

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held On April 8, 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
Christopher Jessup, Administrative Law Judge

Minutes Of March 18, 2021 Meeting:

(Approve or amend minutes of previous board meeting.)

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

Action: No report.

Legislation:

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

Action: There was a brief discussion regarding SB 606. 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 reported on attending the Advisory Committee meeting held March 25, 2021. DIR Director Katie Hagen discussed hiring and examination authority.

Chair Lowry conducted a discussion regarding COVID concerns.

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 reported the Board is awaiting approval from HR for the candidate selected for the HO II position.

Attorney III interviews will be scheduled for next month.

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

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: Kevin Reedy discussed a proposal submitted regarding holding hearings remotely. ALJs would like to continue holding hearings on the Zoom platform.

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

Action: Lee Berlin reported that website links are being created for documents in additional languages.

3. Discuss status of Video Hearings.

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

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

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.)

- | | | |
|---------|--------------------------|---|
| 1359659 | Golden State FC LLC | Action: The Board reviewed and discussed this Decision. |
| 1405439 | McElroy Metal Mill, Inc. | Action: The Board reviewed and discussed this Decision. |
| 1398365 | Walmart Inc. | Action: The Board reviewed and 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.)

NONE

Petitions For Reconsideration (Second Review):

NONE

Orders Dismissing Appeal:

- | | |
|---------|--|
| 1341947 | Acme Anything
Action: The Board reviewed and discussed this Order. |
| 1332122 | Alvaro Adrian De La Cruz Evangelista
Action: The Board reviewed and discussed this Order. |
| 1386092 | P&P Fresh Mex, Inc.
Action: The Board reviewed and 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> |
| 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> |

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

- 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.
Action: Approved to issue DAR
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.
Action: The Board discussed this matter.
- 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.
- 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.
- 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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

- 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.
- Action: The Board discussed this matter.

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. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
7. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
8. Process Cooling International, 34-2019-80003220 (1232555)
9. Prestige Painting, 37-2019-00066143 (1367265)
10. Davis Development Company, 34-2020-80003373 (1226084)
11. Vincent Tuomey, RG20061099 (1152851)
12. Golden State Boring & Pipe Jacking, Inc. 34-2020-80003465 (1308948)
13. Shimmick Construction Co., Inc./Obayashi Corp., 34-2015-80002204 (12-R3D1-0781) (315525790)

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

14. Interline Brands, Inc., CIVDS2021813 (1251604)
15. Shimmick Construction Company, Inc., 34-2020-80003550 (1080515)
16. MWL Solutions, 34-2020-80003549 (1436014)
17. Hampton Tedder Electric, 34-2020-80003562 (1233597)
18. Diversified Utility Services, Inc., 34-2020-80003564 (1326355)
19. BMW West, LLC, 34-2021-80003574 (1399613)
20. Southern California Edison, 34-2021-80003580 (1320327)
21. Davis Development Company 34-2021-80003586 (1293194)
22. Downing Construction, Inc. 34-2021-80003585 (1426007)
23. 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)

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.)

1313380	Advanced Construction Southwest of California
1464996	Alpha Dyno Nobel
1450598	Altman Specialty Plants, Inc.
1368988	Aperia Technology
1493834	Aranda Tooling, Inc.
1098307	Arco National Construction Company, Inc. Dba
1448280	Artistic Marble & Granite, Inc.
1286996	AT & T
1464968	B & V Fashion, Inc.
1262734	Barnett Logging, Inc.
1492957	Baxstra, Inc.
1208870	Bomel Construction Company Inc.
1415855	Brightspark Travel, Inc.
1474779	CA Prison Industry Authority
1462950	California Custom Beverage, LLC
1463659	Camp Ramah in California
1391436	Cen Cal FLC, Inc.
1207928	Charles M. Vogel
1358841	City Lift Parking, LLC
1407745	Clovis Food Products, Inc.
1452203	Consolidated Container Company LP
1423938	Costco Wholesale Corporation

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

1416032	Creative Stone Manufacturing, Inc.
1441083	Creative Stone Mfg., Inc.
1204558	Crenshaw Manufacturing, Inc.
1485541	Draeger's Market
1474614	E N Dell Company, Inc.
1472739	El Camino College
1490092	Emerald Employment LLC
1490094	Emerald Triangle Management Group, Inc.
1408180	Expert Window and Door Installations, Inc.
1428430	Foam Distributors, Incorporated
1493345	Foodservice Partners LLC
1487513	Ford Logging Inc.
1505641	Frank Messina
1497554	Fresno County Sheriff's Department
1491033	Frontier Ag Co., Inc.
1353817	Ges Sheet Metal, Inc.
1308132	Grossmont Gardens Operations, LLC
1501757	H2o Fire Protection Inc.
1375091	Harris Construction Co. Inc.
1240360	Harris Spice Company, Inc.
1423260	Haz Rental Center, LLC
1427416	Hengli Garden Design, Inc.
1396507	Holland Partner Group Management, Inc.
1441335	Hollywood Bed Frame Company
1291465	HPS Mechanical, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

1434990	Humberto Asencio, an Individual
1500864	Hydra Distribution & Rail Services, Inc.
1426001	Icon West, Inc.
1374779	Indio Products, Inc.
1507798	Jaime Martinez, An Individual
1490756	Julian Pie Company LLC
1465128	Julie Bigham
1456223	Kaweah Container, Inc.
1466337	Kern Oil & Refining Co.
1494792	Kingdom Enterprises Inc.
1471357	Kings River Farming, Inc.
1447964	L.A.R.K. Industries, Inc.
1402649	Leopoldo's Farm Service, Inc.
1490450	Lepe Perfect Painting, Inc.
1324040	Los Angeles County Office of Education, Christa
1482346	Luis Limon
1427819	Martini Drilling Corp.
1464786	Matrix Peace Corp.
1339572	McLane Company, Inc.
1486547	Michael Nguyen
316347038	Midwest Roofing & Solar
1478204	New Evolution Construction, Inc.
1303759	Omnimax International, U.S.A., Inc.
1454408	P. W. Stephens Environmental, Inc.
1476734	Patitucci Tree Trimming and Removal, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

1323943	PK Mechanical Systems, Inc.
1315083	Point Loma Operations, LLC
1302665	Priority Business Services, Inc.
1475740	Progressive Produce LLC
1467405	R & M Appliance Inc.
1489798	R & S McIntyre Company, Inc.
1491675	RAAM Construction, Inc.
1437409	Rex Alvera Plastering, Inc.
1301759	Romak Iron Works
1488970	Running Luck Ranch LLC
1378470	Sahara Scaffold, Inc.
1466031	San Diego Heritage Partners, LLC
1478115	San Diego Refrigerated Services Inc.
1444529	Sergio Gonzalez
1387779	Shadow Industries Inc.
1477772	Soil Mixing Services, Inc.
1471124	South Bay International, Inc.
1286189	Sran Farms
1399910	Staffmark Investment, LLC
1391079	Stanley Phillip Caron
1454305	Steven P. Mahrt
1411415	Sun Country Builders, Inc.
1353063	Sunset Landscape Maintenance, Inc.
1402999	The Broadmoor Hotel
1478209	The UNI Kool Partners

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

- 1447163 Tracy Unified School District
- 1484319 United Compost and Organics
- 1376243 Universal Chain of California, Inc.
- 1343677 Ups Ground Freight, Inc.
- 1451098 Walt Oxley Enterprises, Inc.
- 1490103 Wehah Farms, Inc.
- 1482360 West Coast Harvesting Inc.
- 1412603 West Coast Waste Co., Inc.
- 1285782 Wolverton Construction Inc.
- 1442223 Wonderful Citrus li LLC
- 1418784 Yosemite Community College District
- 1408926 Zaharis Landscaping, Inc.

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.
- 1472716 Sutter Bay Hospitals
- 1477632 DL Poultry, Inc.
- 1475440 Sutter Health - California Pacific Medical Center - Mission Bernal

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

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
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
April 8, 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

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

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.
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
1481792	HGST, Inc.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

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
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.

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

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
1504282	Imperfect Food
1490787	Gibraltar Convalescent Hospital Ind. / Del Mar Care Center
1491478	Lucky Farms, Inc.
1488389	Mannington Mills, Inc.
1495416	Jose Carrasco Avila
1489305	Calavo Growers, Inc.
1492892	California Agriculture, Inc.
1491024	Grimmway Enterprises, Inc.
1478127	Contra Costa Behavioral Health Services
1489226	Mollie Stone's Market

California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting and Closed Session
April 8, 2021

1484133	Three Rivers Village Market, Inc.
1499605	United Staffing Associates, LLC.
1473477	A Vidovich Construction, Inc.
1481578	California Prison Industry Authority
1489284	Tosca Services, LLC
1478754	California Department of Corrections and Rehabilitation
1487741	BSF Fitness, LLC
1488834	Norman Elloway DDS
1481321	Autumn Hills Health Care Center
1491659	Studio City Rehabilitation Center
1483915	Sutter Health
1511137	Southern California Permanente Medical Group
1510890	Kaiser Foundation Hospitals
1492738	Dan Marcus

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session was adjourned at 12:06 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.