

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

In the Matter of the Appeal of:

BODEGA LATINA CORP  
dba EL SUPER STORE #31  
14601 B Lakewood Blvd.  
Paramount, CA 90723

Employer

Docket. 2013-R3D3-9075

**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 Bodega Latina Corp doing business as (dba) El Super Store #31 (Employer).

**JURISDICTION**

Commencing on September 20, 2012, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On March 8, 2013, the Division issued two citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.<sup>1</sup>

Employer initiated its appeals of the citations by telephone call to the Board on March 12, 2013.

The Board acknowledged Employer's telephone initiation by letter dated March 13, 2013. The Board's letter informed Employer that it was required to provide completed appeal forms and copies of the citations being appealed to the Board by March 22, 2013. The Board's letter further informed Employer that failing so to provide completed appeal forms, with copies of the citations being appealed, could result in dismissal of the appeals.

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<sup>1</sup> References are to California Code of Regulations, Title 8 unless specified otherwise.

Employer did not provide copies of the citations being appealed when it subsequently sent appeal forms to the Board.

On March 26, 2013, the Board sent a letter to Employer informing it that copies of all citations being appealed were not included with the appeal forms, and that the copies were required.

No response was received from Employer.

On July 8, 2013, the Executive Officer of the Board issued an Amended Order Dismissing Appeal (Order). The initial Order Dismissing Appeal was issued on July 3, 2013.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

### **ISSUE**

Was Employer's appeal properly dismissed?

### **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 finding of fact and 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 substantial evidence in the record as a whole and appropriate under the circumstances.

Board Regulations sections 359(b) and 359.1(b) require employers which are appealing a citation or citations to provide the Board with a copy or copies of the citation(s) being appealed. Moreover, Board Regulation section 347(e) defines “completed appeal form” to mean, *inter alia*, that a copy of the citation being appealed is included with the appeal form. Employers are informed of this requirement in the documents accompanying the citation (which we have often termed the “citation package”) and, as in this case, in correspondence from the Board acknowledging telephonic initiation of an appeal and subsequent failure to provide us with copies of the citation. Employer has never provided the Board with copies of the citations it sought to appeal, even when it filed its petition for reconsideration.

It has been held that failure to timely provide the Board with copies of the citations is valid grounds for dismissing an appeal, even when the cited employer furnishes the citation copies with its petition for reconsideration. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4<sup>th</sup> 43.) In this matter Employer never provided copies of the citations being appealed, even with its petition for reconsideration, and so has not satisfied the requirements of Board regulations.

It appears that Employer mistakenly believes that the appeal forms themselves (i.e. without citation copies) are sufficient. Such is not the case. (Board Regulation 347(e.); *Murray Company, supra.*) Further, misunderstanding the appeal process is not good cause to reinstate an appeal. (See *19<sup>th</sup> Auto Body Center*, Cal/OSHA App. 94-9001, Denial of Petition for Reconsideration (Apr. 13, 1995).)

### **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: August 23, 2013