

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

In the Matter of the Appeal of:

PARTNERSHIP STAFFING SOLUTIONS, LLC
5610 Pacific Blvd, #206
Huntington Park, CA 90255

Employer

Inspection No.
151270

**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 Partnership Staffing Solutions, LLC (Employer).

JURISDICTION

On June 15, 2022, the Division of Occupational Safety and Health (the Division), issued one Citation to Partnership Staffing Solutions, LLC (Employer) for an alleged violation of California Code of Regulations, title 8. ¹ Citation 1, Item 1, alleged a General violation of section 3203, subdivision (a)(4)(C) [failure to identify and evaluate safety hazards in the workplace]. The proposed penalty totaled \$2,000.00.

Employer timely appealed the citation.

This matter was set for a status conference, on December 12, 2022, before Presiding Administrative Law Judge (ALJ) Sam E. Lucas. Employer did not appear at the scheduled time and place. Employer later provided good cause for its non-appearance, and another Status Conference was set for May 8, 2023. Employer did not appear at this status conference, and provided no explanation for its failure to appear. Employer's appeal was subsequently dismissed, on May 9, 2023.

The Order Dismissing Appeal (Order) provided Employer with fifteen calendar days to respond. Employer failed to do so. The Order thus became final on May 24, 2023. The Order further provided that, once such Order became final, Employer then had 30 days to file a petition for reconsideration of the Order.

Labor Code section 6614 provides that a petition for reconsideration must be made within 30 days after the filing of such order or decision. That deadline is extended by five days for service

¹ Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

where the party is located in California. (Lab. Code, § 6614; § 348, subd. (c).) The deadline for filing a petition for reconsideration was therefore June 29, 2023, which is 35 days after May 24.

Employer did not respond to the Order within that timeframe. Employer filed its Petition for Reconsideration (Petition) on August 1, 2023.

ISSUE

Does the Board have jurisdiction to consider Employer's petition for reconsideration?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

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).) Even construing the Petition to assert at least one of the statutory grounds, we conclude that we are unable to grant reconsideration in this matter, because the Petition is untimely. We lack jurisdiction to grant reconsideration when a petition is filed late. (*Quintana Construction, Inc.*, Cal/OSHA App. 1198572, Denial of Petition for Reconsideration (June 24, 2020); *Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021).)

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. The dispositive issue is whether the Petition was timely filed.

A petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. (Lab. Code, § 6614.) Under Board regulations, the time to file a petition for reconsideration is extended by five days for service, including service by email, where the party is located in California. (§ 348, subd. (c).)

Here, in the absence of a timely objection from Employer, the ALJ's Order dismissing Employer's appeal became final on May 24, 2023. Employer's last day to file a petition for reconsideration in response was 35 days later, on June 29, 2023. (Lab. Code, § 6614; § 348, subd. (c).) Employer filed its Petition on August 1, 2023, over a month late.

Employer’s Petition states that the person responsible for handling the appeal, identified as Helmut Ortega, left his employment with Employer on March 3, 2023, and as a result was no longer Employer’s representative in this appeal on the date of the May 8, 2023 Status Conference. Employer incorrectly asserts that, as a result of Mr. Ortega’s departure, Employer “did not have the opportunity to defend its case in court, which resulted in the \$2000 fine.” Employer further asserts that the alleged violation has been abated.

It may be true that the person originally assigned to handle Employer’s appeal was no longer available to represent Employer during the duly noticed May 8, 2023 status conference. It may also be that case that the alleged violation was abated; in this event, Employer’s commitment to workplace safety is to be commended. Nonetheless, the Petition was filed well after the jurisdictional deadline. We further note that Employer raises no potential procedural error on the part of the Board, which might justify reinstating its appeal.

We therefore lack jurisdiction to consider Employer’s Petition. (*Quintana Construction, Inc., supra*, Cal/OSHA App. 1198572.)

DECISION

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Ed Lowry, Chair
Judith S. Freyman, Board Member
Marvin P. Kropke, Board Member

FILED ON: 09/14/2023

