

**State Of California**  
**California Occupational Safety and Health Appeals Board**  
**Minutes of the Public Meeting & Closed Session**  
**Held on September 9, 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  
Sam Lucas, Presiding Administrative Law Judge  
Aaron Jackson, Industrial Relations Counsel  
Elizabeth Clarke, Attorney  
Lee Berlin, Staff Services Manager  
Janis Jonas, Executive Secretary  
Christopher Jessup, Administrative Law Judge  
Kerry Lewis, Administrative Law Judge  
Dale Raymond, Administrative Law Judge  
Dan Lucido, Chief Counsel, DOSH

**Minutes of August 26, 2021 Meeting:**

(Approve or amend minutes of previous board meeting.)

Action: The Board deferred approving the minutes of the August 26, 2021 until the September 23, 2021 Board meeting.

**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: Chair Lowry discussed an article in the Cal/OSHA reporter.

**Board Members Reports:**

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

Action: Member Freyman raised questions regarding the current list of COVID cases.

**Executive Officer's Report:**

*(Report regarding administrative matters.)*

Action: Patricia Hapgood, Acting Executive Officer, reported on the status of staff recruitment and interview schedule.

Ms. Hapgood updated the Board on the preparations for resuming in person hearings. Air purifiers, plexi-glass, and PPEs, (gloves, masks and wipes, sanitizer) are being order for Hearing rooms. The size of the hearing room will determine the number of people admitted during a hearing.

**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.

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

Action: Lee Berlin reported on the status of posting OSHAB documents translated in other languages on the website.

3. Discuss status of Video Hearings.

Action: Transcripts for every hearing. Update contract.

4. Discuss recent appeals filed that 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, with continued discussion regarding in person hearings resuming and the precautions being taken for COVID precautions.

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.)*

- |         |                                     |   |
|---------|-------------------------------------|---|
| 1471575 | Desert Garage Door, Inc.            | Action: Board reviewed and discussed this decision. |
| 1327187 | Ontario Refrigeration Service, Inc. | Action: Board reviewed and discussed this decision. |
| 1183524 | Panda Restaurant Group, Inc.        | Action: Board reviewed and discussed this decision. |
| 1330292 | West Coast Arborists, Inc.          | Action: Board reviewed and discussed this decision. |

**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.)*

- |         |                |  |
|---------|----------------|--|
| 1341947 | Acme Anything  | Action: The Board discussed this petition. |
| 1262198 | ADJ Group, LLC | Action: The Board discussed this petition. |

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1359495 Victor C. Garcia, an Individual  
Action: The Board issued a denial for this petition.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

1461476 Walmart, Inc.  
Action: The Board granted this petition.  
Moved: Marvin Kropke  
Seconded: Judith Freyman  
Vote: 3-0

**Petitions For Reconsideration (Second Review):**

None

**Orders Dismissing Appeal:**

1511775 Juniper Rock Corporation  
Action: The Board reviewed and discussed this order.

1434045 Los Angeles County Department of Parks  
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  
*Whether Mr. Barnes was/is an employer.*  
Action: The Board discussed this matter.

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- 1279492 Arriaga USA, LLC  
*Whether the cited employer's rights were adequately protected at the video hearing.*  
Action: The Board discussed this matter.
- 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.*  
Action: The Board discussed this matter.
- 1135350 Hill Crane Service Inc.  
*Whether Employer violated the safety orders as alleged.*
- 1422951 Lineage Logistics  
*Whether Employer's motion to amend its appeal should be granted.*  
Action: The Board voted to issue Order of Remand as amended.
- 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.*  
Action: The Board discussed this matter.
- 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.*

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- 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.*
- Action: The Board discussed this matter.

**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.)*

**Superior Court:**

1. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, CPF 17-515575, (317134021)
3. R N R Construction, Inc., 34-2017-80002632 (1092600)
4. Ashley Furniture Industries, 34-2017-800002750 (1016514)
5. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
6. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
7. Process Cooling International, 34-2019-80003220 (1232555)
8. Prestige Painting, 37-2019-00066143 (1367265)
9. Davis Development Company, 34-2020-80003373 (1226084)
10. MWL Solutions, 34-2020-80003549 (1436014)
11. Hampton Tedder Electric, 34-2020-80003562 (1233597)
12. BMW West, LLC, 34-2021-80003574 (1399613)
13. Southern California Edison, 34-2021-80003580 (1320327)
14. APTCO, LLC, BCV-21-100421 (1332715)
15. Ventura Coastal, (317808970)

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16. L&S Framing, Inc., SCV-0046603 (1173183)
17. Granite Construction, 34-2021-80003634 (1235643)
18. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
19. Golden State FC, LLC dba Amazon Fulfillment, STK-CV-UWM-2021-0004380 (1310525)
20. USA Waste of California, Inc. dba Blue Barrel Disposal Services, 21STCP01729 (1384029)
21. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
22. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
23. 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 agendaized.  
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: 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.)*

1440754	Albion SC LLC
1488769	Alexandria Care Center

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1413401	American Construction Management & Engineering
1479550	Borrmann Metal Center, Inc.
1450408	Brian Warren
1477034	Brier Oak On Sunset
1371119	Building Zone Industries, LLC
1483678	California Farms Meat Company, Inc.
1509347	Charles Kim
1307467	City Of Modesto
1474959	Construction Developers Inc.
1492676	Courtney Inc.
1472339	Del Monte Foods, Inc.
1058820	E.E. Hall, Inc.
1490268	Eon Technologies, Inc.
1331361	F. D. S. Manufacturing Company
1493411	Fab 4, LLC
1442049	Flynn Restaurant Group LLC
1490096	GRB Con Inc.
1524494	Huhtamaki, Inc.
1524305	Imperial Painters Inc.
1471821	Jalita Corporation
1478865	James Raymond Wilson
1406512	JDS Industries, Inc.
1339069	Jensen Precast
1504572	Jet Speed Plumbing Inc.
1488830	Karas Food, Inc.
1421499	Kebe Construction Corp.
1473687	Kleary Masonry, Inc.
1480118	Kleary Masonry, Inc.
1498330	LMC Enterprises
1499785	Lumber City Corp
1496888	MAMCO



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1448915	MB's Exodus, Inc.
1417678	Moorefield Construction, Inc.
1494418	Morrison Landscape
1475089	MSS Construction Inc.
1396525	Next Level Construction Services, Inc.
1480840	Pacific Commodities Corporation
1497788	Price Manufacturing Co
1456202	Proset Construction, Inc.
1326774	Proven Management, Inc.
1478770	Purely Move, LLC
1270653	R & R Mountain Enterprises, Inc.
1473147	Ralph's Grocery Co.
1457443	Research Metal Industries, Inc.
1468209	Rohr Inc.
1400473	S.O.P.H.I.E., Inc.
1499541	Sepand Tofer
1368393	SFFI Company, Inc.
1462352	Sierra Pacific Industries
1480310	Sierra Pacific Industries
1481262	Sierra Pacific Industries
1482740	Sierra Pacific Industries
1509137	Sierra Pacific Industries
1304647	Sistemas Delfin USA Inc.
1472537	Skilled Construction Services
1511197	Smart & Final Stores, LLC
1457079	Sunshine Raisin Corporation
1459679	Sway-A-Way, Inc.
1368217	Swinerton Builders
1532632	Taylor Structures, Inc.
1344257	Tesla, Inc.
1408862	Tesla, Inc.

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1410880	Tesla, Inc.
1412988	Tesla, Inc.
1461134	Tesla, Inc.
1502851	The Chimney Guy Inc.
1331195	The Wine Group, Inc.
1514456	Tomales Bay Foods, Inc.
1431574	Total Placement Solutions, LLC
1403086	Vanguard Ag, Inc.
1444871	Walt Oxley Enterprises, Inc.
1466730	Wei-Chuan, USA
1474836	West Coast Arborists, Inc.
1508019	Z Logging, LLC

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 12:24 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 12:25 p.m.