

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

In the Matter of the Appeal of:

ST. JERIES ENTERPRISES, INC. dba
EXPRESS AUTO SERVICES
14834 E. Valley Boulevard
La Puente, CA 91746

Employer

Docket No. 16-R6D5-9083

**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 St. Jeries Enterprises, Inc., doing business as (dba) Express Auto Services (Employer).

JURISDICTION

Commencing on January 21, 2016 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On March 4, 2016, the Division issued a citation to Employer alleging one regulatory and five general violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹

Employer timely initiated its appeal by telephone call to the Board on March 15, 2016. The Board acknowledged that communication by letter dated March 16, 2016. The Board's letter informed Employer that it had to send the Board a filled out appeal form and a copy of the "entire citation packet" within 10 calendar days of the date of the Board's letter. The Board's letter further stated that failure to do so "constitutes grounds for dismissal of [Employer's] appeal."

No response was received from Employer.

On April 22, 2016 the Executive Officer of the Board issued an Order Dismissing Appeal (Order).

¹ References are to California Code of Regulations, title 8 unless specified otherwise.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUES

Did Employer satisfy the requirements for filing a petition for reconsideration?

Did Employer establish good cause for its failure to perfect its appeal by sending a filled-in appeal form and a copy of the citation packet to the Board as required?

FINDINGS OF FACT

1. Employer timely initiated its appeal
2. Employer failed timely to complete the appeal process because it did not send the Board a completed appeal form and copy of the citation packet as required.
3. Employer's petition for reconsideration was not verified and did not include a proof of service showing it had been served on the Division.

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.

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. (Labor Code sections 6616 [petition must set forth in detail grounds for petition], 6617; *UPS*, Cal/OSHA App. 08-2049, Denial of Petition for Reconsideration (June 25, 2009), citing, *Bengard Ranch, Inc.* Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).) For present

purposes, however, we will construe, without so deciding, the petition to assert the evidence does not justify the findings of fact, and/or that the findings of fact do not support the Order.

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 a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

First we point out that petition was not verified and contained no proof that it had been served on the Division. Both verification and proof of service are mandatory for the filing of a petition for reconsideration. (Lab. Code sections 6616 and 6619, respectively.) Failure to satisfy either or both of those requirements is grounds to deny a petition for reconsideration. (*RMJ Construction*, Cal/OSHA App. 12-9013, Denial of Petition for Reconsideration (May 11, 2012).)

Employer's petition maintains that it responded by facsimile to the Board's March 16, 2016 letter. It attached to its petition documents allegedly sent with that facsimile and a copy of a facsimile log. The documents and assertions are of no help to Employer.

First, since the petition is not verified we cannot assume the correctness or accuracy of the assertions in the petition. Second, the facsimile log is for the month of September 2013. The petition itself maintains the documents were transmitted on April 13, 2016. The petition seeks to explain that discrepancy by pointing out that the facsimile transmitter log is "5 months off." Be that as it may, the log also refers to 2013, not 2016 or even 2015. Thus, although the line item in the log referenced by the petition shows that something was transmitted to the Board's facsimile line, there is insufficient proof that the transmission in question was sent in 2016.

There are two additional problems as well, even if were we to assume the transmission in question occurred at the time alleged. First, Employer's response was by its own contention sent on April 13, 2016, which was more than 10 days after the date of the Board's acknowledgment letter of March 16, 2016. Second, even if all other deficiencies and problems did not exist or were to be ignored, the documents Employer claims it sent on April 13, 2016 did not include a copy of the citation packet. Thus, Employer has not satisfied the requirements for filing a petition for reconsideration.

DECISION

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

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: June 30, 2016