

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Geoboden, Inc.

Case Nos. 19-0385-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, with respect to work performed on the Hart High School (Project) for the William S. Hart Union High School District. Pursuant to California Code of Regulations, title 8, section 17227, on October 7, 2019, the appointed Hearing Officer, Ann Wu, 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 that 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 attached to Assessment dated June 12, 2019.) Geoboden filed a Request for Review on August 19, 2019, according to the postmark attached to the envelope

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

containing the letter requesting review. Sixty-nine days elapsed between the date DLSE issued the Assessment and the date Geoboden filed the Request for Review.

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

On September 30, 2019, DLSE filed and served an Application for Order to Show Cause Why Request for Review Should Not Be Dismissed as Untimely, and declarations and exhibits in support thereof. On October 7, 2019, the Hearing Officer issued an OSC and parties were provided with ten days to file a response in writing to the Hearing Officer's OSC, and five days to reply to any submission by any other party. On November 1, 2019, Geoboden's recently retained counsel, Terry A. Jones, requested additional time to review and respond to the OSC. On November 1, 2019, the Hearing Officer provided the parties until December 2, 2019, to file a response in writing to the OSC, and until December 12, 2019, to reply to any submission by any other party.

On December 2, 2019, Geoboden filed the Declaration of Terry A. Jones in Response to OSC and Request for Hearing. That declaration states that for the past year, Geoboden's principal, Shahrokh E. Padvar, "has been going through a financial crisis as well as taking care of his elderly parents" whose needs "distract[] him from his work." Further, Jones stated: "After meeting with my client, he has assured me that all documents have been provided to DLSE. However, they were originally provided to the

wrong office and his request for review was thereby delayed at least a few days. He did not intentionally fail to timely provide any documents.”² Nothing in Geoboden’s response to the OSC indicates that the Request for Review was timely submitted to the DLSE Civil Wage and Penalty Assessment Review Office.

On December 9, 2019, DLSE filed its Reply to Declaration of Terry A. Jones in Response to OSC and Request for Hearing.

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, subdivision (a), restates the 60-day filing requirement, and expressly provide that, “Failure to request review within 60 days shall result in the 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 Regs., tit. 8, § 17227, subds. (a) and (b).) There is no right to an oral hearing under the rule. (Id., subds. (b) and (c).) 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 filed a response, and DLSE filed a reply.

² Declaration of Terry A. Jones in Response to OSC and Request for Hearing dated December 2, 2019, paragraph 3, page 2, lines 2-6.

The evidence in the record established that the last day to transmit a written request for review in this matter was August 16, 2019.³ The Assessment became final on August 16, 2019. Therefore, under section 1742, Geoboden's Request for Review transmitted 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].)

Geoboden argues that, because of personal problems, it should be excused from late filing based on mistake, inadvertence, or excusable neglect, where it provided "documents" to "the wrong office," thereby delaying its Request for Review. However, neither the prevailing wage laws in the Labor Code nor the applicable regulations provide the Director with authority to excuse a contractor from its failure to timely request review based on mistake, inadvertence, or excusable neglect. To the contrary, the plain language of section 1742, subdivision (a), unequivocally provides that if there is a failure to timely request review within 60 days after service of the assessment, "the assessment *shall* become final." (Emphasis added.) Under the Labor Code, the word "[s]hall" is mandatory" (§ 15.) Once the Assessment has become final, the Director lacks authority under the rules to further review the Assessment. (Cal. Code Regs., tit. 8, § 17222.)

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

³ The Assessment was issued on June 12, 2019. The 65th day after June 12, 2019, was August 16, 2019. (60 days from June 12, 2019, plus five days for service by mail. Cal. Code Regs., tit. 8, § 17203, subd. (c).)

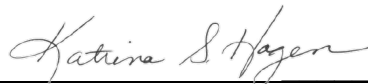
FINDINGS

1. Geoboden, Inc. did not timely request review the Civil Wage and Penalty Assessment issued on 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 a Notice of Findings which shall be served with this Decision on the parties.

Dated: 5/12/20



Katrina S. Hagen
Katrina S. Hagen
Director, Department of Industrial Relations