

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

In the Matter of the Appeal of:

**FABRETTI & DEDINI, A PARTNERSHIP  
P.O. Box 538  
Greenfield, CA 93927**

**Employer**

Inspection No.  
**1562245**

**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 Fabretti & Dedini, a Partnership (Employer).

**JURISDICTION**

The California Division of Occupational Safety and Health (Division) issued two citations to Employer alleging a total of four violations of occupational safety and health standards codified in California Code of Regulations, title 8.<sup>1</sup> Employer received the citations on April 11, 2022, and timely appealed, commencing administrative proceedings before the Board.

On August 24, 2022, the Board sent Employer a Notice of Status Conference, informing Employer that the Conference would be held on October 13, 2022. Employer failed to appear, and on October 13, 2022, the administrative law judge (ALJ) assigned to the matter emailed Employer and requested a response explaining the failure to appear. The ALJ's email further informed Employer that if it did not respond by the close of business on October 17, 2022, Employer's appeal was subject to dismissal. No response was received from Employer.

On October 31, 2022, the ALJ issued an Order Dismissing Appeal for Failure to Appear (Order). The Order informed Employer that it had the opportunity to show good cause for the failure to appear within 15 calendar days, that the Order would become final if Employer did not so respond, and that thereafter Employer would have an additional 30 days to file a petition for reconsideration with the Board.

Employer untimely filed a petition for reconsideration on February 15, 2023.

The Division did not answer the petition.

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<sup>1</sup> References are to California Code of Regulations, title 8 unless specified otherwise.

## 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 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).)

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. We have taken no new evidence.

As noted, the Order was issued on October 31, 2022, and, in sum, notified Employer that it had a total of 45 days to either respond with a showing of good cause within 15 days, or, thereafter, petition for reconsideration within an additional 30 days. That period of 45 days expired on December 15, 2022. Employer petitioned for reconsideration on February 15, 2023, approximately two months late.

The Board lacks jurisdiction to grant reconsideration of a late-filed petition. (*Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021) citing *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.) We must, accordingly, deny Employer's petition.

## DECISION

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

### OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 03/29/2023

