

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

In the Matter of the Appeal of:

EDRIS PLASTIC MFG INC.
4560 Pacific Boulevard
Vernon, CA 90058

Employer.

Docket No. 2015-R4D1-9083

**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 Edris Plastic MFG, INC. (Employer).

JURISDICTION

On March 27, 2015, Employer telephoned the Board indicating its intent to appeal citation(s) issued by the Division of Occupational Safety and Health.

On March 27, 2015, the Board sent Employer a letter by U.S. mail informing Employer of the requirements to complete its appeal. The letter advised Employer that it must complete an appeal form for each citation and that it must provide a copy of the citation packet. Further, the letter advised Employer, pursuant to Cal. Code Regs., tit. 8, § 359.1, that the completed appeal forms and the entire citation packet had to be postmarked (or received by the Board) within ten days.

On June 2, 2015, after receiving no further documents from the Employer, the Board served and filed an Order Dismissing Appeal, which was executed by Han Ha, the Board's Interim Executive Officer.

Employer subsequently prepared an untimely petition for reconsideration. The proof of service attached to the petition stated that Employer had served the petition on both the Division and the Board via mail on September 23, 2015.¹

¹ Despite the proof of service, the Board never received a copy of the petition via mail. The Board only learned of Employer's petition from the Division after the Division filed its answer to the petition for

Employer's petition stated its purpose was to "appeal the final judgment...." Employer also requested that the Board enforce an alleged settlement agreement entered into between it and the Division dated April 21, 2015.

The Division filed an answer to the petition. The Division denies the existence of any purported settlement agreement. The Division also urges multiple additional bases for denial of the petition, including that the petition is untimely.

ISSUE(S)

Does the Board have jurisdiction to grant reconsideration?

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.

Here, Employer's petition does not state any of the bases set forth in Labor Code section 6617. Failure to state one or more grounds upon which reconsideration may be granted is grounds for denial of the petition for reconsideration. (*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).)

Even if we were to construe Employer's petition as setting forth a basis for reconsideration that was compliant with Labor Code section 6617, the Board still could not grant Employer any relief because Employer failed to comply with mandatory time requirements for filing the petition.

Labor Code section 6614, subdivision (a), provides:

reconsideration. The Division provided the Board a copy of Employer's petition. This alone serves as a basis to deny the petition under Cal. Code Regs., tit. 8, § 390, due to Employer's failure to file the petition with the Board. However, assuming without deciding that the Employer's petition was lost in the mail, we go on to address several additional points mandating denial of the petition.

At any time within 30 days after the service of any final order or decision made and filed by the appeals board or a hearing officer, any party aggrieved directly or indirectly by any final order or decision, made and filed by the appeals board or a hearing officer under any provision contained in this division, may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order or decision and specified in the petition for reconsideration. Such petition shall be made only within the time and in the manner specified in this chapter.

This statute establishes a jurisdictional time limit within which a party may file a petition for reconsideration. (*Fisher Metal Products, Inc.*, Cal/Osha App. 15-9011, Denial of Petition for Reconsideration (Aug. 14, 2015), citing, *Mid-Coast Builders Supply, Inc. dba Mid-Coast Builders, Inc.*, Cal/OSHA App. 11-2780, Denial of Petition for Reconsideration (Apr. 10, 2013); *see also*, *Rocket Farms Herbs, Inc.*, Cal./OSHA App. 13-3549, Denial of Petition for Reconsideration (May 5, 2014).) We have no jurisdiction to grant a late petition. (*Ibid.*)

The conclusion that the Board lacks jurisdiction to hear the appeal is based both on the mandatory language of Labor Code section 6614, subdivision (a) [petition “shall be made only with the time and in the manner specified”], and on two Court of Appeal decisions which held that equivalent wording in the Workers’ Compensation Act is jurisdictional. (Lab. Code §§ 5900, 5903; *Nestle Ice Cream Co., LLC v. Workers’ Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; *Scott v. Workers’ Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.)

As noted above, the Board Order Dismissing the Appeal was filed and served on June 2, 2015. Employer’s petition, per the proof of service, was not served until September 23, 2015, exceeding the time limit set forth in Labor Code section 6614. Therefore, the Board is without jurisdiction to hear the petition.

DECISION

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

ART CARTER, Chairman
ED LOWRY, Board Member
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: November 25, 2015