

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

In the Matter of the Appeal of:

ADECCO INC. BRANCH 5100  
521 Main Street  
Woodland, CA 95692-3433

Employer

Docket No. 08-R2D1-4312

**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 Adecco Inc. Branch 5100 (Employer).

**JURISDICTION**

Commencing on July 18, 2008, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On October 16, 2008, the Division issued a citation to Employer alleging two violations of occupational safety and health standards codified in Title 8 California Code of Regulations.

Employer timely filed its appeal.

Thereafter, administrative proceedings were held, which included scheduling and duly-noticing a pre-hearing conference before an Administrative Law Judge (ALJ) of the Board for February 1, 2010.

Employer failed to appear at the pre-hearing conference. Therefore, on February 24, 2010, the Board served Employer by mail an Order To Show Cause Why Sanctions Should Not Be Imposed (OSC). The OSC ordered Employer to show why sanctions, "including possible dismissal of Employer's appeal," should not be imposed and gave Employer 30 days to respond. The OSC further informed Employer that failure to file a showing may result in the Board "imposing such sanctions as are appropriate."

No response was received from Employer.

On May 26, 2010, the ALJ issued an Order Dismissing Appeals (Order), summarizing the above and dismissing Employer's appeals.

Employer filed a document which is deemed a petition for reconsideration on July 6, 2010.

The Division did not answer the petition.

### **ISSUES**

Whether Employer's petition was timely, and, if timely, whether it may be granted.

### **REASON FOR DENIAL OF PETITION FOR RECONSIDERATION**

Labor Code section 6614(a) specifies that a petition for reconsideration "shall" be filed within 30 days of the Board action or order at issue. As noted above, the Order involved here was issued on May 26, 2010. Thirty days after May 26 is June 25, 2010. Employer in its appeal documents informed the Board that its address of record is in California. The Board has therefore directed communications to Employer's record address. Also, because the Board's written communications were being mailed to Employer at its California address, Code of Civil Procedure section 1013 extends the time within which Employer could file its petition by five days, and thus to June 30, 2010. Board regulation section 390(a) (Title 8 California Code of Regulations section 390(a)) provides that a petition for reconsideration is "deemed filed on the date it is delivered or mailed" to the Board. Since Employer's petition was postmarked July 6, 2010, it was late filed.

Board precedent holds that Labor Code section 6614(a) established a jurisdictional time limit for filing a petition for reconsideration, because the Legislature used mandatory language. (*Daniel Santos Estrada*, Cal/OSHA App. 09-9251, Denial of Petition for Reconsideration (Jan. 21, 2010); *Mission Hills Construction Co.*, Cal/OSHA App. 07-9302, Denial of Petition for Reconsideration (Oct. 19, 2009); *Galaxie Universal Corp. dba Gamco*, Cal/OSHA App. 06-859, Denial of Petition for Reconsideration (Nov. 12, 2008).) The Board has no jurisdiction to grant a petition if it is filed late. (Labor Code section 6614(a) [petition shall be filed "only within the time and manner specified in this chapter."]; *Otis Lawrence Construction*, Cal/OSHA App. 05-9054, Denial of Petition for Reconsideration (Jun. 22, 2005).) In analyzing Worker's Compensation Act provisions having language equivalent to that of Labor Code

section 6614(a), two Courts of Appeal have held that “The [Workers’ Compensation Appeals] Board is without jurisdiction to grant an untimely petition[for reconsideration].” (Labor Code sections 5900 and 5903; *Nestle Ice Cream Co., LLC v. Workers’ Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; citing *Scott v. Workers’ Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.) In view of the Courts’ interpretation of analogous Worker’s Compensation Act language, the Board concludes that the Legislature intended Labor Code section 6614(a) to establish a jurisdictional time limit for petitioning for reconsideration.

In short, Employer’s petition must be denied because it was untimely.

We note that Employer’s petition was filed by its (presumed) headquarters office in North Carolina. Employer had not previously informed the Board of a change of address or change of representative as required by Board regulation 355(b), even though at least the representative changed in February 2009. (Board regulation 355(b) (Title 8 California Code of Regulations section 355(b)) requires prompt notice and in no case more than 30 days after such change.) Thus the Board’s communications were properly sent to Employer’s address in California.

Even if Employer’s petition were to have been timely, it must be denied for other reasons. Employer’s petition was not verified as required by Labor Code section 6616 and Employer provided no proof that its petition had been served on the Division as required by Labor Code section 6619. The Board wrote to Employer on July 14, 2010 to inform it of both requirements, and has not received either a verification or proof of service. By their language both statutory requirements are mandatory, and Board precedent holds that a failure to comply with either is grounds for denying a petition for reconsideration. (Labor Code sections 6616, 6619; Board regulation (Title 8 California Code of Regulations) section 391.1; *Descor Inc. dba Descor Builders*, Cal/OSHA App. 09-0930, Denial of Petition for Reconsideration (Jun. 16, 2010).)

As to the other circumstances of this matter and Employer’s petition, 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 substantial evidence in the record as a whole.

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 does not state any of the bases set forth in Labor Code section 6617 above, which is grounds sufficient to deny the petition. *UPS*, Cal/OSHA App. 08-2049, Denial of Petition for Reconsideration (Jun. 25, 2009), citing, *Bengard Ranch, Inc.*, Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).

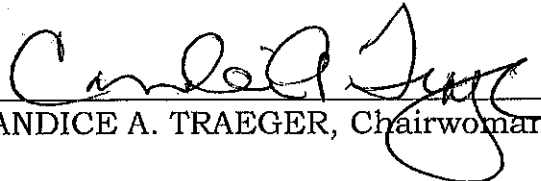
If we were able to reach the merits of the petition, we would address Employer's contention that it did not appear at the pre-hearing because it did not receive notice of the pre-hearing until after the fact. As pointed out earlier, Employer did not comply with Board regulation section 355(b) when it failed to notify the Board of a change in its representative and apparently its mailing address when both changed in February 2009. Employer first informed the Board of those events in the document constituting its petition for reconsideration, which was filed in July 2010. "An employer's failure to receive notice due to its failure to inform the Board of its new address is not grounds for reinstatement of an appeal or setting aside a dismissal for failure to appear." (*Chamlian Enterprises, Inc.*, Cal/OSHA App. 08-1322 *et al.*, Denial of Petition for Reconsideration (Aug. 13, 2009), citing *Reicon Builders, Inc.*, Cal/OSHA App. 07-4902, Denial of Petition for Reconsideration (Oct. 24, 2008), citing *Toad in the Hole Tavern & Grill, Inc. dba Brittany's Café*, Cal/OSHA App. 05-2533, Decision After Reconsideration (Nov. 2, 2007).)

Moreover, it appears that Employer's failure to receive or properly process notices from the Board were due to its own internal operating problems, which are not grounds for failure to appear. (*The Pep Boys - Manny, Moe and Jack of California*, Cal/OSHA App. 09-1732, Denial of Petition for Reconsideration (Nov. 30, 2009).)

Lastly, we have held that that a party may not argue the merits of an appeal on petition for reconsideration when the appeal has been dismissed because of a failure to appear, since unless the failure to appear was for good cause, the party has waived a hearing on the merits or alternatively may be sanctioned by virtue of being denied such a hearing. (Board regulation (Title 8 California Code of Regulations) section 374(c); *Regional Steel Corporation*, Cal/OSHA App. 04-2688, Denial of Petition for Reconsideration (Jan. 4, 2007).)

**DECISION**

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

  
CANDICE A. TRAEGER, Chairwoman

  
ART R. CARTER, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

FILED ON: AUG 25 2010

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