

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held On March 4, 2021
Sacramento, California
West Covina, California

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
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
Christopher Jessup, Administrative Law Judge

Minutes Of February 18, 2021 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: Board approved minutes as amended, of the February 18, 2021 Board meeting.
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: Presiding Administrative Law Judge Kevin Reedy reported on current video hearings. Judge Kerry Lewis and Judge Christopher Jessup also updated the Board on status of virtual hearings.

Legislation:

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

Action: There was a brief discussion regarding SB 321, SB 606, AB 893 and AB 701.

Chairperson's Report:

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

Action: Chair Ed Lowry discussed a report issued by the California's

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 supervisor and managers meeting being held on Friday. There will be a staff mandatory meeting scheduled at a future date.

There was a discussion regarding conducting in-house testimony. Ms. Hapgood reported that instructions have been prepared to use for anyone setting up a room for the purpose of conducting and recording testimony.

Applications have been received for the open position of Attorney II. The applications are under review and once selection made, interviews will be scheduled.

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: OSHAB now has translations on ten documents in six languages. Five documents have been made accessible and are in preparation to be posted on the OSHAB website.

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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.)

1269048 U.C.I. Construction, 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.)

1410726 Hathaway Dinwiddie Construction Co.

Action: This matter was held over for the next meeting.

316347038 Midwest Roofing & Solar

Action: This matter was held over for the next meeting.

Petitions For Reconsideration (Second Review):

NONE

Orders Dismissing Appeal:

- | | | |
|---------|-------------------------------------|---|
| 1457804 | ATV Inc. | Action: The Board discussed this order. |
| 1393295 | Jason D. Watson | Action: The Board discussed this order. |
| 1464711 | So Cal Stone Fabricators Inc. | Action: The Board discussed this order. |
| 1376243 | Universal Chain of California, Inc. | Action: The Board discussed this order. |

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> |
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(Dosh's Petition) | <i>Whether adult film performers are employees or independent contractors.</i> |

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- 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.
- 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.
- 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.
Action: The Board discussed this matter.
- 1422951 Lineage Logistics
Whether Employer's motion to amend its appeal should be granted.
- 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.

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- 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)

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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)
22. Davis Development Company 34-2021-80003586 (1293194)
23. Downing Construction, Inc. 34-2021-80003585 (1426007)

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.

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2. Categorizing the Board's DARs and Denials on the DIR website.

Action: No report.

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.)

1452351	Alameda Electrical Distributors Inc.
1427076	All Phase Concrete
1485377	Baron HR
1506956	Bob Smalley General Contracting
1488327	Bodycote Thermal Processing, Inc.
1494976	Bouncing Angels Inc.
1352535	Burrtec Waste Industries, Inc.
1480346	California Highway Construction Group Inc.
1478621	Camptonville Union Elementary School District
1410106	Cascade Drilling
1322885	Channell Commercial Corporation
1478565	Chevron USA, Inc.
1340361	Christensen Brothers General Engineering, Inc.
1405409	Citi Staff Solutions
1373860	Coast Sign Incorporated
1181239	Coastal Viticultural Consultants Inc. Dba North
1446722	Convoy Investments, Inc.
1498576	Coyne Stair Inc.
1483192	Dahlstrom & Watt Bulb Farms, Inc.
1458006	Department Of State Hospitals - Coalinga
1439208	DHA Capital, Inc.
1492595	Digital Path, Inc.

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1487770	Dollar General Corporation
1413011	DPR Construction
1282645	Eddy Liu
1485594	El Pollo Loco
1493789	FedEx Express
1272369	FedEx Freight, Inc.
1374671	FedEx Freight, Inc.
1409276	Fenix Marine Services
1303948	Green Valley Farm Supply, Inc.
1439614	Greenstreak Landscaping, Inc.
1467717	Hawaiian Host Candies Of L.A. Inc.
1318222	Hill Phoenix, Inc.
1433948	Husks Unlimited, Inc.
1492360	In-N-Out Burger Inc. #76
1461147	James Otis
1472198	Jay Tree Service
1451245	Los Angeles County Metropolitan Transportation
1446861	Milano Granite, Inc.
1396505	Mission Linen Supply
1457524	Morin Corporation
1470441	Norms Restaurant
1482761	Olson Meat Company
1433261	Paul Graham Drilling and Services
1482763	People's Sausage Company
1485044	Peterson Trucks, Inc.
1437400	Pomona Unified School District, Simons Middle
1498138	Redline Builders Inc.
1350794	Rhino California, LLC
1345627	Sandridge Partners.
1214552	Searles Valley Minerals Inc.
1483172	Sierra-Cascade Nursery Inc.

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1464787	Signal Hill Petroleum, Inc.
1329847	Signature Flight Support Corporation
1486130	Smart & Final LLC
1477033	So Cal Construction Enterprises, Inc.
1485463	State Of Ca Dept. Of State Hospitals
1486327	Suja Life, LLC
1372531	Sulzer Bingham Pumps, Inc.
1291106	Szabolcs Ulics
1402103	The Raymond Group
1447044	Topline Nails, Inc.
1278609	Tutor Perini/Zachry/Parsons, Joint Venture
1289631	United Parcel Service
1401003	United Parcel Service, Inc.
1246932	United Parcel Service, Inc.
1328447	United Parcel Service, Inc.
1351918	United Parcel Service, Inc.
1372841	United Parcel Service, Inc.
1429859	United Parcel Service, Inc.
1432733	United Parcel Service, Inc.
1461697	United Parcel Service, Inc.
1262192	UPS
1341411	UPS
1422682	UPS
1445680	UPS
1366332	UPS Supply Chain Solutions, Inc.
1481751	Usibelli Grape Ranch
1483904	Veestro LLC

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

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
1482809	Serve Max Farm Labor Contractor
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
1473260	Fletcher Cove Holdings, LLC
1473670	Dragonfruit Holdings, LLC
1473517	Kaiser Foundation Hospital - San Francisco

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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 Hospitals/Kaiser Permanente - Oakland Med.
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
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

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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
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.
1485541	Draeger's Market
1483898	Chipotle Mexican Grill Inc.

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1483864	JBM Restaurant Group Inc
1495407	D'Arrigo Bros. Co. of California
1481860	Carter's Retail Inc.
1486771	Doctors Medical Center, Inc.
1483170	H&B Hospitality LLC
1478378	Kaiser Foundation Hospitals
1483472	California Enterprises Employment, Inc.
1485373	A&A Dasso Farms Inc.
1498833	AMN Healthcare, Inc.
1484306	Olam West Coast, Inc.
1490454	Erickson Framing CA LLC
1480866	State of California, Department of Corrections & Rehabilitation
1485615	Ooma, Inc.
1491837	MV Transportation
1482178	United Parcel Service Inc.
1477528	Tranquility Inc.
1480875	OWB Packers, LLC

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session was adjourned at 12:10 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 12:11 p.m.