

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

**P&P FRESH MEX
dba MI PANANDERIA LA MICHOCANA
4474 E. Belmont Avenue
Fresno, CA 93702**

Employer

Inspection No.

1386092

**DENIAL OF PETITION FOR
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the Petition for Reconsideration filed in the above-entitled matter by P&P Fresh Mex dba Mi Pananderia La Michocana (Employer).

JURISDICTION

On June 18, 2019, pursuant to an inspection at a place of employment maintained by Employer in Fresno, California, the Division of Occupational Safety and Health (Division) issued two citations to Employer alleging seven violations, six general and one serious, of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer timely appealed the citations.

On December 9, 2019, Employer failed to appear at a duly-noticed status conference. On March 17, 2021, the ALJ issued an Order Dismissing Appeal for Failure to Appear.

On June 8, 2021, Employer untimely filed the instant Petition for Reconsideration.

The Division did not answer the petition.

ISSUE

Does the Board have jurisdiction to grant reconsideration in this matter?

¹ References are to California Code of Regulations, title 8 unless specified otherwise.

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

The Board has fully reviewed the record in this case, including the arguments presented in the Petition for Reconsideration. Based on our independent review of the record, we find that the Order was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

Employer's petition asserts none of the statutory grounds upon which we may grant reconsideration, which is reason to deny the petition. (*Arodz Motorsports, LLC, dba A1 Tune & Lube*, Cal/OSHA App. #1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) However, even if we were to construe the petition to assert one or more of the statutory grounds in Labor Code section 6617, we could not grant reconsideration.

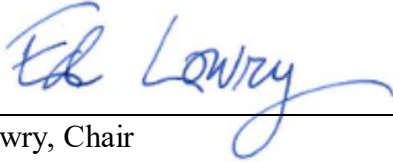
The dispositive issue is whether the petition was timely filed. The Board's record in this matter shows that the Order was served on March 17, 2021. In the absence of Employer's response within fifteen calendar days, the Order then became final. Both the Order and Labor Code section 6614, subdivision (a) gave Employer notice that a party may petition the Board for reconsideration within 30 days after service of the decision or order at issue. Employer's petition was filed in June 2021, more than a month late.

We lack jurisdiction to grant reconsideration when the petition is filed late. (*Amerisk Engineering Corp.*, Cal/OSHA App. 1129146, Denial of Petition for Reconsideration (Dec. 21, 2018), citing Labor Code sections 5900 and 5903; *Nestle Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; citing *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.)

DECISION

For the reasons stated above, the petition for reconsideration is denied. The ALJ's Order is affirmed.

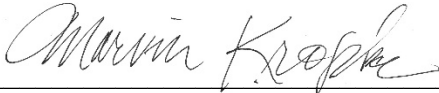
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD



Ed Lowry, Chair



Judith S. Freyman, Board Member



Marvin P. Kropke, Board Member

FILED ON: 07/21/21

