

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

In the Matter of the Appeal of:

**EDVENTURE MORE
2363 Verna Court
San Leandro, CA 94577**

Employer

Inspection No.

1604280

**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 Edventure More (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) issued one citation to Employer alleging eight violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer received the citation on September 12, 2022, and initiated its appeal of the citation on November 22, 2022.

There were deficiencies with Employer's appeal as initially filed, which were corrected after notice from the Board. The Board made a routine request to the Division for proof of when the citation was served on Employer, to which the Division responded with a copy of the U. S. Postal Service certified mail return receipt form, which showed the appeal to have been filed late.

On December 12, 2022, the Board sent Employer a Notice of Untimely Appeal (Notice) stating that its appeal appeared to be late, and informing Employer that it could submit a declaration and statement explaining the reason for the late appeal and showing the good cause for it. The Notice informed Employer that a response was required to be postmarked within 20 days of the date of service of the Notice. Employer failed to respond.

On January 26, 2023, the Executive Officer of the Board sent Employer an Administrative Order Dismissing Appeal (Order).

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

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

ISSUE

Has Employer shown that the appeal was late for good cause?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

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 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).)

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. 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 6600 provides that a cited employer may appeal to the Board within 15 working days of receiving the citation. Labor Code section 6601 provides that when the cited employer fails to timely appeal, the citation becomes a final order of the Board, and that the Board may extend the appeal period "for good cause."

Employer filed its appeal on November 22, 2022, which is more than 15 working days after the date it received the citation, September 12, 2022. Because it made no response to the Notice, Employer did not make a showing of good cause for the late appeal. And, Employer's petition for reconsideration, while it admits the late appeal, also does not establish good cause. Instead, it appears from Employer's petition that it misunderstood the appeal process. Misunderstanding the appeal process is not good cause for a late appeal. (*On the Thirty, Inc.*, Cal/OSHA App. 1345451, Denial of Petition for Reconsideration (Aug. 15, 2019).)

DECISION

For the reasons stated above, the petition for reconsideration is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 03/17/2023

