

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

In the Matter of the Appeal of:

**WRIGHT TREE SERVICE OF THE WEST, INC.
5930 Grand Avenue
West Des Moines, IA 50266**

Employer

Inspection No.
1425896

**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 Wright Tree Service of the West, Inc. (Employer).

Jurisdiction

The Division of Occupational Safety and Health (Division) inspected a worksite maintained by Employer. The Division issued a General citation asserting a violation of section 3395, subdivision (i) [failure to establish, implement, and maintain an effective heat illness prevention plan]. Employer filed a timely appeal. Thereafter, the parties entered into a settlement agreement. The parties agreed to reclassify the citation to a notice in lieu. The settlement agreement was codified in a Settlement Order, which was issued by an Administrative Law Judge on June 23, 2021.

On March 9, 2022, Employer filed a motion to enforce the settlement order, or alternatively requested relief from the settlement order. Although several issues are raised, Employer predominantly filed the motion for two reasons: (1) Employer requests that the Division actually issue a notice in lieu, a specific form, as required by the Division's policy and procedure manual; and (2) Employer complains that the Division has miscommunicated the settlement to Federal OSHA. Employer complains that Federal OSHA's website, fed by Division data, interprets the notice in lieu as a citation.

The Board has no rule governing a motion to enforce settlement; therefore, the Board interprets the instant motion as a petition for reconsideration.

Issue Presented

1. Does the Board have continuing authority to enforce its Settlement Orders in this case, such that it may issue an order requiring the Division to comply with the Settlement Order's terms?

Discussion

1. **Does the Board have continuing authority to enforce its Settlement Orders in this case, such that it may issue an order requiring the Division to comply with the Settlement Order's terms?**

On March 9, 2022, Employer filed a motion to enforce the terms of a Settlement Order that had been issued by a Board ALJ on June 23, 2021. The first question presented by Employer's motion is procedural; whether the Board has continuing jurisdiction to enforce the terms of a final Settlement Order in this matter, particularly given the lateness of Employer's request.

The Board's authority to act, with some exceptions not raised here, is bounded by firm time constraints. An ALJ's order becomes final within 30 days unless a timely petition for reconsideration is filed. (Lab. Code, § 6614; Cal. Code. Regs, tit. 8, § 390.3.) The Settlement Order here is a final order by operation of law. Employer has not cited to any authority supporting the proposition that the Board has continuing jurisdiction to enforce final settlement orders, particularly absent a timely petition for reconsideration, nor have we located any. A contention is waived by failure to cite to legal authority. (*Shimmick, Construction Company, Inc.*, Cal/OSHA App. 1080515, Denial of Petition for Reconsideration (March 30, 2017).)

Ultimately, Petitioner's motion to enforce settlement, filed on March 9, 2022, which the Board interprets as a petition for reconsideration, has not been timely made. It has been made many months after the Settlement Order was final. The Board lacks authority to grant or act upon reconsideration when a petition is filed late. (*Amerisk Engineering Corp.*, Cal/OSHA App. 1129146, Denial of Petition for Reconsideration (Dec. 21, 2018); *Quintana Construction Inc.*, Cal/OSHA App. 1198572, Denial of Petition for Reconsideration (June 24, 2020).)

Of course we do not decide whether Employer has another avenue of relief, e.g. via the court system. We merely hold that, if there is an avenue of relief, it is not through the Appeals Board.

DECISION

For the reasons stated, the motion/petition is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 04/22/2022

