

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

In the Matter of the Appeal of:

T&R Automotive Repair

Employer

Inspection No.

1565033

**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 T&R Automotive Repair (Employer).

JURISDICTION

On March 28, 2022, the Division issued T&R Automotive Repair (Employer) several citations, including: Citation 1, Item 1, a Regulatory violation of section 461, subdivision (a),¹ [operation of air tank without a permit]; Citation 1, Item 2, a General violation of section 3203 [failure to maintain effective Injury and Illness Prevention Plan]; Citation 1, Item 3, a General violation of section 3205, subdivisions (c)(1) through (c)(11) [failure to establish written COVID-19 Prevention Program with all required elements]; Citation 1, Item 4, a General violation of section 5195 [failure to develop, implement, and maintain a compliant Hazard Communications Program]; Citation 1, Item 5, a General violation of section 6151 [failure to ensure compliant and readily accessible fire extinguishers]; Citation 2, Item 1, a Serious violation of section 3577 [failure to ensure adequate protection hoods or safety guards for abrasive wheels]; and Citation 3, Item 1, a Serious violation of section 3577 [failure to ensure adequate work rests for use with abrasive wheels/grinding machines] [collectively, the Citations].

Employer timely appealed the Citations. In its appeal forms, Employer provided its email address, and advised that its preferred method of service is via U.S. Mail.

On April 17, 2023, Judge Grimm issued a Notice of Status Conference (Notice), scheduling a status conference on July 24, 2023, at 10:30 a.m. The Notice also contained (1) a Zoom Telephone Conference Call Number and Meeting ID and (2) a hyperlink for the same Zoom meeting. The Notice also provided the following statement:

The designated representatives for both parties must attend the status conference by calling the Conference Call Number above at the designated time indicated on this Notice. You may also click on the Zoom link above

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

to attend the audio-only conference using your computer. ****NOTE:** Although you may opt to join the conference through the Zoom meeting platform, this is an audio call, not a video conference.

The Notice was served on Employer via U.S. Mail, in accordance with Employer's designated preference for service.

Employer failed to appear for the July 24, 2023, status conference.

On July 26, 2023, ALJ Grimm issued an Order Dismissing Appeal for Failure to Appear (Order). The Order stated that Employer "has not provided any sufficient explanation for its failure to appear." Further, the Order stated that the matter would be dismissed unless Employer provided "good cause or a compelling reason for not appearing" within 15 calendar days from the date of service. The Order was also served on Employer via U.S. Mail.

Employer did not respond to the Order.

On October 10, 2023, Employer filed a "Request to Reopen Case," which the Board construes as a Petition for Reconsideration (Petition). In its Petition, Employer alleges that it "was not provided the adequate login credentials to enter the Zoom court appearance" via the Zoom conference program. Employer's Petition also states, "On July 26, 2023, I received notice regarding an Order Dismissing Appeal for Failure to Appear."

ISSUE

Does the Board have jurisdiction to grant 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 does not assert any of the specific grounds for reconsideration set forth in Labor Code section 6617, which is by itself sufficient grounds to deny the Petition. (Lab. Code,

§§ 6616-6617; *Arodz Motorsports, LLC, dba AI Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).

In support of its Petition, Employer alleges the following (in relevant part):

I am writing to respectfully request the reopening of my case, #1565033, which was adjudicated on September 27, 2023. I believe that information related to a Zoom court appearance was inadvertently left out, ultimately resulting in my failure to appear at the hearing. I was unsure how to proceed or contact the parties involved as to my ability to enter the Zoom courtroom. In addition, no login information was provided.

...

I, Rolando Regalado, had been in discussion with Luis Mireles, DOSH LETF, regarding a settlement agreement on the condition I withdraw my appeal. I am aware the appearance(s) were rescheduled due to unforeseen circumstances. On July 26, 2023, I received notice regarding an Order Dismissing Appeal for Failure to Appear.

...

I was not provided the adequate login credentials to enter the Zoom court appearance. As Zoom Technology is not really an area of expertise for me, I was unaware of the procedures or protocols in place in order to enter such a room. I am unsure who was to provide that information, but nonetheless, I apologize for my inconvenience in being unable to find a solution by means of entering the Zoom court appearance.

...

I respectfully request that you consider reopening my case, #1565033, to allow for the above-mentioned information to be considered. To reiterate, I am aware the appearance(s) had been rescheduled in the past due to unforeseen circumstances and it is my minimal understanding that Luis Mireles had provided the Zoom login credentials in the past, but, in this circumstance, I unfortunately did not receive anything.

If Judge Grimm grants this request, I am fully prepared to provide any necessary documentation, including any and all formal petitions to reopen my case and ensure an appropriate resolution of the case.

I am grateful for your attention to this matter and your commitment to assisting in resolving this matter. I eagerly await your decision on this request and remain respectful of the judges [sic] procedures and your judgment.

(Petition, pp. 1-2.)

The Board has fully reviewed the record in this case, including the arguments presented in the Petition. We have taken no new evidence. We conclude the Petition must be denied.

Here, the Petition essentially alleges that Employer tried to appear for the noticed status conference, but “was unsure how to proceed or contact the parties involved as to my ability to enter the Zoom courtroom” and that “no login information was provided.” Employer is incorrect. The Board has reviewed the Notice, and concludes that it provided an accurate conference call-in number.² Moreover, the Notice specifically advised the parties that they “must attend the status conference by calling the Conference Call Number above” (all four forms of emphasis in original), and that joining the call via Zoom was *optional*. On this basis, the Board would be justified in denying the Petition, on the grounds that Employer has not established good cause for its failure to appear.

However, the Board need not reach that question to resolve Employer’s Petition, as the Petition is untimely. The Order states that, unless Employer filed an objection within 15 days of its issuance on July 16, 2023, the Order would become “final.” The record contains no indication that Employer filed an objection; therefore, the Order became final on July 31, 2023.

Labor Code section 6614, subdivision (a), provides that a petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. 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).)

Employer had 30 days to petition the Board for reconsideration, or until August 30, 2023. (Lab. Code § 6614, subd. (a); Code Civ. Proc., §1013, subd. (a).) While Employer asserts that the matter “was adjudicated on September 27, 2023,”³ Employer admits that it received the Order “[o]n July 26, 2023.” Employer filed its Petition on October 10, 2023, nearly six weeks after the August 30, 2023 deadline to do so.

Accordingly, as the Petition was untimely, the Board lacks jurisdiction to grant reconsideration in this matter.

² The Notice’s hyperlink for the Zoom meeting appears to contain poor spacing, as it refers to “Judge Grimmhttps://us02web.zoom.us/j/2687895682”. While the link should have separated “Judge Grimm” and <https://us02web.zoom.us/j/2687895682>, the Board concludes that the Notice was sufficiently clear that Employer was could join the status conference via telephone.

³ Employer makes no effort to explain how it came up with that date, and the record indicates that the Board took no further action since ALJ Grimm’s July 26, 2023 Order.

DECISION

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 11/08/2023

