

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

**In the Matter of the Appeal of:**

**VICTORIO MUFFLERS, INC.  
1071 W. 17<sup>th</sup> Street, Unit C  
Santa Ana, CA 92706**

**Employer**

**Inspection No.  
1565022**

**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 Victorio Mufflers, Inc. (Employer).

**JURISDICTION**

The Division of Occupational Safety and Health (Division) issued three citations to Employer, alleging violations of California Code of Regulations, title 8<sup>1</sup>, on March 10, 2022. The United States Postal Service (USPS) indicates the citation packet was delivered by certified mail, addressed to “Victorio Mufflers, Inc, and its successors, 1071 West 17th Street Unit C, Santa Ana, CA 92706,” and signed for by an agent or employee of Employer on March 16, 2022.

Section 359, subdivision (d) and Labor Code section 6600 provide that an appeal is timely if the cited employer initiates its appeal within 15 working days of receipt of the citations. Employer was thus required to file its appeal no later than April 7, 2022. Employer initiated its appeal on June 22, 2022.

Section 359 and Labor Code section 6601 authorize the Board to extend the 15 working day deadline for filing an appeal if the employer provides a written statement and declaration demonstrating good cause for the late filing. On October 30, 2022, the Board served Employer and the Division with a Notice of Untimely Appeal (Notice). On November 14, 2022, Employer timely filed a sworn Declaration for Late Appeal (Declaration) by Cornelio Victorio (Victorio) in support of its request to file a late appeal. On November 16, 2022, the Appeals Board served Employer’s Declaration to all parties.

On November 21, 2022, an Administrative Law Judge (ALJ) of the Board, Rheeah Yoo Avelar, issued an Order Denying Late Appeal (Order), finding that Employer failed to demonstrate good cause for its late appeal. Employer’s timely Petition for Reconsideration (Petition), which repeats, verbatim, the assertions in its Declaration, followed.

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<sup>1</sup> Unless otherwise specified, all section references are to California Code of Regulations, title 8.

## ISSUE

Has Employer established 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's petition asserts none of the statutory grounds upon which we may grant reconsideration, which in itself is reason to deny the petition. (*Arodz Motorsports, LLC, dba AI Tune & Lube*, Cal/OSHA App. #1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).)

As summarized above, section 359, subdivision (d) and Labor Code section 6600 provide that an appeal is timely if the cited employer initiates its appeal within 15 working days of receipt of the citations. Here, the record indicates that, on an unknown date, the Division mailed the citation packet by certified mail to "Victorio Mufflers, Inc, and its successors, 1071 West 17th Street Unit C, Santa Ana, CA 92706." Employer initiated its appeal on June 22, 2022.

On August 29, 2022, the Board served a letter to the Division and Employer, requesting a copy of the return receipt or proof of service demonstrating when Employer received the citation packet. The letter requested the Division provide the proof of service within ten days of the letter. The Division responded on the same day. The Domestic Return Receipt shows delivery on March 16, 2022. Employer was thus required to file its appeal no later than April 7, 2022. Employer's appeal was therefore filed more than two months late.

Employer's appeal, when initiated, failed to include a completed appeal form for each citation appealed. On July 15, 2022, the Board issued a Notice of Incomplete Appeal (Notice), requesting that Employer file completed appeals forms for each citation and item appealed within 20 calendar days. Employer responded the same day, filing the necessary forms.

Section 359 and Labor Code section 6601 authorize the Board to extend the 15 working day deadline for filing an appeal if the employer provides a written statement and declaration demonstrating good cause for the late filing.

On October 30, 2022, the Board served Employer and the Division with a Notice of Untimely Appeal (Notice). The Notice informed Employer that, to prevent dismissal of its appeal, Employer's declaration under penalty of perjury in support of a late appeal must be postmarked within 20 days of service of the Notice. Employer was thus required to file its declaration no later than November 19, 2022.

On November 14, 2022, Employer mailed its sworn Declaration from Cornelio Victorio, Employer's President, without service to the Division. On November 16, 2022, the Board served Employer's Declaration to all parties. Mr. Victorio's Declaration stated, in sum, that Mr. Victorio is not fluent in English; that Employer, as represented by Mr. Victorio, failed to understand the appeal process; and that Employer had abated the alleged violations.

Section 359, subdivision (d) defines "good cause" for a late appeal as "sufficient facts to show or establish a reasonable basis for the late filing." In construing what constitutes a "reasonable basis" for a late appeal, the Board has long held that in pursuing an appeal, 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).)

Under Board precedent, an Employer's lack of proficiency in English, an Employer's misunderstanding of the appeal process, and an Employer's abatement of the cited violations do not constitute good cause for a late appeal. Employer's explanations for its late appeal all fall within these categories, which the Board considers a failure to handle the appeal with the requisite degree of care.

First, the Board has consistently held that a lack of fluency in English on the part of Employer's representative is not good cause for a late appeal. (See, e.g., *George Castano dba New Century Builders & Developers and Centennial Builders & Developers, Inc.*, Cal/OSHA App. 1342208, Denial of Petition for Reconsideration (Oct. 24, 2019); *Barnard Impreglio Healy JV*, Cal/OSHA App. 2014-9013, Denial of Petition for Reconsideration (Apr. 30, 2014); *19th Auto Body Center*, Cal/OSHA App. 94-9001, Denial of Petition for Reconsideration (Apr. 13, 1995).) If Employer's chosen representative is not fluent in English, legal and translation services are available for assistance. As ALJ Avelar correctly noted, "while the Appeals Board has long been sensitive to the rich panoply of multilingual communities in our state, the Appeals Board has held that a misunderstanding of the appeal process, even when due to English proficiency issues, is not good cause for a late appeal." (Order, p. 4.)

Second, a failure to understand the appeal process is not good cause for a late appeal. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43 (*Murray Company*); See also, e.g., *Nasir Jamal Choudry dba Infinity General Engineering Construction & Design*, Cal/OSHA App. 11-9112, Denial of Petition for

Reconsideration (Sep. 28, 2011); *19th Auto Body Center*, supra, Cal/OSHA App. 94-9001; *Ray Cammack Shows, Inc.*, Cal/OSHA App. 02-9240, Denial of Petition for Reconsideration (Apr. 30, 2003).) If an employer chooses to do business in the state of California, that decision carries responsibilities which include compliance with the state’s workplace safety regulations.

Finally, the Board has held that abating the cited violation(s) is not good cause for a late appeal. (*Antonio Corona dba Central Valley Upholstery*, Cal/OSHA App. 1395729, Denial of Petition for Reconsideration (Apr. 13, 2020).) This amounts to a misunderstanding of the appeal process, by confusing the requirements for abatement with the requirements for appeal, and thus is not good cause. The documents constituting the citation package are legally sufficient to put employers on notice of their rights and obligations regarding the appeal process. (*Murray Company, supra*, 180 Cal.App.4th 43.) While Employer’s efforts to address safety issues in its workplace are laudable, they do not provide good cause for a late appeal.

### DECISION

For the reasons stated above, the petition for reconsideration is denied. The ALJ’s Order Denying Late 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: 02/03/2023