOND GROWERS, (1040471)
10. ROBINSON MFG., INC., 30-2019-01067631 (1169633)
11. WEST COAST ARBORISTS, 37-2019-00026620 (1180192)
12. UNITED PARCEL SERVICE, INC. DBA UPS, 34-2019-80003174 (1116529)
13. SHIMMICK CONSTRUCTION COMPANY, INC., 34-2019-80003191 (1059365)
14. PROCESS COOLING INTERNATIONAL, 34-2019-80003220 (1232555)
15. ACCO ENGINEERED SYSTEMS, INC., RG19042824 (1195414)
16. PRESTIGE PAINTING, 37-2019-00066143 (1367265)
17. DAVIS DEVELOPMENT COMPANY, 34-2020-80003373 (1226084)
18. VINCENT TUOMEY, RG20061099 (1152851)
19. GOLDEN STATE BORING & PIPE JACKING, INC. 34-2020-80003465  
(1308948)
20. SHIMMICK CONSTRUCTION CO., INC./OBAYASHI CORP.,  
34-2015-80002204 (12-R3D1-0781) (315525790)
21. INTERLINE BRANDS, INC., CIVDS2021813 (1251604)

**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. ATKINSON CONSTRUCTION, LP, 34-2017-80002611, C091705  
(317386084)

**OTHER ITEMS:**

- New and/or interlocutory petitions for reconsideration not filed in time to be agendaized.
- Categorizing the Board's DARs and Denials on the DIR website.
- Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

**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.)*

1391076	AMCAL GENERAL CONTRACTORS, INC.
1439734	ARAMARK FOOD & SUPPORT SERVICES GROUP, INC.
1350192	BAY CITY MARINE, INC.
1474948	COASTCRAFT RUBBER CO.
1416834	DAN'S LANDSCAPING COMPANY, INC.
1458034	EFRAIN L NUNEZ
1281598	ELITE LIGHTING
1473122	ELLIOTT ENTERPRISES, INC.
1446445	EXTREME PLASTERING, INC.
1468786	FOG COAT CORPORATION
1192746	GOOD VIEW ROOFING & BUILDING SUPPLY CORPORATION
1475483	GRADETEK INC.
1375985	GUY F. ATKINSON CONSTRUCTION, LLC
1347513	KPS FIRE SPRINKLERS, INC.
1471992	LAMANUZZI & PANTALEO, LLC
1391857	LODI FARMING, INC.
1378306	LOS ANGELES DEPARTMENT OF WATER AND POWER
1272077	LOS ANGELES ENGINEERING, INC.
1445401	MCPAYNE ENTERPRISES, INC.
1433085	MICHAELS STORES PROCUREMENT COMPANY, INC.
1442639	MTNA, INC.
1364467	NEXUS ENERGY SYSTEMS, INC.
1476494	OSI INDUSTRIES LLC
1472024	PANERA, LLC
1473521	PIONEER WINDOW PRODUCTS
1447962	PRIMUS MARBLE INC.
1372171	RESTAURANTS DEL SUR, LLC

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1474343	ROSAS CORPORATION
1422986	SCOTT MCMILLAN DBA MCMILLAN TREE SERVICE
1371614	SIMWON AMERICA
1453822	SKYLINE CONSTRUCTION & DESIGN, INC.
1249627	SKYLINE STEEL, INC.
1442273	SLM DEVELOPMENT INC
1465706	SO CAL STONE FABRICATORS INC.
1346634	SOLO MIO, INC.
1271710	SOUTHERN CALIFORNIA GAS COMPANY
1455083	SPROUTS FARMERS MARKET
1371306	T&U ROOFING
1313385	TAYLOR FARMS RETAIL, INC.
1444562	VENEZIA STONE FABRICATION, INC.
1472531	XPRESS TECHNICAL SERVICES, INC.

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

**PERSONNEL:**

(Issues regarding staff)

ACTION: No report.

The Closed Session was adjourned at 12:08 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 12:12 p.m.