

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held On February 18, 2021
Sacramento, California
West Covina, California

Present:

Ed Lowry, Chair, Public Member
Judith Freyman, Management Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Andia Farzaneh, Attorney
Elizabeth Clarke, Attorney
Lee Berlin, Staff Services Manager
Janis Jonas, Management Services Technician
Kerry Lewis, Administrative Law Judge

Absent:

Marvin Kropke, Labor Member

Minutes Of February 4, 2021 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: Board approved minutes of the February 4, 2021 Board meeting.
Moved: Ed Lowry
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.)

- Board to discuss progress on implementing Video Hearings.

Action: Presiding Judge Kevin Reedy and Judge Kerry Lewis reported on current video hearings. All virtual hearings have been running flawlessly with no technical issues.

Legislation:

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

Action: There was a brief discussion regarding SB321.

Chairperson's Report:

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

Action: Chair Ed Lowry reported on the Agency Roundtable and highlighted several topics discussed.

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: Acting Executive Officer Patty Hapgood reported on the Chief Officers meeting held February 17, 2021. Among the several topics covered were the budget, HR, COVID and teleworking.

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 reported on working with the DIR Translations Office in moving forward in creating documents in other languages and making the documents ADA accessible for posting on the website. OSHAB is waiting for response from the DIR Translations Office.

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

Action: There was a brief discussion about current cases with COVID-19 related citations.

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 comments from the public.

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.)

1363401 Vasvision Berry Farms, LLC
Action: The Board discussed this matter.

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.)

1436785 RND Contractors, Inc.
Action: Denial of petition to be issued.
Moved: Judith Freyman
Second: Ed Lowry
Vote: 2-0

Petitions For Reconsideration (Second Review):

1437646 Fabrication Technologies Industries, Inc.
Action: Denial of petition to be issued.
Moved: Judith Freyman
Second: Ed Lowry
Vote: 2-0

Orders Dismissing Appeal:

1424922 West Port Construction, Inc.
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
<i>Whether Mr. Barnes was/is an employer.</i> |
| 1268738 | Arizona Tile, LLC.
<i>Whether the hearing should be continued.</i> |
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
<i>Whether adult film performers are employees or independent contractors.</i> |
| 1141604 | Boy Racer Inc. DBA Burning Angel
(Dosh's Petition)
<i>Whether adult film performers are employees or independent contractors.</i> |
| 1246527 | Cemex
<i>Whether the settlement in this matter was procured by fraud.</i> |
| 316446855 | Cybernet Entertainment, LLC, 14-R6D1-0364-0367
<i>Whether adult film performers are employees or independent contractors.</i>

Action: The Board discussed this matter. |
| 1206788 | DPR Construction, Inc. ET AL
<i>Whether the Division had jurisdiction. Whether the ALJ decision constituted an underground regulation.</i>

Action: DAR to be issued.
Moved: Judith Freyman
Seconded: Ed Lowry
Vote: 2-0 |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

- 1310525 Golden State FC, LLC
Whether Employer provided appropriate foot protection under § 3385.
Action: The Board discussed this matter.
- 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.
- 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.
Action: DAR to be issued.
Moved: Judith Freyman
Seconded: Ed Lowry
Vote: 2-0
- 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

- 1199064 SA Recycling
Whether employer established that, the alleged violation was abated at the time of inspection.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 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.
- 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.

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. Key Energy Service, LLC (12004280)
3. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
4. R N R Construction, Inc., (1092600) 34-2017-80002632
5. Ashley Furniture Industries, 34-2017-800002750, (1016514)
6. Robinson Mfg., Inc., 30-2019-01067631 (1169633)
7. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
8. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

9. Process Cooling International, 34-2019-80003220 (1232555)
10. Prestige Painting, 37-2019-00066143 (1367265)
11. Davis Development Company, 34-2020-80003373 (1226084)
12. Vincent Tuomey, RG20061099 (1152851)
13. Golden State Boring & Pipe Jacking, Inc. 34-2020-80003465 (1308948)
14. Shimmick Construction Co., Inc./Obayashi Corp., 34-2015-80002204
(12-R3D1-0781) (315525790)
15. Interline Brands, Inc., CIVDS2021813 (1251604)
16. Shimmick Construction Company, Inc., 34-2020-80003550 (1080515)
17. MWL Solutions, 34-2020-80003549 (1436014)
18. Hampton Tedder Electric, 34-2020-80003562 (1233597)
19. Diversified Utility Services, Inc., 34-2020-80003564 (1326355)
20. BMW West, LLC, 34-2021-80003574 (1399613)
21. Southern California Edison, 34-2021-80003580 (1320327)

Appellate Court:

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

Supreme Court:

1. Ventura Coastal, F077267 (317808970)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
Action: No report.
2. Categorizing the Board's DARs and Denials on the DIR website.
Action: No report.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

3. 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.)

1391425	American Innovative Products Inc.
1236885	Atkinson/Clark a Joint Venture
1436874	Atlas Environmental Services, Inc.
1470678	Avani Customized Staffing, LLC
1459244	Blessed Harvesting Inc.
1374762	Bradford Way Properties, LLC
1483374	Bread & Cie Wholesale LLC
1485360	Brentwood Home
1351935	BSA Framing, Inc.
1420898	Cal Pac Sheet Metal, Inc.
1367134	Cambro Manufacturing
1464998	Charlie's Enterprises
1397340	Circle K 9511
1488585	Covi Concrete Construction, Inc.
1440756	Custom Industrial Sheet Metal, Inc.
1473116	Diamond Landscaping, Inc.
1335852	Directv, LLC
1441314	Dole Packaged Foods, LLC

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

1483342	Dynamic Fabrication Inc.
1501252	Engel Insulation Inc.
1451276	F.D. Thomas, Inc.
1485344	Fairway Staffing Services
1476123	Final Touch Construction & Design Inc.
1476502	Gateway Mattress Co., Inc.
1309487	Golden Bear Equipment, Inc.
1268859	Greenwaste Recovery, Inc.
1430493	H L Auto Group, Inc.
1479991	H&P Recycling
1483789	International Golf Maintenance, Inc.
1404052	JC Resorts LLC
1466808	Joslyn - Sunbank Company LLC
1377699	Kana Pipeline, Inc.
1474476	Legend Fence Corp.
1268716	Leonard Roofing Inc.
1335644	Los Angeles County Fire Department
1449738	Los Angeles Unified School District, Van Nuys
1366835	Ltd Sheet Metal, Inc.
1502295	Luis E. Rios
1384361	Luna's Farm Management, Inc.
1487718	Magic Gourmet Trading Inc.
1450930	Marble Expressions Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

1396637	Matrix Environmental, Inc.
1415246	Mb Herzog Electric
1454762	McNamara Construction, Inc.
1373389	Mehta Mechanical Company, Inc.
1364604	Monterey Regional Waste Management District
1391416	Morrow-Meadows Corporation
1480579	National Security Industries
1453490	Northwest Pipe Company
1447598	Office Depot, Inc.
1418730	Orco Block & Hardscape
1438339	Pacific Utility Installation, Inc.
1488098	Pantheryx, Inc.
1348417	Populus Group, LLC
1375403	Precision Castparts Corp.
1464151	Rama Food Manufacture Corp.
1472095	Randal Optimal Nutrients, LLC
1473557	Recology Ostrom Road
1456770	Redwood Coast Developmental Services
1291418	Redwood Electric Group, Inc.
1492870	Santa Margarita Water District
1410093	Simone Fruit Company, Inc.
1489230	Site Work Solutions
1267365	Southern California Mountains Foundation

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

1254464	Stamoules Produce Company
1315669	Sunrun, Inc.
1496423	Sweet Things Inc.
1306573	Swift Beef Company DbA JBS Riverside
1489587	Target Corporation
1353377	TBC - The Boring Company
1413635	Tesoro Refining & Marketing Company LLC
1284134	Thunder Jones Contracting Group
1486505	Ulrich Barn Builders of California Inc.
1291833	United Production Framing, LLC
1322268	United Production Framing, LLC
1433863	Walmart Stores, Inc.
1484385	Weber Logistics LLC
1249791	Wilbur Curtis Co., Inc.
1450399	World Of Jeans And Tops, Inc.
1380498	Zixta Enterprises Inc.

Action: All Administrative Law Judge Settlement Orders approved.
Moved: Judith Freyman
Seconded: Ed Lowry
Vote: 2-0

Pending Appeals Involving Covid19-Related Citations:

(The following list consists of pending appeals that involve Covid19-related citations. Find more information about the citations at the [Federal OSHA Website](#). Type the inspection number in a box and click on the submit button.)

1475491	Sutter Bay Medical Foundation
1483044	Ruiz Farm Labor

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

1482809	Serve Max Farm Labor Contractor
1483172	Sierra-Cascade Nursery Inc.
1485198	Alfaro Farm Labor Contractor, Inc.
1478209	The UNI Kool Partners
1482004	M & J Williams Inc.
1472716	Sutter Bay Hospitals
1477632	DL Poultry, Inc.
1475440	Sutter Health – Calif. Pacific Med. Center - Mission Bernal
1483569	Vie de France Yamazaki, Inc.
1484808	JobSource North America, Inc.
1473542	JobSource North America, Inc.
1472876	Sutter Health Memorial Hospital Los Banos
1475234	Amazon.com Services, LLC
1473644	Amazon.com Services, LLC
1482761	Olson Meat Company
1476240	Overhill Farms, Inc.
1473510	Overhill Farms, Inc.
1475903	Ralphs Grocery Company
1473922	Cardenas Market, LLC
1472915	Kaiser Permanente Psychiatric Health Facility - Santa Clara
1474956	Kaiser Foundation Hospital Ontario
1482763	People's Sausage Company
1472020	Pitman Family Farms

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

1473260	Fletcher Cove Holdings, LLC
1473670	Dragonfruit Holdings, LLC
1473517	Kaiser Foundation Hospital - San Francisco
1474250	Ralphs Grocery Company
1472724	Santa Rosa Police Department
1473654	CHA Health Systems, Inc. / CHA Hollywood Medical Center, LP
1476536	Harvest Farms
1472737	University of California, Santa Cruz
1482017	Food 4 Less Holdings Inc.
1476202	Ralphs #222
1476044	Ralphs Grocery Company
1474648	Kaiser Foundation Hospitals
1475605	Kaiser Foundation Hospitals Redwood City Medical Center
1474630	Kaiser Foundation Hosp/Kaiser Permanente - Oakland Medical
1476723	Smithfield Foods Inc.
1474695	Kaiser Foundation Health Plan, Inc.
1479073	Integral Senior Living, LLC
1479264	Fresh Harvest, Inc.
1496706	Morada Produce Company, LLC
1476551	Arden Group, Inc.
1473356	The Regents of the University of California, Los Angeles
1473875	Panorama Meadows Nursing Center, LP
1476073	Kaiser Foundation Hospital

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

1475159	Driftwood Hayward Operating Company, LP
1478836	Los Angeles County Metropolitan Transportation Authority
1482031	United Staffing Associates, LLC
1473792	Central Valley Meat Holding Company
1476167	Kaiser Foundation Hospitals
1476072	Windsor Vallejo Care Center LLC
1480541	Western General Insurance Company
1478727	Doctors Medical Center, Inc.
1476882	NorthBay Medical Center
1477009	Lusamerica Foods, Inc.
1483221	CLW Foods LLC
1483678	California Farms Meat Company, Inc.
1477051	Marin General Hospital
1482369	Fancher Creek Packing LLC
1479906	Hayward Sisters Hospital
1484106	DHL Express (USA), Inc.
1475603	Kaiser Permanente Antioch Medical Center
1483240	Stephen H. Smith Farms, Inc.
1482357	H & R Labor Contracting, LLC
1474698	City of Santa Clarita-Santa Clarita Transit
1488121	Apollo Wood Recovery, Inc.
1495517	River Valley Farms, LLC
1483438	Mills-Peninsula Medical Center

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
February 18, 2021

1483129	Walmart Inc.
1487976	Stevens Creek BMW
1495252	Elkhorn Packing Co. LLC
1482808	Primex Farms, LLC
1477773	Citistaff Solutions, Inc.
1485044	Peterson Trucks, Inc.
1479944	Hughson Nut, Inc.
1486320	Coldwater Care Center LLC
1485067	Orange County Bagel Partners, L.P.
1477159	Grimmway Enterprises, Inc.
1481574	Daniel C Salas Harvesting, Inc.
1478942	Port City Operating Co LLC
1493465	Cardenas Market
1479549	Kaiser Foundation Hospitals
1481502	Fremont Healthcare Operating Co, LP
1483210	Community Home Partners LLC
1481792	HGST, Inc.

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session was adjourned at 11:32 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 11:33 a.m.