

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

In the Matter of the Appeal of:

UNITED PARCEL SERVICE,. INC
3800 N. Sillect Svenue
Bakersfield, CA 93308

Employer

Docket No. 16-R4D7-9109

**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 United Parcel Service, Inc. (Employer).

JURISDICTION

Commencing on July 31, 2015 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On January 27, 2016 the Division issued two citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹

Employer untimely appealed.

Employer was notified by Board staff that its appeal appeared to be late and informed of the steps it could take to show that the appeal was late for good cause. Employer provided documents seeking to establish that the late appeal was for good cause. An administrative law judge (ALJ) of the Board reviewed the record and Employer's explanation and subsequently issued an Order Denying Late Appeal (Order) on July 20, 2016, which found that good cause for the late appeal had not been established.

Employer timely filed a petition for reconsideration.

The Division filed an answer to the petition.

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

ISSUE

Did Employer show that its late appeal was reasonable and for good cause?

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 contends 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.

The record shows that Employer received the citations at issue at one of its business addresses on February 1, 2016. The appeals were initiated on February 29, 2016. Labor Code section 6601 provides that an appeal must be initiated by notifying the Board of one's intent to appeal within fifteen working days of receiving the citation or citations to be appealed. A review of the calendar for February 2016 shows that the fifteenth working day² after February 1 was February 23, 2016. Employer's appeal was filed late, and the question then is whether it was for good cause.

² Working days are days other than Saturday, Sunday, and State-recognized holidays. (Board regulation section 347, subd. (w), citing Gov. Code sections 6700 and 6701.)

Employer first contends that there was confusion amounting to good cause for the late appeal. The subject citations were mailed by certified mail as required (Labor Code section 6317), received, and signed for at Employer's address in Sunnyvale, California, while the inspection and the alleged violations apparently involved one of its other worksites in Bakersfield, California. Another citation alleging a violation at the Bakersfield facility was mailed to that facility, which Employer maintains caused confusion in Sunnyvale which resulted in a delay in transmitting the citation through appropriate channels to appropriate personnel.

The information the Division sent to Employer with the subject citations has been held legally sufficient to put Employer on notice of its rights and obligations respecting the citations, including its rights of appeal. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43; *Barnard Impreglio Healy JV*, Cal/OSHA App. 14-9013, Denial of Petition for Reconsideration (Apr. 30, 2014).) If a citation is sent to an employer's business office or address which is different from the place of the inspection and alleged violation, the citation is still sufficient to put employer on notice of the allegations and its rights and obligations regarding them. (*San Mateo Union High School District, Capuchino H. S.*, Cal/OSHA App. 09-9342, Denial of Petition for Reconsideration (Mar. 4, 2010); see *Zacky Farms, LLC*, Cal/OSHA App. 05-9022, Denial of Petition for Reconsideration (May 27, 2005).) Therefore, we hold that sending the citations to Employer's address in Sunnyvale is not adequate grounds to find good cause for the late appeal; the information in the citation package was sufficient to cause Employer's personnel in Sunnyvale to handle the citations as they would any other of Employer's "most important legal affairs." (*A L S Fashion, Inc.*, Cal/OSHA App. 14-9046, Denial of Petition for Reconsideration (July 8, 2014), citing *Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).)

Employer's second contention is that the U.S. Department of Labor's website shows that the closing conference regarding the subject citations was held after the citations were received, and therefore the appeal period did not commence running until completion of the conference. We do not agree.

Labor Code section 6601 states that a cited employer has fifteen working days from receipt of the citation(s) to appeal; it does not contain the term "closing conference" or tie the appeal period to it. The Board cannot add terms to a statute. (See *Lockheed Missiles and Space Co., Inc.*, Cal/OSHA App. 74-629, Decision After Reconsideration (Apr. 10, 1975) [when interpreting a statute, judge may ascertain and declare what is expressed, not insert what may have been omitted]; *Auchmoody v. 911 Emergency Services* (1989) 214 Cal.App.3d 1510, 1517 [same rules of interpretation applicable to statutes and regulations].) And, there is no statutory requirement that the Division hold a

closing conference. (*A L S Fashion, Inc.*, Cal/OSHA App. 14-9046, Denial of Petition for Reconsideration (July 8, 2014), citing *Duran's Body Shop*, Cal/OSHA App. 82-369, Decision After Reconsideration (Oct. 3, 1985).) Moreover, the closing conference made clear that Employer had been cited and, in combination with the information in the appeal package, put Employer on notice that it had to act to preserve its rights and options. (*Murray Company*, 180 Cal.App.4th 43, *supra*.)

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: October 7, 2016