

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held On March 18, 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
Sam Lucas, Administrative Law Judge
Howard Chernin, Administrative Law Judge

Minutes Of March 4, 2021 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: Board approved minutes as amended, of the March 4, 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.)

Action: No report.

Legislation:

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

Action: There was a brief discussion regarding SB 321. SB 606 is set for hearing March 22, 2021. This bill concerns businesses with multiple work sites. Violations would apply to all sites.

Chairperson's Report:

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

Action: Chair Ed Lowry introduced, for discussion, the memo distributed by DIR Director Katie Hagen regarding the reinstatement of delegated hiring and examination authority.

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 Patricia Hapgood updated the Board on the status of several positions within the Appeals Board, that are vacant or being re-established.

HO II interviews will be held next week. This will be a 9 month temporary position.

IRC III is being re-classed to Attorney III. The paperwork for this position is ready to submit paperwork. This position is a permanent hire.

The Executive Secretary position is being re-established and the Appeals Board will be re-filling the AGPA position left vacant by Phyllis Eldredge.

There are new mask requirements when working in the office building. Double mask is required if one mask does not fit properly. Mask must fit securely around all edges.

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: Counsel Aaron Jackson submitted a proposal, supported by Administrative Law Judges, to amend Section 376, subdivisions (d) and (e), govern the procedures that must be followed when setting a hearing. The proposal incorporates current practice of video or remote hearings under the emergency Executive Order issued by Governor Newsom during the COVID-19 pandemic.

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

Action: A complete set of documents in Spanish have been reviewed, are ADA accessible and ready for posting to the website. Documents in other languages are ready for review once readers are found.

3. Discuss status of Video Hearings.

Action: Video hearings are being held and several have completed and decisions are being processed.

4. 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.

5. 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.)

1330738 Home Depot U.S.A., 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.)

1357982 Arrowhead Brass and Plumbing, LLC
Action: Denial approved to issue as amended.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

1326533 Cedar Fair, LP
Action: Denial approved to issue as amended.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

1442360 Grimmway Enterprises, Inc.
Action: Denial approved to issue as amended.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

1105855 Jeff Alexander Farming
Action: Denial approved to issue as amended.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

1331340 U.S. Pipe and Foundry Company
Action: Denial approved to issue as amended.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

1451098 Walt Oxley Enterprises, Inc.
Action: Denial approved to issue as amended.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

Petitions For Reconsideration (Second Review):

- 1410726 Hathaway Dinwiddie Construction Co.
Action: Denial approved to issue as amended.
 Moved: Marvin Kropke
 Second: Judith Freyman
 Vote: 3-0
- 316347038 Midwest Roofing & Solar
Action: Denial approved to issue as amended.
 Moved: Marvin Kropke
 Second: Judith Freyman
 Vote: 3-0

Orders Dismissing Appeal:

- 1406118 Goodwill Distribution Center
Action: The Board discussed this order.
- 1424523 Shenzhen Beautiful Garden Land
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
 Whether Mr. Barnes was/is an employer.
- 1268738 Arizona Tile, LLC.
 Whether the hearing should be continued.

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

- 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.
- 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: DAR approved to issue.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0
- 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: DAR approved to issue.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0

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

- 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: DAR approved to issue.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0
- 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.)

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

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)
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)
24. Sierra Forest Products, VCU285853 (1291481)

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.
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.)

1405597	Ambassador Automotive, Inc.
1477625	AMD International Technologies LLC
1498833	AMN Healthcare, Inc.
1441945	B2 Services LLC
1277524	Blackburn Transportation Group, Inc.
1351916	Bragg Investment Company, Inc.
1459364	Browning Contractors, Inc.
1493169	Cadence Gourmet, LLC

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

1451616	California Air Conveying Corporation
1472069	California Prison Industry Authority
1498457	Capital City Drywall, Inc.
1481791	City Of Vallejo
1483788	Colin's Labor Contractor, Inc.
1483210	Community Home Partners LLC
1324749	Costco Wholesale Corporation
1417460	Costco Wholesale Corporation #658
1326355	Diversified Utility Services, Inc.
1473670	Dragonfruit Holdings, LLC
1473260	Fletcher Cove Holdings, LLC
1501969	Forest Energy Corporation
1374750	Garney Pacific, Inc.
1447948	GL Ventura, Inc.
1383733	GP Merger Sub, Inc.
1442360	Grimmway Enterprises, Inc.
1264930	Hakanson Construction
1343096	Hanford City - Waste Water Treatment Plant
1479944	Hughson Nut, Inc.
1461548	Hyun Kim Landscape
1456525	Ismael Jonas Perez Sacarias and Santa Sabina
1420241	Jalal Abdu Karrar, an Individual
1447953	James R. Glidewell, Dental Ceramics, Inc.

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

1434993	Jose Antonio Gomez Ortiz
1272351	KF Community Care, LLC
1471772	Klink Citrus Association
1473029	Kubota Corporation
1482004	M & J Williams Inc.
1429847	Magic Mountain LLC
1385421	Malley Farms, Inc.
1386789	Mariano Moreno and Arcelia Tostado, Individually
1483245	Maxum Petroleum
1465475	McKinney Packing Inc.
1383499	Metal Supply LLC
1428546	Miller Clark Landscape & Nursery Company
1351910	Morton Grinding, Inc.
1430203	National Renovation Inc.
1470919	Ontario T, Inc.
1447776	Outsource, LLC
1363516	Pacific Southwest Structures, Inc.
1333197	Pearls Farm Labor, Inc.
1435002	Pleasanton Trucking, Inc.
1444074	Quanta Telecommunication Services, LLC
1433574	Rafael Zamorano
1474127	Ramos Oil Co., Inc.
1321781	Rancho Vista Operations, LLC

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

- 1458820 RDJJB, Inc.
 - 1495517 River Valley Farms, LLC
 - 1276552 Rosendin Electric, Inc.
 - 1489047 Securitas Security Services
 - 1481804 Skanska USA Civil West California District Inc.
 - 1503793 Solarlux Nana Manufacturing LLC
 - 1489307 Soma Windows, Doors, and Cabinets, Inc.
 - 1448264 Somatdary Incorporated
 - 1379062 Target Corporation
 - 1421001 Tradesmen International
 - 1320424 Tutor Perini Corporation
 - 1325392 United Parcel Service, Inc.
 - 1493199 Vadnais Trenchless Services, Inc.
 - 1477786 Vicente Navarrette
 - 1334475 Walmart
 - 1480541 Western General Insurance Company
 - 1321149 William Barranon
- 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

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

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
1472020	Pitman Family Farms
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

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

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
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.

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

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.
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.
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.
1484306	Olam West Coast, Inc.
1490454	Erickson Framing CA LLC
1480866	State of California, Department of Corrections & Rehabilitation
1485615	Ooma, Inc.
1491837	MV Transportation

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

1482178	United Parcel Service Inc.
1477528	Tranquility Inc.
1480875	OWB Packers, LLC
1482321	Erickson Framing CA LLC
1487546	Bevill Vineyard Management
1483601	The Fish Company
1495502	Al Pak Labor Inc.
1478155	Kingston Healthcare Center, LLC
1483470	HR Staffing Solutions, Inc.
1478320	Sutter Bay Hospitals
1485410	SC Warehouses, Inc.
1482360	West Coast Harvesting Inc.
1489025	Los Angeles Apparel, Inc.
1481220	The Villa Park Orchards Association
1489768	State of California, Dept. of Corrections - Avenal State Prison
1482518	G.L. Mezzetta Inc.
1484564	Integrated Pain Management Medical Group, Inc.
1486765	Teledyne Defense Electronics, LLC
1489371	Frontier-Kemper Constructors, Inc. and Tutor Perini Corporation
1489032	Michael Nicholas Designs, Inc.
1486257	The Kroger Company
1481476	Marin Resource Recovery Center

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session was adjourned at 11:30 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 11:32 a.m.