

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Hazard Construction Company dba
Hazard Construction**

Case No.: **21-0052-PWH**

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected prime contractor, Hazard Construction Company doing business as Hazard Construction (Hazard), requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on September 29, 2020. Pursuant to California Code of Regulations, title 8, section 17227),¹ on April 30, 2021, the appointed Hearing Officer, Steven A. McGinty, served an Order to Show Cause Why Request for Review Should Not Be Dismissed as Untimely under Labor Code section 1742, subdivision (a) (OSC).² 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, I find that the time limit for requesting review is mandatory and jurisdictional and Hazard's Request for Review was not filed timely. Accordingly, the Request for Review must be dismissed.

¹ For ease of reference, individual sections of the Department of Industrial Relations' prevailing wage hearing regulations found at California Code of Regulations, title 8, section 17201 et seq., "are referred to as 'Rules' using only their last two digits." (Rule 01, subd. (d).)

² All statutory references are to the Labor Code unless otherwise specified.

FACTS

DLSE issued the Assessment against subcontractor Anton's Service Inc. (Anton's) and prime contractor Hazard on September 29, 2020. Hazard filed a Request for Review on January 19, 2021. One hundred and twelve days elapsed between the date DLSE issued the Assessment and the date Hazard 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:

Labor Commissioner - State of California
Civil Wage and Penalty Assessment Review Office
PO Box 32889
Long Beach, CA 90832

The Parties were provided 15 days to file a response in writing to the Hearing Officer's OSC of April 30, 2021, and five days to reply to any submission by any other Party. On May 14, 2021, Hazard's representative filed a pleading indicating that it joined in subcontractor Anton's request that Hazard's Request for Review not be dismissed because the parties were scheduled for a voluntary settlement conference with the Enforcing Agency on May 18, 2021.

On June 3, 2021, DLSE filed its Response to the OSC. In the Response pleadings, DLSE noted that Hazard's Request for Review was dated and

postmarked on January 19, 2021, 112 days after the date of the Assessment. (Lance Grucela Declaration, ¶4, p. 2, ll. 1-2, and Exhibit 2 attached thereto.)

On August 25, 2021, Hazard filed its response to the OSC. It essentially argued that DLSE had waived enforcement of section 1742, subdivision (a), by consenting to participate in a voluntary settlement conference with Hazard.

Thereafter, on September 1, 2021, DLSE filed a reply to Hazard's response. In reply, DLSE argued that the statutory deadline for filing a request for review found in section 1742, subdivision (a), was jurisdictional. Neither DLSE nor the Director could waive the deadline.

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.) Rule 22 restates the 60-day filing requirement, and expressly provides that, "Failure to request review within 60 days shall result in the Assessment becoming final and not subject to further review under these Rules."

Rule 27 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, to be 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 submitted in support or opposition to the Order is by affidavit or declaration. (Rule 27, subds. (a) and (b).) There is no right to an oral hearing under the rule. (Rule 27, subds. (b) and (c).) The rule authorizes the Director to dismiss a Request for Review that is untimely under section 1742. (Rule 27, subds. (c) and (d).)

This case proceeded under Rule 27. The Hearing Officer issued an OSC. The Parties filed various pleadings in response and reply.

The evidence in the record established that the last day to transmit a written request for review in this matter was December 3, 2020.³ The Assessment became final on December 3, 2020. Therefore, under section 1742, Hazard's Request for Review transmitted on January 19, 2021, was untimely. The Director is without jurisdiction to proceed on the untimely Request for Review. (§ 1742, subd. (a); Rule 22, subd. (a); see *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].)

Hazard advanced the argument that DLSE had waived enforcement of the statutory time-period by agreeing to participate with Hazard in a voluntary settlement conference. This argument betrays a fundamental misunderstanding of the Director's role and jurisdiction in this matter. 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). The word "'shall' is mandatory." (§ 15.) Once the Assessment has become final, the Director lacks authority under the rules to further review the Assessment. (Rule 22.) The Parties are free to meet and engage in settlement negotiations around their respective rights and liabilities. However, the Director lacks jurisdiction to hear Hazard's Request for Review.

³ The Assessment issued on September 29, 2020. The 65th day after September 29 was December 3, 2020. Thus, December 3, 2020 was the last day to transmit the Request for Review.

Had Hazard filed a Request for Review timely, it would have forestalled the finality of the Assessment and would have vested the Director with jurisdiction to conduct a hearing on the merits. Because the time for transmitting a Request for Review passed, there is no jurisdiction to proceed because the assessment is final. (§ 1742, subd. (a); Rule 22, subd. ((a).) The time limit is mandatory and jurisdictional.

Based on the foregoing, the Director makes the following findings:

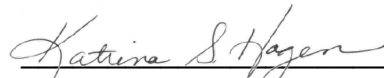
FINDINGS

1. Hazard Construction Company did not timely request review of the Civil Wage and Penalty Assessment issued September 29, 2020.
2. The Assessment became final on December 3, 2020.
3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by Hazard Construction Company.

ORDER

Hazard Construction Company's Request for Review is dismissed. The Hearing Officer shall issue and serve a Notice of Findings on the parties.

Dated: 12-30-21



Katrina S. Hagen, Director
California Department of Industrial Relations