

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

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

**PRECISE PERSONNEL, LLC  
4631 Riverside Drive  
Chino, CA 91710**

**Employer**

**Inspection No.  
1593084**

**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 Precise Personnel, LLC (Employer).

**JURISDICTION**

Employer is an employment agency, based in Chino, California, which provides staffing for other employers, including in industrial and warehouse settings. Beginning on May 2, 2022, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Harpreet Dhillon (Dhillon), conducted an accident investigation at a place of employment maintained by general contractor Calego International, Inc. (Calego), in Redlands, California (the job site), in response to an incident in which a forklift driver, employed by Employer, allegedly drove over the feet of another employee. On September 14, 2022, the Division issued four citations to Employer for alleged violations of California Code of Regulations, title 8,<sup>1</sup> three of which were classified as Serious.

Employer timely notified the Board of its intent to appeal, by filing an appeal form. The Board notified Employer on October 3, 2022 that its appeal had been docketed. Employer failed to provide the information required by sections 359.1 and 361.3 to complete its appeal. On October 28, 2022, the Board issued to Employer a Notice of Incomplete Appeal, identifying the missing information, providing instructions for completing the appeal, and notifying Employer that failure to complete its appeal would result in dismissal. Employer did not respond, and failed to complete its appeal. Employer's appeal was dismissed by an Administrative Order (Order) on January 24, 2023.

Employer timely filed a Petition for Reconsideration (Petition). Employer still has not provided the information necessary to perfect its appeal. Instead, Employer argues that the Division's inspection was invalid for a number of reasons. Primarily, Employer asserts hearsay claims that Mr. Dhillon failed to present his Division identification and credentials, as required by

---

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

Labor Code section 6314, subdivision (a), and failed to give a representative of Employer the opportunity to accompany him on the inspection, as required by Labor Code section 6314, subdivision (d). Employer asserts further hearsay claims that Mr. Dhillon engaged in exceedingly inappropriate and unprofessional speech and conduct during the course of his investigation. Employer implicitly acknowledges that it has no first-hand knowledge of these facts. Employer also argues that it was “grossly unfair” for one Division inspector to conduct simultaneous investigations of the primary and secondary employers at the same job site.

Employer has neither filed a completed appeal nor offered any argument or explanation for the failure to do so in its Petition. Issues not raised in the Petition are deemed waived. (Lab. Code, § 6618.)

### **ISSUE**

1. Should Employer’s appeal be reinstated, and Employer given another opportunity to perfect its 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 argues that it is entitled to reconsideration on the basis of its claim that the Division inspector, Mr. Dhillon, acted improperly in conducting the investigation. Employer asserts that Mr. Dhillon’s conduct, which Employer states it was informed of by the general contractor only after it had initiated its appeal, amounted to issuance of the citations by means of fraud, rendering the citations presumptively invalid, and that the Board’s Order dismissing Employer’s appeal was therefore necessarily also invalid. (Lab. Code, § 6617, subd. (a), (b), (d), (e).) However, Employer has never submitted all the information necessary to perfect its appeal, and does not do so now. We deny Employer’s Petition on these procedural grounds alone, without reaching Employer’s claims regarding the validity of the inspection.

Section 359.1 of the Board’s regulations sets forth the requirements for docketing and perfecting an appeal. Here, Employer failed to provide all information necessary to complete its appeal. Employer timely initiated its appeal, by submitting an appeal form with its name, postal address, email address, and the inspection number. (§ 359; § 359.1, subd. (a)(1), referencing § 355.1, subd. (a).) Employer did not provide the citation numbers being appealed, the bases for appeal of each citation, and any affirmative defenses. (§ 359.1, subd. (a)(2), referencing § 361.3.)

On October 3, 2022, the Board notified Employer that its appeal had been docketed. It appears that the docketing of the appeal was premature. Section 359.1, subdivision (d), specifies, “After the information required by subsection (a) is submitted either on paper or online via the OASIS system, and confirmed to be complete, the appeal will be docketed.” Here, the appeal was docketed before Employer had provided all the required information. However, this is an administrative error, and does not ultimately affect the Board’s decision in this matter. In addition, Employer’s Petition does not raise this issue, thus waiving it. (Lab. Code, § 6618.)

On October 25, 2022, Employer again provided the same information it had provided earlier, and only that information, on an appeals form provided by the Board.<sup>2</sup>

On October 28, 2022, the Board served Employer with a Notice of Incomplete Appeal, which informed Employer that its appeal was in danger of being dismissed as incomplete, and provided Employer with notice that it had 20 days from service of that notice to complete its appeal. It also included instructions on how to complete the appeal, and specified the missing information: the citation numbers being appealed, the bases for appeal of each citation, and any affirmative defenses.<sup>3</sup> As of this writing, Employer still has not provided the missing information.

Employer had notice of the regulatory requirements, as provided both in the citation package and in the Board’s Notice of Incomplete Appeal, and failed to comply with them. It is well-established that “notice of the regulations regarding appeal rights is properly provided on the citations themselves.” (*Murray Co. v. Occupational Safety and Health Appeals Board* (2009) 180 Cal.App.4th 43, 51 (*Murray Co.*)) When it failed to provide the required information in the forms submitted on October 25, 2022, Employer was informed by the Board, in the Notice of Incomplete Appeal served on October 28, 2022, what information was missing, that this information was required to complete its appeal, was instructed how to do so, and was informed if it did not so within 20 days from the service of that notice, its appeal could be dismissed. Employer does not claim that it did not receive this notice. Employer failed to respond within the required 20 days, resulting in the dismissal of its appeal, on January 24, 2023. Employer still has not provided the information required by sections 359.1 and 361.3.

Employer’s failure to complete its appeal is grounds for dismissal pursuant to the Board’s rules of practice and procedure. (See, e.g., *Apelinc Landscape Services*, Cal/OSHA App. 1185341,

---

<sup>2</sup> The Board, it appears, did not provide the second page of the appeal form. However, section 359, subdivision (b), and section 359.1, subdivision (c), indicate that the use of that form is “optional” so long as Employer provides all the necessary information.

<sup>3</sup> On the same day, the Board also returned unspecified “additional documents received from employer” as they were not necessary for the processing of employer’s appeal. It is unclear what documents Employer provided.

Denial of Petition for Reconsideration (Jan. 30, 2017) citing *Murray Co.*, *supra*, 80 Cal.App.4th at 52; section 359.1, subd. (b).) Employer's failure to complete its appeal is also, in itself, a sufficient basis for the Board to now deny its petition for reconsideration. (See, e.g., *Acapulco Polishing Corporation*, Cal/OSHA App. 1285466, Denial of Petition for Reconsideration (Oct. 31, 2018).) The Board's longstanding rule is 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).) Employer has failed to exercise the requisite degree of care in completing its appeal.

Employer also argues that it was "grossly unfair" for one Division inspector to conduct simultaneous investigations of the primary and secondary employers at the same job site. However, the Board has long recognized that the Division may, through one compliance officer, conduct investigations of multiple employers at the same job site, and issue citations to more than one employer in relation to the same incident. (See, e.g., *Rudolph and Sletten, Inc.*, Cal/OSHA App. 01-478, Decision After Reconsideration (March 30, 2004); *Airco Mechanical, Inc.*, Cal/OSHA App. 99-3140, Decision After Reconsideration (Apr. 25, 2002); *McCarthy Building Companies, Inc.*, Cal/OSHA App. 11-1706, Decision After Reconsideration (Jan. 11, 2016).)

As noted, Employer alleges serious misconduct on the part of a Division employee. These accusations — which are currently unsubstantiated and based solely on hearsay — would, of course, be disturbing, if proven true. However, regardless of the veracity of those allegations, the fact remains that Employer failed to complete its appeal. We deny the Petition on that basis.

## 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: 04/27/2023

