

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held On August 26, 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  
Kevin Reedy, Presiding Administrative Law Judge  
Aaron Jackson, Industrial Relations Counsel  
Elizabeth Clarke, Attorney  
Janis Jonas, Executive Secretary  
Kerry Lewis, Administrative Law Judge  
Eric Berg, Deputy Chief Research and Standards, DOSH  
Kumani Armstrong, Special Counsel, DIR Director's Office  
Lisa Baiocchi, Attorney, Prince Law Firm  
AnaStacia Wright, Attorney, Worksafe  
Dave Wiseman, Counsel, CalFire  
Elizabeth Treanor, The Phylmar Group  
Dan Lucido, Chief Counsel, DOSH  
Kevin Bland, Attorney, Ogletree Deakins  
Karin Umfrey, Staff Attorney, Worksafe  
David Ross, Construction Analyst, Caltrans  
Gerry McEwen, Safety Consultant, GMGS  
Kristy Narsinghani  
Chris Park

**Minutes of August 12, 2021 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the August 12, 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.)*

1. Consideration of regulatory amendments to the Board's rules of practice and procedure to govern, address and permit Board hearings via telephone or videoconference, including consideration of proposed amendments to Board regulation 376.

Action: The Board led a discussion regarding the regulatory amendments to the Board regulation 376. Public comments were accepted at this time.

**Legislation:**

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

Action: Elizabeth Clarke reported on current legislation.

**Chairperson's Report:**

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

Action: No report.

**Board Members Reports:**

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

Action: Member Freyman reported that she has been invited to attend the Standards Board meeting to discuss COVID cases.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood, Acting Executive Officer, reported that the office bandwidth is being expanded. Ms. Hapgood also updated the Board on the process of transcribing hearings and the efforts of posting DARs on the OSHAB website.

**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: The Board discussed this topic under old business.

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

Action: The translation project is in progress. The Board is preparing an exemption to post the documents under emergency status while the documents undergo remediation.

3. Discuss status of Video Hearings.

Action: Presiding Judge Reedy and Judge Lewis reported on hearings conducted by video platforms.

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

Action: The Board discussed cases related to COVID-19.

5. Litigation update:

Action: Counsel Aaron Jackson 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: Public comments were received during the Old Business topic. No additional comments were made.

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 have 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:**

- |         |                          |  |
|---------|--------------------------|--|
| 1253054 | C & F Foods, Inc.        | Action: The Board reviewed and discussed this order. |
| 1474657 | Schmidt Industries, 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>  |
| 1279492 | Arriaga USA, LLC  | <i>Whether the cited employer's rights were adequately protected at the video hearing.</i> |
| 1141604 | Boy Racer Inc. DBA Burning Angel<br>(Employer's Petition) | <i>Whether adult film performers are employees or independent contractors.</i>             |
| 1141604 | Boy Racer Inc. DBA Burning Angel<br>(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>                        |

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- 1135350 Hill Crane Service Inc.  
*Whether Employer violated the safety orders as alleged.*  
Action: The Board discussed this matter.
- 1422951 Lineage Logistics  
*Whether Employer's motion to amend its appeal should be granted.*  
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.*
- 1334740 Olam West Coast, Inc. dba Olam Spices and Vegetable Ingredients  
*Whether the Employer committed the alleged violations.*
- 1199064 SA Recycling  
*Whether employer established that, the alleged violation was abated at the time of inspection.*
- 1155042 Signal Energy LLC  
*Whether Employer appropriately oversaw the actions of the subcontractors.*
- 1306170 Siu's Products and Distributor, Inc.  
*Whether Employer complied with lockout/tagout requirements.*
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals  
*Whether Employer violated section 3212(a)(2)(A) as alleged.*
- 1384029 USA Waste of California, Inc. dba Blue Barrel Disposal Services  
*Whether the Employer committed the alleged violations.*
- 1152851 Vincent Tuomey  
*Whether the Board ordered to issue a new decision was consistent with the superior court's ruling on a writ of mandate.*

**Matters 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.)*

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**Superior Court:**

1. MCM Construction, Inc., 34-2016-80002312 (13-R1D2-3851-3854)
2. Key Energy Service, LLC (12004280)
3. Barnard Impregilo Healy, JV, CPF 17-515575, (317134021)
4. R N R Construction, Inc., 34-2017-80002632 (1092600)
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. MWL Solutions, 34-2020-80003549 (1436014)
12. Hampton Tedder Electric, 34-2020-80003562 (1233597)
13. BMW West, LLC, 34-2021-80003574 (1399613)
14. Southern California Edison, 34-2021-80003580 (1320327)
15. APTCO, LLC, BCV-21-100421 (1332715)
16. Ventura Coastal, (317808970)
17. L&S Framing, Inc., SCV-0046603 (1173183)
18. Granite Construction, 34-2021-80003634 (1235643)
19. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
20. Golden State FC, LLC dba Amazon Fulfillment, STK-CV-UWM-2021-0004380 (1310525)
21. USA Waste of California, Inc. dba Blue Barrel Disposal Services, 21STCP01729 (1384029)
22. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
23. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
24. RND Contractors, Inc., CIV SB 2119442 (1436785)

**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: This topic was discussed under Board members' reports.
3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.  
Action: Cases with citations related to COVID-19 were discussed.

**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.)*

1274415	Argus Contracting, LP
1293822	Baker Electric, Inc.
1474830	Bakersfield Shingles Wholesale Inc.
1434558	Balfour Beatty Construction, LLC
1318877	BSA Framing, Inc.
1407456	Burgeson's Heating & Air Conditioning, Inc.
1479303	California Plastic Containers, Inc.
1481860	Carter's Retail Inc.
1488366	Courtside Basketball Center
1476232	Discovery Builders, Inc.
1447955	Downing Construction, Inc.
1354161	Dr. Smoothie Enterprises dba Bevolution Group
1466333	Electric City Butcher LLC

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1453710	Escondido Disposal, Inc.
1485836	Freedom Forever Solar
1167729	Gizelle Investments, Inc.
1479275	Graham-Prewett Inc.
1494653	High Speed Steel Treating Co., Inc.
1473820	J. L. Produce
1491823	Janitorial Equipment Services, Inc.
1475454	Jason Clifford
316212224	KTI Inc. Db a Rialto Concrete Products
1493146	La Crescenta Roofing Inc.
1505149	La Mar USA, LLC dba La Mar Cebicheria Peruana
1476238	Liberty Staffing USA LLC
1477051	Marin General Hospital
1492772	McNicoll Construction Inc.
1516802	MG Lifetime Construction
1474821	Mody Pumps, Inc. A Nevada Corporation
1463361	Mycrodyne Plastics Inc.
1449998	Norman Jacobson Realty Resources, Inc.
1417571	Olivas Construction
1506969	Pacific Alloy Casting Company, Inc.
1473934	Pronto Plumbing & Drains, Inc.
1491768	RA&B Development LLC
1476044	Ralphs Grocery Company
1110939	RDY Construction, Inc.
1479800	Reliance Steel & Aluminum Co.
1474272	Republic Services Vasco Road, LLC
1473832	Rion Alnas
1391580	Safeway Inc.
1497589	Sanchietti Farming Inc.
1493471	Santana's Pumping & Plumbing, Inc.
1245480	Shambaugh & Son LP
1309507	Sierra Mountain Aviation, Inc.



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1498128	Sierra Pacific Industries
1504648	Simmons Construction, Inc.
1482812	Sycamore Labor Inc.
1434987	T & M Wholesale Plumbing Supply, Inc.
1508397	Temple Park Convalescent Hospital, Inc.
1499284	Valle El Paraiso Berry Farms, LLC
1487919	VCA Animal Hospitals, Inc. #1171
1471890	Vignolo Farms, Inc.
1514218	Wesley Allen Inc.
1215273	Workforce Enterprises WFE Inc.

Action: The Board reviewed and discussed the Settlement Orders issued by the Administrative Law Judges.

**Personnel:**

*(Issues regarding staff)*

Action: No report.

The Closed Session was adjourned at 11:43 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 11:44 a.m.