

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on October 21, 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
Elizabeth Clarke, Attorney
Janis Jonas, Executive Secretary
Christopher Jessup, Administrative Law Judge
Kerry Lewis, Administrative Law Judge
Rocio Reyes, Assistant Chief Counsel, DOSH
Bruce Wick, Housing Contractors of California

Minutes of October 7, 2021 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the October 7, 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 discussed comments received from stakeholders regarding the regulatory amendments to the Board regulation 376.

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: No report.

Executive Officer's Report:

(Report regarding administrative matters.)

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

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 status of Video Hearings.

Action: Judge Reedy updated the Board on Video Hearings.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: The Board discussed the cases relating to COVID-19.

4. Litigation update:

Action: Chief Counsel Jeff 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: The Board received public comments.

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.)

1342017 O.C. Jones & Sons, Inc.

Action: The Board reviewed 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.)

None

Petitions for Reconsideration (Second Review):

1485458 SD Design Construction Corp.

Action: The Board discussed this matter.

Orders Dismissing Appeal:

1494822 Ciasom, LLC

Action: The Board reviewed 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

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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.
- 1279492 Arriaga USA, LLC
Whether the cited employer's rights were adequately protected at the video hearing.
Action: The Board voted to issue an order allowing employer opportunity to show prejudice.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0
- 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.
- 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.
- 1327187 Ontario Refrigeration Service, Inc.
- 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.
Action: The Board voted to issue DAR.
Moved: Marvin Kropke
Seconded: Judith Freyman
Vote: 3-0

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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.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.

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)

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15. Ventura Coastal, (317808970)
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)
24. Sunview Vineyards of California, Inc. RG21111733 (1153101)

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: 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.)

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1476219	Abdellatif Mohammed Latif
1461711	Ace Hardware Corporation
1493073	Ajinomoto Foods North America Inc.
1501057	Ajinomoto Foods North America Inc.
1528457	AT&T
1469098	ATV, Inc.
1447226	Avalon Bay Communities, Inc.
1516125	Barry R. Kirshner Wildlife Sanctuary
1412698	Berkel And Company Contractors, Inc.
1474527	Burrtec Waste Industries, Inc.
1468036	CDK Agriculture, Inc.
1466824	Chandler Brothers Construction Inc.
1499806	Commercial Design, Inc.
1487981	Control Technology, Inc.
1485632	Country Villa Westwood
1314741	DAMCO Distribution Services, Inc.
1462224	Davis Development Company, Inc.
1496930	Day-Lee Foods Inc.
1194705	Drill Tech Drilling & Shoring, Inc.
1540871	Ducommun Aerostructures Incorporated
1492128	Emerald Textiles Services, San Diego, LLC
1481941	Express Employment Professionals
1531251	Fleur De Lait West, LLC
1505121	G A Roofing
1487937	Galasso's Bakery
1497499	Garcia's Wood Works Corporation
1503397	GMJ Arborists, Inc.
1398198	Golden State FC, LLC
1510010	HACOR Inc.
1395410	Hansen Bros. Enterprises
1341831	Helix Electric, Inc.
1523776	Hunt & Sons, Inc.
1414949	JJ Charles, Inc.
1494844	Johnstone Moyer, Inc.
1476073	Kaiser Foundation Hospitals
1474689	Kandola Farms
1521186	Los Amigos Food Center, Inc.
1525990	Los Angeles Turf Club, Incorporated
1507752	Ludwick Construction LLC
1525610	Macpherson Oil Company, LLC

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1522167	Matt and Sarah Alvernaz, Individuals
1305557	Moorefield Construction, Inc.
1494439	National Construction Rentals, Inc.
1506791	National Logistics Team
1508070	Nestle USA
1498564	Ontario-Montclair School District
1468757	Os4labor, LLC
1496109	R & S Manufacturing Of Southern California Inc.
1494655	Randstad USA LLC
1475451	RCP Construction, Inc.
1474931	Rio Hondo Subacute and Nursing Center
1361831	Rodolfo Alberto Medina
1473686	Santa Clara Valley Medical Center
1490971	Santa Clara Valley Transportation Authority
1323621	Santa Fe Aggregates, Inc.
1480729	Sincere Orient Commercial Corporation
1474695	Southern California Medical Group Erroneously
1487976	Stevens Creek BMW
1196972	Sully-Miller Contracting Company
1541653	Superior Wall Systems, Inc.
1484801	T.M. Cobb Company
1348177	Target Corporation
1538807	TBC - The Boring Company
1520355	The People Concern
1471674	UDC Corporation
1509373	Ultramar, Inc.
1490762	Us Shutters and Blinds Inc.
1475496	ZG Plastering 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 adjourned at 11:57 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 adjourned at 11:59 a.m.