

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Geoboden, Inc.

Case No.: 19-0386-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor Geoboden, Inc. (Geoboden) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on June 12, 2019. Pursuant to California Code of Regulations, title 8, section 17227, on September 20, 2019, the appointed Hearing Officer, Steven A. McGinty, served an Order to Show Cause Why Request for Review Should Not Be Dismissed as Untimely under Labor Code section 1742, subdivision (a) (OSC).¹ Section 1742, subdivision (a), mandates that a request for review be transmitted to the Labor Commissioner within 60 days after service of the Assessment.

For the reasons stated below, this Decision finds that the time limit for requesting review is mandatory and jurisdictional and Geoboden's Request for Review was not filed timely. Accordingly, the Request for Review must be dismissed.

FACTS

DLSE issued the Assessment against Geoboden on June 12, 2019. (Certification of Service dated June 12, 2019, attached to Assessment.)

¹ All statutory references are to the Labor Code unless otherwise specified.

Geoboden filed a Request for Review on August 19, 2019, according to the postmark on the envelope containing letter-requesting review. Sixty-eight (68) days elapsed between the date DLSE issued the Assessment and the date Geoboden filed the Request for Review.²

Notice of the right to seek review is found at the top of page two of the Assessment. The notice states in part:

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

State of California - Labor Commissioner
Civil Wage and Penalty Assessment Review Office
PO Box 32889
Long Beach, CA 90832

The Parties were provided ten days to file a response in writing to the Hearing Officer's OSC of September 20, 2019, and five days to reply to any submission by any other Party. On September 27, 2019, Geoboden filed a letter in response to the Order to Show Cause.³ In the letter, Geoboden averred that on July 10, 2019, it had sent to Michael Barraquio (the DLSE Industrial Relations Representative who had issued the Assessment on behalf of the Labor

² The Hearing Officer took Official Notice of a calendar for the year 2019. (Cal. Code Regs., tit. 8, § 17245.)

³ Apparently, Geoboden did not serve the letter on DLSE. There is no proof of service. (Cal. Code Regs., tit. 8, § 17210, subd. (c).) The DLSE attorney who appeared at the Prehearing Conference denied receiving it.

Commissioner), at his office in San Bernardino, a package apparently in response to the Assessment.⁴ Further, “due to extremely high personal and business responsibilities,” Geoboden’s president, Shahrokh E. Padvar, conceded in his September 27 letter that he had missed by a few days the deadline to mail a duplicate package to the Long Beach office.

Padvar indicated in the letter that, for 5 to 6 hours daily, he takes care of two elderly parents with severe health problems. Due to family matters, he had difficulty meeting deadlines in the past 24 months.

At a Prehearing Conference held October 21, 2019, Padvar acknowledged that the Request for Review sent to the Long Beach office was late and pled the extenuating circumstance of his parents’ ill health and his need to care for them. DLSE took the position that the Request for Review was untimely.

DISCUSSION

Section 1742, subdivision (a), provides that an affected contractor may request review of a civil wage and penalty assessment within 60 days after service of the assessment. If no hearing is requested within that period, “the assessment shall become final.” (§ 1742, subd. (a.) The applicable regulation at title 8, section 17222, restates the 60-day filing requirement, and expressly provides that, “Failure to request review within 60 days shall result in the

⁴ The letter requesting review that DLSE transmitted to the Office of the Director – Legal Unit pursuant to California Code of Regulations, title 8, section 17223, is Geoboden’s letter dated July 10, 2019, addressed to Michael Barraquio at the Labor Commissioner’s Office, 464 W. Fourth St, Room 348, San Bernardino, CA 92401. It is stamped “RECEIVED, AUG 23, 2019, DIR/DLSE, BOFE-PW Long Beach.” The letter appears to have Padvar’s original signature in blue ink, and an orange colored symbol next to the company name in the heading of the letter. A copy of the front of the envelope was also transmitted, and it is likewise stamped, and the postmark on the envelope is “Aug 19, 19.” The address on the envelope is “State of California – Labor Commissioner, Civil Wage and Penalty Assessment Review Office, PO Box 32889, Long Beach, CA 90832.”

Assessment...becoming final and not subject to further review under these Rules.”

Section 17227 of the regulations governs the early disposition of a Request for Review that appears untimely. Under the rule, the Hearing Officer issues an Order to Show Cause why the Request for Review should not be dismissed as untimely under section 1742. The Order is served on all parties and provides the parties an opportunity to respond to the Order and to reply to any submission by any other party. Evidence in support or opposition to the Order is submitted by affidavit or declaration. (Cal. Code of Regs., tit. 8, § 17227, subds. (a) and (b).) The rule expressly authorizes the Director to dismiss a Request for Review that is untimely under section 1742. (*Id.*, subds. (c) and (d).)

This case proceeded under procedures set forth in section 17227 of the regulations. The Hearing Officer issued an OSC. Geoboden was the only party to file a response.

The record established that the last day to transmit a written request for review in this matter was August 16, 2019 (60 days from June 12, 2019, plus five days for service by mail). The Assessment became final on August 16, 2019. Therefore, under section 1742, Geoboden’s Request for Review transmitted to the Labor Commissioner’s Civil Wage and Penalty Assessment Review Office on August 19, 2019, was untimely. The Director is without jurisdiction to proceed on the untimely Request for Review. (§ 1742, subd. (a); Cal. Code Regs., tit. 8, § 17222, subd. (a); see also *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831 [where the time for filing is mandatory and jurisdictional, a late filing may not be excused on the grounds of mistake, inadvertence, or excusable neglect]; *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489 [same].)

Had Geoboden timely filed a Request for Review, it would have vested the Director with jurisdiction to review the Assessment and conduct a hearing as

necessary. Geoboden failed to do so. The time limit is mandatory and jurisdictional, and accordingly the Assessment is final. (§ 1742, subd. (a).)

Based on the foregoing, the Director makes the following findings:

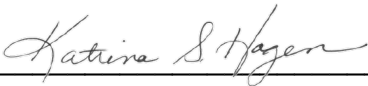
FINDINGS

1. Geoboden, Inc. did not timely request review of the Civil Wage and Penalty Assessment issued June 12, 2019.
2. The Assessment became final on August 16, 2019.
3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by Geoboden, Inc.

ORDER

Geoboden, Inc.'s Request for Review is dismissed. The Hearing Officer shall issue and serve a Notice of Findings on the parties.

Dated: 5/12/20



Katrina S. Hagen
Director of the Department of Industrial Relations