

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

In the Matter of the Appeal of:

C-DAD, INC.  
5718 West Jefferson Boulevard  
Los Angeles, CA 90016-3107

Employer

Docket No. 01-R4D3-436

**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 C-DAD, Inc. (Employer).

**JURISDICTION**

On July 12, 2000, a representative of the Division of Occupational Safety and Health (the Division) conducted an investigation at a place of employment maintained by Employer at 850 N. Cordova, Burbank, California (the site).

On January 9, 2001, the Division issued a citation to Employer alleging the following general violations of section 1512(b) [appropriately trained person]; section 6151(g)(2) [training and education]; section 3203(a)(4)(C) [injury and illness prevention program (IIPP)]; section 1509(e) [toolbox or tailgate safety meetings]; section 1509(a) [IIPP in accordance with General Industry Safety Order section 3203]; section 1529(d)(5) [multi-employer worksites]; of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.<sup>1</sup>

Employer filed a timely appeal contesting the existence of the alleged violations.

On October 19, 2001, Employer failed to appear at a duly noticed hearing. On February 14, 2002, the Board sent to Employer a "Notice of Intent to Dismiss Appeals." The notice gave Employer 10 days to provide the Board with a statement containing sufficient facts to show that Employer's failure to appear at the hearing was reasonable and for good cause. No statement was

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<sup>1</sup> Unless otherwise specified all references are to sections of Title 8, California Code of Regulations.

received by the Board. On May 29, 2002, the Board issued an order dismissing Employer's appeal.

On July 8, 2003, Employer petitioned for reconsideration after receiving a second notice of unpaid civil penalties from the Department of Industrial Relations Division of Administration/Accounting. Employer's petition alleges that they were only following the owner's (Burbank Unified School District) instructions and that they are no longer in business.

**REASONS FOR DENIAL  
OF  
PETITION FOR RECONSIDERATION**

Labor Code section 6614(a) sets forth the deadline for filing a petition for reconsideration from an ALJ decision or an order of the Board:

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 [aggrieved] party . . . may petition the appeals board for reconsideration . . . . Such petition shall be made only within the time and in the manner specified in this chapter.

A regulation of the Board provides that "[t]he petition for reconsideration shall be filed at the Appeals Board in Sacramento, California, and shall be deemed filed on the date it is delivered or mailed to the Appeals Board." (8 Cal. Code Regs. § 390(a).)

In the present case, the order dismissing the appeal was served by mail on the parties on May 29, 2002. Because the order was served by mail, the time for filing a petition was extended by 5 days. (See 8 Cal. Code Regs. § 348(a).) Thus, the last day to file a petition for reconsideration challenging the order was July 4, 2002, which was 35 days after service of the order. The petition for reconsideration filed by Employer *over thirteen months later* on July 8, 2003, was well past the statutory deadline.

Longstanding Board precedent establishes that the Board does not have jurisdiction to accept the petition. The Board has consistently held that the requirement that a petition for reconsideration be mailed or delivered to the Appeals Board within 30 days of the issuance of the decision or order to be reconsidered is jurisdictional and the Board is without power to enlarge the time for the filing of a petition for reconsideration. (*Unocal Corporation*, Cal/OSHA App. 92-639, Denial of Petition for Reconsideration (May 13, 1993) citing *Dalton Construction Company*, Cal/OSHA App. 83-987, Denial of Petition for Reconsideration (Feb. 7, 1985).) The deadline for filing a petition for reconsideration is jurisdictional and even a petition filed one day beyond the deadline must be denied. (See *Beutler Heating & Air Conditioning, Inc.*, Cal/OSHA App. 93-2220, Denial of Petition for Reconsideration (Mar. 16, 1995)

and *Edwin D. Chapman*, Cal/OSHA App. 81-331, Denial of Petition for Reconsideration (Oct. 1, 1981).)

The courts and other adjudicatory agencies have reached the same conclusion when interpreting similar statutory filing deadlines. It is well established that if a time limitation for filing a document with an agency is jurisdictional, and a document is filed beyond the time limit, neither the agency nor a court may grant relief since they lack jurisdiction over the matter. (See *Humbert v. Castro Valley County Fire Protection Dist.* (1963) 214 Cal.App.2d 1, 9.)

The Appeals Board finds that Employer did not file its petition for reconsideration within the statutorily prescribed time. Therefore, the Board is without jurisdiction to review the order issued May 29, 2002. Accordingly, the order dismissing the appeal is final and not subject to review by any court or agency.<sup>2</sup>

### **DECISION**

Based upon the above, the petition for reconsideration is denied as untimely. The Board has no jurisdiction to re-open the now final Order Dismissing Appeal.

MARCY V. SAUNDERS, Member  
GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: August 27, 2003

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<sup>2</sup> Section 390.3(a) states: “[i]f within 30 days of the filing of an order or decision no petition for reconsideration has been filed, and no reconsideration has been ordered on the Appeals Board’s own motion, the order or decision is a *final order* of the Appeals Board and not subject to review by any court or agency.” (Italics added.)