

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Quality Electric & Engineering, Inc.

Case No. 15-0422-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Quality Electric & Engineering, Inc. (Quality Electric), the subcontractor on the Clausen Hall Modernization/Los Angeles City College project in Los Angeles County (Project), submitted a Request for Review (RFR) of the Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) arising from Quality Electric's work on the Project.¹ DLSE filed an application for an Order to Show Cause (OSC) why the RFR should not be dismissed as untimely. The appointed Hearing Officer, Howard Wien, granted DLSE's application and issued the OSC. The Hearing Officer ordered a date by which Quality Electric must file and serve its written response to the OSC. Quality Electric timely responded to the OSC by filing a letter in opposition to dismissal.

For the reasons below, this decision finds that Quality Electric's RFR was not timely, the time limit for requesting review is jurisdictional, and therefore the RFR must be dismissed.

FACTS

On August 26, 2015, DLSE issued the Assessment against Quality Electric based upon Quality Electric's alleged failure to comply with the Labor Code's prevailing wage and apprentice requirements with respect to the Project. The Assessment expressly stated that a request for review must be transmitted to the Labor Commissioner within 60 days

¹ The prime contractor, Jeffrey C. Stone Inc. dba Summit Builders, did not file a request for review.

after service of the Assessment. It further provided that failure to submit a timely request for review would result in a final order, which may then be filed with the office of the clerk of the superior court in any county in which the affected contractor has property or has or had a place of business.

Quality Electric's RFR was dated November 3, 2015, the mailing envelope was postmarked November 4, 2015, and the RFR was received by DLSE on November 6, 2015.

On March 25, 2016, the Hearing Officer conducted a prehearing conference and set the Hearing on the Merits for September 22, 2016. On July 27, 2016, DLSE served and filed its "Application for Order to Show Cause Why Request for Review Should Not be Dismissed as Untimely" (Application for OSC). The Hearing Officer subsequently set a telephonic prehearing conference for August 26, 2016, to discuss the Application for OSC. DLSE and Quality Electric were the participants in the August 26, 2016, prehearing conference. The Hearing Officer explained to Quality Electric's representative the process by which Quality Electric may file and serve a written response stating its contentions and evidence on why the RFR should not be dismissed as untimely. In that prehearing conference, the Hearing Officer orally granted the Application for OSC and ordered Quality Electric to file and serve its written response. A written OSC and order for a response from Quality Electric followed. The Hearing Officer also vacated the date set for the Hearing on the Merits.

On September 23, 2016, Quality Electric filed and served by email its written response to the OSC, consisting of an unsigned letter admitting that the RFR "... was after the deadline date." The letter blamed the tardiness on: "... unfortunate circumstances regarding Quality Electric going out of Business, flood of paper work and lack of morality and finance caused us to hinder to response [...] Some paper work, including, response to a letter sent to us from DIR to file for a hearing before deadline date." (*Sic.*) Quality Electric, DLSE and the Hearing Officer did not request an oral hearing, so the matter stood submitted.

DISCUSSION

Labor Code section 1742, subdivision (a)² in effect in 2015 (the year the Assessment was issued) stated:

An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall be come final.³

California Code of Regulations, title 8, section 17222, subdivision (a), restates the 60-day filing requirement and expressly provided that “[f]ailure to request review within 60 days shall result in the Assessment ... becoming final and not subject to further review under these Rules.” California Code of Regulations, title 8, section 17227 authorizes the Director to dismiss a request for review that was untimely under the statute. Under section 1777.7, subdivision (c)(1), a determination of an apprenticeship violation becomes final and not subject to further review unless a request for review is made within 60 days. (See also Cal. Code. Regs., tit 8, § 232.27, authorizing the Director to dismiss an untimely request for review of the determination.)

Accordingly, Quality Electric was required to serve the RFR no later than Friday, October 30, 2015, i.e., 65 days after the Assessment was served by mail on August 26, 2015. Quality Electric did not transmit its RFR until November 4, 2015⁴ – five days late. Quality Electric admits the tardiness and cites reasons for its delay. Neither the Labor

² All further statutory references are to the California Labor Code unless otherwise specified.

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 as to a request for review of an assessment – thus giving an in-state contractor or subcontractor 65 days from the date of mailing of the assessment to file a request for review. (Cal. Code Regs., tit. 8, § 17203, subd. (a).) The same extension of time applies for a request for review of a determination of an apprenticeship violation. (Cal. Code Regs., tit. 8, § 232.20, subd. (a).)

⁴ California Code of Regulations, title 8, section 17203, subdivision (b) states in relevant part that “Unless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be: a postmark date imprinted on the envelope by the U.S. Postal Service if first-class postage was prepaid”

Code nor its implementing regulations, however, provide the Director with any authority to excuse an affected contractor or subcontractor from its failure to timely request review, regardless of grounds. Under the plain language of section 1742, subdivision (a), the Director was without jurisdiction to proceed on Quality Electric's untimely RFR. (See *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831, 836-837.) Where a statute sets out a duty and a consequence for the failure to act in conformity, that statute is said to be "mandatory." (*California Correctional and Peace Officers Association v. State Personnel Board* (1995) 10 Cal. 4th 1133, 1145). (See also *Progressive Concrete, Inc. v. Parker* (2006) 136 Cal. App. 4th 540, 546-548.)

Since Quality Electric's RFR was not timely served, the Assessment is final and the Director does not have jurisdiction to conduct a hearing. (Sections 1742, subd. (a) and 1777.7, subd. (c)(1).)

FINDINGS

1. Quality Electric did not timely request review of the August 26, 2015, Civil Wage and Penalty Assessment.
2. The Civil Wage and Penalty Assessment became a final order on October 30, 2015.
3. The Director has no jurisdiction to proceed on Quality Electric's untimely Request for Review of the Civil Wage and Penalty Assessment.

ORDER

Quality Electric & Engineering Inc.'s Request for Review in Case No. 15-0422-PWH is dismissed as untimely as set forth in the foregoing findings. The Hearing Officer

shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 6/12/2017

A handwritten signature in blue ink, appearing to read "Christine Baker", written over a horizontal line.

Christine Baker
Director of Industrial Relations