

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

In the Matter of the Appeal of:

FISHER METAL PRODUCTS, INC.
P.O. Box 382
Visalia, CA 93279

Employer

Docket. 15-R2D4-9011

**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 Fisher Metal Products, Inc. (Employer).

JURISDICTION

Commencing on July 11, 2014, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On September 19, 2014, 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 telephoned the Board to communicate its intent to appeal on December 1, 2014, which was late under the provisions of Labor Code section 6600.

On December 23, 2014 the Board sent a letter to Employer informing it that its appeal appeared to be late and providing Employer the opportunity to show that the late appeal was reasonable and for good cause. Contemporaneously, the Board wrote the Division requesting that it provide the Board with proof that the citations were served on Employer as required by statute and when such service occurred.

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

No response to the opportunity to show the late appeal was reasonable and for good cause was received by the Board until June 2015.

The Division provided proof that the citations were served on September 25, 2014 by certified mail. (Labor Code § 6317.)

On January 29, 2015, the Board's Executive Officer issued an Order Dismissing Appeal (Order) because no response to the Board's December 23, 2014 letter had been received. The Order indicated that if Employer disagreed with the Order it could petition the Board for reconsideration within 30 days.

Employer untimely filed a petition for reconsideration.

The Division filed an answer to the 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 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).) Liberally construed in the light most favorable to Employer, the petition may be deemed 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. The Board has 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.

Labor Code section 6614, subdivision (a), establishes a jurisdictional time limit within which a party may file a petition for reconsideration. (*Mid-Coast Builders Supply, Inc. dba Mid-Coast Builders, Inc.*, Cal/OSHA App. 11-2780, Denial of Petition for Reconsideration (Apr. 10, 2013).) We have no jurisdiction to grant a late petition. (*Id.*) We base our conclusion on both the mandatory language of Labor Code section 6614, subdivision (a) [petition “shall be made only with the time and in the manner specified”], and on two Court of Appeal decisions which held that equivalent wording in the Workers’ Compensation Act is jurisdictional. (Lab. Code §§ 5900, 5903; *Nestle Ice Cream Co., LLC v. Workers’ Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; *Scott v. Workers’ Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.)

As noted, until June 2015 the Board had not received any response to its letter informing Employer that its appeal was late and subject to dismissal without a showing of good cause. In June 2015 Employer sent the Board documents dated January 15, 2015, purported to have been mailed that day, which sought to show good cause. Even assuming (without deciding) for the sake of discussion that Employer’s response was sent but lost in the mail and disregarding the fact that the response was untimely, and further assuming that it established good cause for the late appeal, we are still without jurisdiction to grant reconsideration, as explained above.

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: AUG 14, 2015