

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

In the Matter of the Appeal of:

**SEE'S CANDIES, INC.
3423 S. La Cienega Blvd.
Los Angeles, CA 90016**

Employer

Inspection No.

1652414

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board) issues the following Decision After Reconsideration.

JURISDICTION

On March 2, 2023, the Division of Occupational Safety and Health (Division) issued one citation to See's Candies, Inc. (Employer) alleging a general violation of California Code of Regulations, title 8, section 3314, subdivision (j).¹ Employer received the citation by certified mail on March 6, 2023, and filed its appeal of the citation on April 19, 2023.

Board staff sent Employer a Notice of Untimely Appeal (Notice) on May 16, 2023, informing Employer that its appeal appeared to be late, and further that Employer had the opportunity to show that the appeal was late for good cause. Employer responded on June 9, 2023. (Dafour Declaration.)

An administrative law judge (ALJ) of the Board considered Employer's response and issued an Order Denying Late Appeal (Order) on July 11, 2023.

On its own motion, the Board ordered reconsideration of the Order on July 28, 2023, pursuant to Labor Code section 6614, subdivision (b).

ISSUE

Whether, given the circumstances in this matter, Employer showed good cause for its late appeal.

DECISION

Labor Code section 6601 provides that a cited employer must notify the Board within 15 working days that it intends to appeal the citation. If the employer fails timely to appeal, the citation is final and not subject to review. (Lab. Code, § 6601.) However, the appeal period "may be

¹ References are to California Code of Regulations, title 8, unless otherwise indicated.

extended by the appeals board for good cause.” (*Ibid.*)

We have defined “good cause” as used in Labor Code section 6601 as “a substantial reason; one that affords a legal excuse.” (*Ameripride Uniform*, Cal/OSHA App. 04-106, Decision After Reconsideration (Apr. 3, 2008), citing *A-1 Printing & Copy*, no docket number, Denial of Petition for Reconsideration (Aug. 10, 1984).)

The Board’s rules of practice and procedure, section 359, subdivision (d), define “good cause” for a late appeal as “sufficient facts to show or establish a reasonable basis for the late filing.” (*State of California, Department of Transportation dba Division of Maintenance District 4*, Cal/OSHA App. 1600554, Denial of Petition for Reconsideration (June 14, 2023).) The Board has, over the years, applied this definition as a means of explaining what does and does not constitute good cause under various circumstances. (*Total Terminals International, LLC*, Cal/OSHA App. 1572962, Denial of Petition for Reconsideration (Feb. 22, 2023).) Generally, an employer must “act with the degree of care a reasonably prudent person would undertake in dealing with his or her most important legal affairs.” (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).)

The Division served the citation on Employer at its La Cienega plant, and it was received at Employer’s reception area there. (Dufour Declaration.) Historically, the Division had routinely served citations on Employer’s safety personnel at the plant. (*Ibid.*) Employer’s procedures for handling citations are premised on plant safety personnel receiving and forwarding them to management in South San Francisco. (*Id.*)

We have consistently held that a cited employer’s failure to properly handle citations is “an internal operating problem” and not good cause for a late appeal. (See, e.g., *Southern California Edison*, Cal/OSHA App 08-9062, Denial of Petition for Reconsideration (Jan. 30, 2009).) Here, however, there is a distinguishing factor from that pattern. The Division’s past practice of serving the citation on plant safety personnel created a reasonable expectation that they would do so in this instance as well. (*Brinks Incorporated*, Cal/OSHA App. 97-2197, Decision After Reconsideration (Apr. 26, 2001).) Accordingly, the delay in the internal handling of the citation due to the atypical service *in this instance*, is enough to justify our finding good cause. Our doing so in this matter should not be viewed as a general departure from our prior holdings that service of a citation at any of an employer’s business addresses is acceptable and starts the appeal period. (*Pyramid Telecommunications, Inc.*, Cal/OSHA App. 04-9063, Denial of Petition for Reconsideration (July 11, 2005).)

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For the reasons stated above we reverse the ALJ's Decision and reinstate Employer's appeal.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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



FILED ON: 10/06/2023