

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

In the Matter of the Appeal of:

LOUIS TANGALAKIS dba
ELIAS CONSTRUCTION
318 Avenue I, #482
Redondo Beach, CA 90277

Employer

Docket No(s). 15-R4D1-9236

**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 Louis Tangalakis doing business as (dba) Elias Construction (Employer).

JURISDICTION

Commencing on May 8, 2015 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On November 4, 2015 the Division issued a citation to Employer alleging two regulatory and four general violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹

Employer timely initiated an appeal by telephoning the Board to state its intent to appeal. The Board acknowledged that call by letter dated November 24, 2015. The Board's letter informed Employer of the steps necessary to perfect its appeal.

No response or further communication was received from Employer prior to its filing the subject petition for reconsideration.

On January 6, 2016, the Executive Officer of the Board issued an Order Dismissing Appeal (Order) based on Employer's failure to perfect its appeal.

Employer timely filed documents which we deem to be a petition for reconsideration

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

The Division did not file an answer opposing the petition.

ISSUE

Does the petition satisfy the Labor Code's requirements for a petition for 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.

Employer's petition asserts that the evidence does not justify the findings of fact in 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.

The documents which we are treating as a petition for reconsideration for this analysis consist of five pages, a two page appeal form, a two page copy of the citation involved, and a fifth page which is a copy of the Division's "penalty remittance form." From those documents, which include no statement of the grounds for reconsideration, it appears Employer is seeking reconsideration of only the alleged violation of section 342, subdivision (a) [failure to report a serious injury to employee].

The citation alleges that Employer failed to report a serious injury (as defined in Labor Code section 6302, subdivision (h)) to the Division. The injury occurred on March 27, 2015 and was reported as required section 342, subdivision (b), to the Division by the Los Angeles Fire Department. The Division began its investigation of the accident causing that injury in May 2015, and Employer made his first report in June 2015. The citation further

alleges that Employer falsified the facts in its report. For present purposes we need not address the false report allegation; it is sufficient here to note that making a first report of the injury to the Division after the Division started its investigation is tantamount to failing to report.

There are at least three bases on which to deny the petition. First, it was not verified and did not include a proof of service on the Division. (Lab. Code §§ 6616, 6619; *Fleetlogix, Inc.*, Cal/OSHA App. 14-1252, Denial of Petition for Reconsideration (Apr. 23, 2015).) The lack of verification also prevents us from treating as true the statements made in the petition, especially in light of contrary information in the citation itself. (See *Club Fresh LLC*, Cal/OSHA App. 06-9241, Decision After Reconsideration (Sep. 4, 2007).)

Second, while Employer ostensibly challenges the findings of fact implicit in the Order, the petition actually challenges the merits of the underlying citation, not the finding that it failed to submit a completed appeal form. Thus, the contentions of the petition miss the point. The record shows that Employer did not timely respond and Employer's petition does not claim it had done so.

Third, an appeal must be perfected by the filing of a completed appeal form as required by Board regulation, and filing it with a petition for reconsideration is not timely. (Board regulation § 359.1; *Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43.) Failure to timely file a completed appeal form is grounds to dismiss the appeal. (*Id.*)

DECISION

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

ED LOWRY, Member
JUDITH S. FREYMAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: MAR 24, 2016