

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

In the Matter of the Appeal of:

**Precision Custom Conversions, Inc.
dba Precision Custom Conversions
1710 W. Foothill Blvd., Suite B1
Upland, CA 91786**

Employer

Inspection No.
1430976

**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 Precision Custom Conversions, Inc. dba Precision Custom Conversions (Employer).

JURISDICTION

On November 13, 2019, the Division of Occupational Safety and Health (Division) issued Employer with five Citations alleging ten violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer timely appealed.

A duly-noticed prehearing conference was set for May 16, 2022. Employer failed to appear and failed to provide any explanation for its failure to appear. As a result, the Administrative Law Judge (ALJ) issued an Order Dismissing Appeal for Failure to Appeal (Order) on May 19, 2022. Employer did not object or respond to the Order within 15 calendar days, failing to demonstrate good cause or a compelling reason for not appearing at the scheduled time and place. The Order thus became final on June 5, 2022.

After Employer received a collection notice from the Division, it initiated its untimely Petition for Reconsideration (Petition) on October 19, 2022.

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. 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 asserts that the evidence does not justify the findings of fact (Lab. Code, § 6617, subd. (c)) and the findings of fact do not support the order or decision (Lab. Code, § 6617, subd. (e)). However, the Board lacks jurisdiction to grant reconsideration in this matter, because the Petition is 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.)

Employer asserts that it never received any notice of the scheduled pre-hearing conference, and was also unaware of the ALJ's Order. Indeed, Employer's Petition states that Employer "had not received any correspondence referencing this matter since December 2021." However, the Board's records indicate that a Notice of Prehearing Conference, set for May 16, 2022, at 10:00 a.m. before ALJ Mario Grimm, via Zoom, was sent by mail on February 9, 2022, to the same mailing address given by Employer in its Appeal Form. (*See* Evid. Code, § 641 ["A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail."]) Employer also received previous communications from the Board, as well as the Division's collection notice, at this address.

Employer failed to appear at the duly noticed prehearing conference, on May 16, 2022, or to provide any explanation for its failure to appear. Its appeal was thus dismissed on May 19, 2022. The ALJ's Order was served on Employer at its designated mailing address. The Order provided Employer with 15 calendar days from the date of service to state good cause or a compelling reason for not appearing at the scheduled time and place of the prehearing conference, pursuant to Labor Code section 6611. (*Ameripride Uniform*, Cal/OSHA 04-106, Decision After Reconsideration (Apr. 3, 2008).) Employer did not timely respond. The Order therefore became final on June 5, 2022.

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 an order or decision becomes final. However, Employer did not respond until it received a collection notice from the Division, on or about October 7, 2022. Employer then filed its Petition, on October 19, 2022, more than three months late. Because the Petition was untimely, it is unnecessary to discuss whether Employer established good cause for failing to appear at the prehearing conference.

The Board has held that section 6614 is a jurisdictional time limit for filing a petition for reconsideration. (*Amerisk Engineering Corp.*, *supra*, Cal/OSHA App. 1129146.) The Board does not have the authority to grant a late petition.

DECISION

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member

FILED ON: 11/30/2022

