

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

ADVANCED RIGGERS AND
MILLWRIGHTS
4698 Brookhollow Circle
Riverside, CA 92509

Employer

Docket. 13-R3D1-2057

**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 Advanced Riggers and Millwrights (Employer).

JURISDICTION

Commencing on January 28, 2013 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On June 18, 2013 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 appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board. A pre-hearing conference was held among the parties and the ALJ on March 10, 2014 and the matter was then duly-noticed for a contested evidentiary hearing to be held on June 10, 2014. The Division appeared at the noticed place and time, and Employer failed to appear. On July 14, 2014 the ALJ issued a "Notice of Intent to Dismiss Appeals" which informed Employer that unless it filed a motion for reinstatement presenting facts sufficient to show that Employer's failure to appear was reasonable and for good cause its appeal would be dismissed. No response was received from Employer.

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

On August 13, 2014 the ALJ issued an Order Dismissing Appeal (Order).

Employer timely filed a petition for reconsideration.

The Division filed an answer to the petition.

ISSUE

Does Employer's petition establish that its failure to attend the scheduled hearing 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 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).) We shall liberally construe the petition and in doing so deem it to assert that the evidence does not justify the findings of fact and/or 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. We have taken no new evidence. 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.

As stated above, Employer failed to attend a duly-noticed hearing, and further failed to respond to an Order to Show Cause why the appeal should not be dismissed due to that failure to appear. Employer's petition makes no claim

that the hearing notice was not properly mailed or not received, and the Board's record does not indicate such an irregularity. Since the record does not indicate that the Board failed properly to give notice of the hearing to the parties and Employer presents an entirely different reason for its failure to appear, the issue of improper notice is not before us. (Lab. Code § 6618 [issues not raised in petition waived].)

In pertinent part Employer's petition states: "Due to unforeseen circumstance that would have resulted in an extreme financial hardship to my small business I was unable to appear at the hearing on June 10, 2014 for the above stated docket number. My presence was required on an out of town job to oversee contracted work."

Board precedent states that failure to attend a duly-noticed hearing is grounds to dismiss an appeal unless the failing party shows there was good cause for the failure. More specifically, failure to appear in order to conduct other business has been held not to be good cause. (*Del Rio West Pallet, Inc.*, Cal/OSHA App. 09-2403, Denial of Petition for Reconsideration (Jul. 26, 2011) ["choosing to conduct business" instead of attending hearing not good cause].) We hold that our rationale in deciding against granting relief under circumstances similar to those of this case applies here as well. Employers are "require[d] to handle their appeals with the degree of care a reasonably prudent person would in the conduct of its most important legal affairs." (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) Employer's decision to attend to other business rather than attend the hearing was apparently economically motivated. It is not for us to decide whether that decision was economically sound in a cost-benefit sense. Employer chose to attend to business rather than appear, and bears the consequences of that choice, namely the dismissal of its appeal.

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 13, 2014