

**State Of California**  
**California Occupational Safety and Health**  
**Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held On December 17, 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  
Kerry Lewis, Administrative Law Judge  
Christopher Jessup, Administrative Law Judge  
David Rawe, Risk Manager, City of Roseville  
Kevin Kiger, Roseville Electric/City of Roseville

**Minutes Of December 3, 2020 Meetings:**

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

Action: Board approved minutes of the December 3, 2020  
Board meetings.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
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: Judge Kevin Reedy reported on holding a virtual hearing and felt that it ran successfully and smoothly.

Judge Kerry Lewis reported holding a hearing which included an interpreter and this hearing also ran smoothly.

**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 he will be absent for the January 7, 2021 Board Meeting.

**Board Members Reports:**

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

Action: Member Judith Freyman reported that she attended the Employer Association Christmas function by Zoom. People attending the function expressed appreciation of the Board, however, felt the Board is not finalizing cases as quickly as they would hope.

Member Marvin Kropke spoke about the COVID fatigue people are experiencing.

**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.)*

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: No report.

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

Action: The Board discussed the list of cases filed 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: Member Marvin Kropke thanked Presiding Administrative Law Judge Ursula Clemons for her years of State Service and her years with the Appeals Board. He also congratulated her on her retirement as this was her last Board Meeting.

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.)*

1268738 Arizona Tile, LLC  
Action: Granted  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0

1399613 BMC West, LLC  
Action: Denied petition for reconsideration.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0

1233597 Hampton Tedder Electric  
Action: Denied petition for reconsideration.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0

**Petitions For Reconsideration (Second Review):**

None

**Orders Dismissing Appeal:**

1437646 Fabrication Technologies Industries Inc.  
Action: The Board discussed this matter.  
1432421 Imperial Unified School District  
Action: The Board discussed this matter.

**Order Denying Leave To File Late Appeal:**

None

**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.  
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.

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- 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.
- 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.  
Whether Employer violated the safety orders as alleged.
- 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.

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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.
- 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.  
  
Action: The Board discussed this matter.
- 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.
- 1474264 Outdoor Keepers  
Whether the ALJ acted appropriately in approving settlement terms offered by the Division and not accepted by the Employer
- 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.  
  
Action: Board approved DAR to be issued.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals  
Whether Employer violated section 3212(a)(2)(A) as alleged.

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- 1153101 Sunview Vineyards Of California, Inc.  
Whether the Board should reconsider this interlocutory petition. Whether the Division should be required to provide a redacted copy of the complaint to Employer.
- 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.
- Action: Board approved DAR to be issued.  
Moved: Marvin Kropke  
Second: Judith Freyman  
Vote: 3-0

**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. MCM Construction, Inc., 34-2016-80002312 (13-R1D2-3851-3854)
2. Solarcity Corp., 34-2016-80002345 (14-R3D2-3707)
3. Key Energy Service, LLC (12004280)

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4. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
5. R N R Construction, Inc., (1092600) 34-2017-80002632
6. Ashley Furniture Industries, 34-2017-800002750, (1016514)
7. Blue Diamond Growers, (1040471) 34-2018-80003007
8. Robinson Mfg., Inc., 30-2019-01067631 (1169633)
9. West Coast Arborists, 37-2019-00026620 (1180192)
10. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
11. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
12. Process Cooling International, 34-2019-80003220 (1232555)
13. Acco Engineered Systems, Inc., RG19042824 (1195414)
14. Prestige Painting, 37-2019-00066143 (1367265)
15. Davis Development Company, 34-2020-80003373 (1226084)
16. Vincent Tuomey, RG20061099 (1152851)
17. Golden State Boring & Pipe Jacking, Inc. 34-2020-80003465 (1308948)
18. Shimmick Construction Co., Inc./Obayashi Corp. 34-2015-80002204  
(12-R3D1-0781) (315525790)  
Action: Approved  
Moved Judith Freyman  
Seconded: Marvin Kropke  
Vote: 3-0
19. Interline Brands, Inc., CIVDS2021813 (1251604)
20. Walsh Shea Corridor Constructors, S264760, (1093606)

**Appellate Court:**

1. Blue Diamond Growers, 34-2012-80001308 (10-R2D1-1280/1281)
2. Ventura Coastal, F077267 (317808970)



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3. Lion Farms, LLC, MCV075788 (1070258)
4. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
5. United Parcel Service, B308218, 18STCP03195 (1158285)

**Other Items:**

- New and/or interlocutory petitions for reconsideration not filed in time to be agendized.  
Action: No report.
- Categorizing the Board's DARs and Denials on the DIR website.  
Action: No report.
- Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.  
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.)*

1493987	Addison Construction
1451104	AFC Trading & Wholesale, Inc.
1470807	Arcadia, Inc.
1405957	Arnaz Engineering Contractors
1440745	Buttonwillow Warehouse Company, Inc.
1482701	Cook San Francisco LLC
1459979	Deckrite Waterproofing Company Inc.
1413458	Elwood Staffing Services, Inc.
1370292	Funfar, LLC
1337020	Gold Coast Farms, Inc.
1342225	Hess Contracting Inc.
1478720	J T S Modular Inc.
1476714	JD RMD Group Inc.
1383336	Jessie Verdun, An Individual
1495951	Jim Crew and Sons General Contracting
1452853	KBS Staffing
1369964	Leprino Foods Company
1485375	M. Baker Management, Inc.

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1435630 Olivas Construction  
1429467 Orbit International, Inc.  
1315321 Pacific Bell Telephone Company  
ART-201903 Park Management Corp.  
1461766 Paul Mello Construction, Inc.  
1470060 Priority Business Services, Inc.  
1481240 Priority Pallet, Inc.  
1408277 Pro-Tech Painting  
1295202 Randstad Us, LLC  
1464676 Reser's Fine Foods  
1466509 Rjp Framing, Inc.  
1434691 Robert Brkich Construction Corp.  
1386659 Roy O. Huffman Roof Co.  
1295238 Spherion Staffing LLC  
1395471 System Waterperoofting, Inc.  
1408577 T.R.E. Elevator Corporation  
1483183 Takaokaya USA, Inc.  
1442199 Tgm Construction  
1474060 True Value Company, L.L.C.  
1436918 URMEC Builders  
1492723 Vanlaw Food Products 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 12:05 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 12:07 p.m.