

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

In the Matter of the Appeal of:

**ENGINE 53, INC. dba CRAZY OTTO'S DINER
25373 Wayne Mills Place
Valencia, CA 91355**

Employer

Inspection No.

1492543

**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 Engine 53, Inc. (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) issued four citations to Employer, alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8¹, with proposed penalties totaling \$25,340.

According to the Division's certified mail receipt, Employer received the citations on August 13, 2021.

On October 19, 2021, Employer contacted the Board to initiate its appeal of the citations.

On October 27, 2022, the Board sent Employer a Notice of Untimely Appeal, explaining that Employer's appeal appeared to be late, and informing Employer that it could submit a declaration and statement, within 20 days, to explain the reason for the late appeal and to show good cause for the untimeliness. Employer did not provide a declaration or statement in response.

On January 5, 2023, the Board issued an Administrative Order Dismissing Appeal. In that Administrative Order Dismissing Appeal, the Board advised Employer of its right to petition the Board for reconsideration, and provided instructions on that process. The Board also included a verification form for Employer to submit along with any petition.

On January 23, 2023, Employer submitted a signed verification form. On that form, Employer requested reconsideration, stating only the following: "I am sorry for the confusion. I am not sure how I missed this form. I have been confused of [sic] this entire process. Please reconsider our case. We cannot afford another bill."

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

Employer did not provide the Board with any other documents or information. Thus, the Board construes Employer's verification form as its petition for reconsideration.

ISSUE

Did Employer demonstrate good cause for its late appeal?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

The Board has fully reviewed the record in this case. Based on our independent review of the record, we find that the Order was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

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 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).) Regardless, Employer has provided the Board no reason to vacate the Administrative Order Dismissing Appeal.

An employer must initiate its appeal within 15 working days of its receipt of citations, unless it can demonstrate good cause for its late appeal. (Lab. Code, § 6601; § 359, subd. (d).) Here, Employer received the citation package on August 13, 2021, so its deadline to initiate an appeal expired on September 3, 2021. Employer did not contact the Board until October 19, 2021, approximately six weeks after that deadline. Thus, absent a showing of good cause, Employer's appeal was untimely.

Employer does not even attempt to demonstrate good cause for its late appeal. In the sole document it submits, Employer simply apologizes for its own oversight, and expresses confusion about the appeal process. However, "[m]isunderstanding the appeal process is not good cause for a late appeal." (*Graciana Tortilla Factory Inc.*, Cal/OSHA App. 15-9010, Denial of Petition for Reconsideration (Apr. 23, 2015).) Further, the information regarding a cited employer's appeal rights included with the citation is legally adequate to give notice of those rights and the steps necessary to exercise them. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43; *Knight Transportation Port Service, LLC*, Cal/OSHA App. 15-9225, Denial of Petition for Reconsideration (Mar. 21, 2016).)

Thus, Employer has failed to demonstrate good cause for its late appeal.

DECISION

For the reasons stated above, the petition for reconsideration is denied. The Administrative Order Dismissing Appeal is 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: 03/09/2023

