

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

In the Matter of the Appeal of:

**Jensen Meat Company
2550 Britannia Boulevard, #101
San Diego, CA 92154**

Employer

Inspection No.
1625466

**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 Jensen Meat Company (Employer).

JURISDICTION

On January 12, 2023, the Division issued Jensen Meat Company (Employer) one citation, alleging a Serious Accident-Related violation of section 4184, subdivision (a),¹ [Guarding Required] (the Citation).

Employer timely appealed the Citation. In its appeal forms, Employer provided its email address, and advised that its preferred method of service is email.

On June 1, 2023, the Board served Employer with a Notice of Status Conference (Notice) scheduling a status conference on January 2, 2024, at 3 p.m. The Notice was served on Employer via email, to the Employer's designated email address in accordance with Employer's designated preference for service.

Employer failed to appear for the January 2, 2024, status conference.

On January 8, 2024, Administrative Law Judge Mario L. Grimm issued an Order Dismissing Appeal for Failure to Appear (Order). The Order stated that Employer "did not appear at this scheduled time and has not provided any sufficient explanation for its failure to appear." The Order indicated the matter would be dismissed unless Employer provided "good cause or a compelling reason for not appearing" within 15 calendar days from the date of service. The Order also indicated that, if Employer failed to respond within 15 days, the Order would become final, and that Employer may file a petition for reconsideration within 30 days of the date the Order became final. The Order was served on Employer via email at Employer's email address.

¹ Unless otherwise specified, references are to title 8 of the California Code of Regulations.

Employer did not timely respond to the Order. The Order became final on January 23, 2024.

On March 7, 2024, Employer filed its Petition.

ISSUE

Does the Board have jurisdiction to grant 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 does not assert any of the specific grounds for reconsideration set forth in Labor Code section 6617, which is by itself sufficient grounds to deny the Petition. (Lab. Code, §§ 6616-6617; *Arodz Motorsports, LLC, dba Al Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) Instead, Employer submitted excerpts of an October 9, 2023 email exchange concerning abatement between Employer's Human Resource Department and Timothy Decker, a Senior Safety Engineer with DOSH Enforcement.

Employer's Petition contained a one-line email from Mr. Decker to Employer that stated, apparently in response to Employer's Human Resources Department inquiry: "The citation has already been marked abated in our system and we have received the pictures." Employer's Petition asserts, based upon that email, it understood that the Citation had been resolved (presumptively settled) and "... we were not instructed by Mr. Decker that we were required to attend a conference call dated January 2, 2024, by Judge Grimm." (Petition, p. 1.) While the condition creating the violation was abated, Employer did not and has not paid the proposed penalty assessed in the Citation.

The Board has fully reviewed the record in this case, including the arguments presented in the Petition. We have taken no new evidence. We conclude the Petition must be denied.

A petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. (Lab. Code, § 6614.)² We lack jurisdiction to grant reconsideration when a petition is filed late. (*Quintana Construction, Inc.*, Cal/OSHA App. 1198572, Denial of Petition for Reconsideration (June 24, 2020); *Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021). See also *Nestle Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108 [citing *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984].)

Here ALJ Grimm's Order was entered on January 8, 2024. Employer failed to respond to the Order within 15 days, so it became final on January 23, 2024. At most, Employer had until February 27, 2024 to file a petition for reconsideration. (Lab. Code § 6614, subd. (a); § 348, subd. (c).) Employer did not file its Petition until March 7, 2024.

Accordingly, as the Petition was untimely, the Board lacks jurisdiction to grant reconsideration in this matter.

DECISION

For the reasons stated above, Employer's Petition is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Judith S. Freyman, Board Member
/s/ Marvin P. Kropke, Board Member

FILED ON: 04/19/2024



² Under Board regulations, the time to file a petition for reconsideration is extended by five days for service, including service by email, where the party is located in California. (§ 348, subd. (c).)