

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Morgan Construction

Case No. **13-0038-PWH**

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

On June 6, 2012, the Division of Labor Standards Enforcement (DLSE) served Morgan Construction with a Civil Wage and Penalty Assessment (Assessment). On January 18, 2013, Morgan Construction served a Request for Review of the Assessment. On June 6, 2013, Jessica L. Pirrone, the appointed Hearing Officer served an Order to Show Cause (OSC) by June 21, 2013, why the Request for Review should not be dismissed as untimely under Labor Code section 1742, subdivision (a),¹ which requires that a request for review be transmitted to the Labor Commissioner within 60 days after service of the assessment. To date, Morgan Construction has not responded to the OSC. For the reasons stated below, I find that the time limit is mandatory and jurisdictional. Accordingly, the Request for Review must be dismissed.

FACTS

DLSE issued the Assessment against Morgan Construction on June 6, 2012,² arising out of work it performed for the Grossmont Union High School District in San Diego County (Project). DLSE served the Assessment the same date by mail. Morgan Construction served its Request for Review to the Labor Commissioner via facsimile dated January 18, 2013 -- 226 days after service of the Assessment.

¹ All statutory references are to the California Labor Code unless otherwise specified.

² The Assessment also named the prime contractor, Precise Construction Management, but only Morgan Construction filed a Request for Review.

On June 6, 2013, the Hearing Officer issued the OSC, stating in relevant part:

A Request for Review of a Civil Wage and Penalty Assessment (CWAPA) must be served within 60 days of service of the CWAPA. Labor Code section 1742 (a). Here, the CWAPA was served on June 6, 2012, and Morgan Construction's Request for Review is dated January 18, 2013. Accordingly, it appears that the Request for Review should be dismissed as untimely under 8 California Code of Regulations section 17227 (Rule 27).

NOTICE TO SHOW CAUSE

Accordingly, the parties are ordered to show cause, if any, why the Request for Review should not be dismissed under Rule 27. Any such showing or other response to this Notice (including any statement or argument in support of the intended action) shall be submitted in writing by **June 21, 2013**, and any further responses to those submissions shall be submitted in writing by **July 1, 2013**.

* * *

Any person served with this Notice who does not submit a timely response shall be deemed to have no objection to this case being dismissed as untimely.

Morgan Construction did not respond to the OSC.

DISCUSSION

Section 1742, subdivision (a) provides that an affected contractor or subcontractor may request review of a civil wage and penalty assessment within 60 days of service of the assessment.³ If no hearing is requested within this period, "the assessment shall

³ Since section 1741, subdivision (a) requires that service of the assessment be completed by mail "pursuant to Section 1013 of the Code of Civil Procedure," the time extension rules of Code of Civil Procedure section 1013 are taken into account, thus giving an in-state contractor or subcontractor 65 days from the

become final.” (§ 1742, subd. (a).) Rule 22, subdivision (a) (Cal. Code Regs., tit. 8, § 17222, subd (a)) restates the 60-day filing requirement and expressly provides that “Failure to request review within 60 days shall result in the Assessment ... becoming final and not subject to further review under these Rules.” See also Rule 27 (Cal. Code Regs., tit. 8, § 17227), which provides authority for dismissing a request for review that is untimely under the statute.

The Assessment became final on August 10, 2012, the 65th day after it was served. This was the last day on which Morgan Construction could have timely requested review. Morgan Construction did not transmit its Request for Review until January 18, 2013. Under section 1742, subdivision (a) and Rule 22, the Director is without jurisdiction to proceed on the untimely Request for Review. (See *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831; *Division of Labor Standards Enforcement v. Davis Moreno Construction, Inc.*, *supra*, 193 Cal.App.4th 560.)

FINDINGS

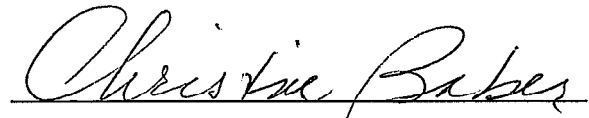
1. Morgan Construction did not timely request review of the June 6, 2012, Civil Wage and Penalty Assessment.
2. The Assessment became a final order on August 10, 2012.
3. The Director has no jurisdiction to proceed on Morgan Construction’s untimely Request for Review.

date of mailing of the assessment to file a request for review. (See Cal. Code Regs., tit 8, § 17203, subd. (a).)

ORDER

Morgan Construction's Request for Review is dismissed. The Hearing Officer shall issue a Notice of Findings which shall be served with this Decision on the parties.

Dated: 7/25/2013

A handwritten signature in cursive script that reads "Christine Baker". The signature is written in black ink and is positioned above a horizontal line.

Christine Baker
Director of Industrial Relations