

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

In the Matter of the Appeal of:

TRUCK ACCESSORIES GROUP LLC
1686 East Beamer Street
Woodland, CA 95776

Employer

Docket. 16-R2D1-9019

**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 Truck Accessories Group LLC (Employer).

JURISDICTION

Commencing on July 1, 2015, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On December 14, 2015 the Division issued a citation to Employer alleging a violation of occupational safety and health standards codified in California Code of Regulations, title 8.¹

Employer timely commenced an appeal by mailing the Board an appeal form. The Board replied on December 29, 2015 with a letter informing Employer that it needed to send the Board a copy of the citation packet it had received from the Division. The Board's letter further stated that failure to provide those documents constitutes grounds to deny Employer's appeal.

No response to the Board's December 29, 2015 letter was received from Employer.

On February 22, 2016, the Executive Office of the Board issued an Order Dismissing Appeal (Order) to Employer which stated that Employer had commenced its appeal but failed to complete the process as required and dismissed the appeal accordingly.

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

Employer timely filed a petition for reconsideration.

The Division filed an Answer to the petition.

ISSUE

Did Employer establish good cause for its failure to perfect its appeal?

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 (Jun. 25, 2009), citing, *Bengard Ranch, Inc.*, Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).)

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.

Employer timely initiated its appeal by sending the Board an appeal form, but without including a copy of the citation. The Board acknowledged receiving the incomplete appeal form by letter dated December 29, 2015 which informed Employer that it needed to send a copy of the citation itself. No response was received from Employer prior to the Order being issued on February 22, 2016. The only response was Employer's petition for reconsideration, which Employer filed in response to the Order.

Failure to provide the Board with a copy of the citation being appealed is grounds to dismiss the intended appeal. (*Murray Company v. California*

Occupational Safety and Health Appeals Bd. (2009) 180 Cal.App.4th 43.) Sending a copy of the citation at issue with one's petition for reconsideration is not sufficient. (*Id.*)

Employer's petition does not present us with a basis to justify our deviating from the above authority or which would support a finding that there was good cause for sending the citation copy to the Board late. The petition acknowledges receipt of the Board's December 29th letter, stating, in part, "[W]e misconstrued [the letter] as a follow up to our prior conversations indicating that we intended to file the initial appeal. We submitted the initial paperwork and believed it was a complete submission at that time." The Board's file on this matter reflects no "conversations" between Employer and a member of Board staff prior to or up to the time the appeal was initiated and acknowledged. Instead, it appears such communications as occurred were by mail. It is likely, therefore, that the conversations which Employer mentions were between it and Division personnel.

It is apparent from the foregoing that Employer misunderstood the appeal process. Misunderstanding the appeal process is not good cause. (*Ryland Homes*, Cal/OSHA App. 14-9164, Denial of Petition for Reconsideration (Jan. 13, 2015).) Moreover, the Board has held that the citation package is legally sufficient to put cited employers on notice of their various rights and responsibilities when appealing, including the obligation to send the Board a copy of the citation itself. (*Murray Company, supra; International Pita Bread, Inc.*, Cal/OSHA App. 14-9153, Denial of Petition for Reconsideration, (Dec. 31, 2014).) And Board regulation section 347, subdivision (e) defines "completed appeal form, which is required to be submitted, as requiring the employer appealing a citation to send the board a copy of the citation. (Board regulation (Cal. Code Regulations, title 8) section 359.1.)

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: APR 28, 2016