

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Willkom, Inc.

Case No: 20-0361-PWH

From a Notice of Withholding of Contract Payments issued by:

Los Angeles Unified School District

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor, Willkom, Inc. (Willkom), requested review of a Notice of Withholding of Contract Payments (Notice) issued by the Los Angeles Unified School District (LAUSD) on July 17, 2020. Pursuant to California Code of Regulations, title 8, section 17227),¹ on July 1, 2021, the appointed Hearing Officer, Steven A. McGinty, served an Order to Show Cause Why Request for Review Should Not Be Dismissed as Untimely (OSC). Labor Code sections 1771.6, subd. (b), and 1742, subdivision (a), mandate that a Request for Review be transmitted to LAUSD within 60 days after service of the Notice.²

For the reasons stated below, I find that the time limit for requesting review is mandatory and jurisdictional and Willkom'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

LAUSD issued the Notice against Willkom on July 17, 2020. (Uyenbinh Nguyen Declaration, 12, p. 3, ll. 14-24, and LAUSD Exhibit E attached thereto.) Willkom filed a Request for Review dated October 19, 2020, and postmarked on October 20, 2020. (Nguyen Declaration, 15, p. 4, ll. 4-7, and Exhibit F attached thereto.) Ninety-five (95) days lapsed between the date LAUSD issued the Notice and the date Willkom filed the Request for Review. (Nguyen Declaration, 16, p. 4, ll. 8-9.)

Notice of the right to seek review is found at the top of page three of the Notice. The notice states in part:

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Department that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Jessica Tam, Labor and Contract Compliance Administrator
Los Angeles Unified School District
Facilities Services Division
Labor Compliance Department
P. O. Box 513307
Los Angeles, CA 90051-1307

The Parties were provided ten days to file a response in writing to the Hearing Officer's OSC of July 1, 2021, and five days to reply to any submission by any other Party. On July 12, 2021, LAUSD filed its Response to the OSC. In the Response pleadings, LAUSD noted that Willkom's Request for Review was

postmarked on October 20, 2020, 95 days after the date of the Notice. Willkom did not file a response or a reply.

DISCUSSION

Sections 1771.6, subdivision (b) states that the withholding of contract payments shall be reviewable under section 1742, as if the notice was a civil penalty order of the Labor Commissioner. Thus, section 1742, subdivision (a), provides that an affected contractor may request review of a Notice of Withholding of Contract Payments within 60 days after service of the notice. If no hearing is requested within that period, "the [notice] 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 [Notice of] Withholding of Contract [Payments] 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 the law, 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 the statute. (Rule 27, subds. (c) and (d).)

This case proceeded under Rule 27. The Hearing Officer issued an OSC. LAUSD was the only party to respond.

The evidence in the record established that the last day to transmit a written request for review in this matter was September 21, 2020.³ The Notice became final on September 21, 2020. Therefore, under sections 1771.6, subdivision (b), and 1742, Willkom's Request for Review transmitted on October 20, 2020, 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].)

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 notice, "the [notice] *shall* become final." (Emphasis added). The word "'shall' is mandatory." (§ 15.) Once the Notice has become final, the Director lacks authority under the rules to further review the withholding of contract payments. (Rule 22.)

Had Willkom filed a Request for Review timely, it would have forestalled the finality of the Notice 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 withholding of contract payments 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:

³ The Notice issued on July 17, 2020. The 65th day after July 17 was September 21, 2020. Thus, September 21, 2020, was the last day to transmit the Request for Review.

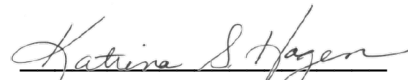
FINDINGS

1. Willkom, Inc. did not timely request review of the Notice of Withholding of Contract Payments issued July 17, 2020.
2. The Notice became final on September 21, 2020.
3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by Willkom, Inc.

ORDER

Willkom Inc.'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
Katrina S. Hagen, Director
California Department of Industrial Relations