

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

In the Matter of the Appeal of:

GUARANTEED QUALITY RESTORATIONS  
3001 Redhill Avenue, Suite 6-107  
Costa Mesa, CA 92626

Employer

Docket No. 13-R3D1-9130

**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 Guaranteed Quality Restorations (Employer).

**JURISDICTION**

The Division of Occupational Safety and Health (Division) conducted an inspection on January 10, 2013 at a jobsite in Costa Mesa, California maintained by Employer. On March 8, 2013 the Division issued one citation with four items to Employer, alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.<sup>1</sup>

Citation 1, Item 1 alleges a regulatory violation of section 14300.29 [failure to use Cal/OSHA 300, 300A, and 301 forms, or equivalent, for recordable injuries] and proposes a penalty of \$325. Item 2 alleges a general violation of section 1509 [failure to establish, implement and maintain an effective Illness and Injury Prevention Program in accordance with 3203 of the GISO] and proposes a penalty of \$1125. Item 3 is a general violation which alleges a violation of 1509 [failure to adopt a written Code of Safe Practices which relates to the employer's operations], and proposes a penalty of \$1125. Item 4 is a general violation alleging a violation of 3395 [Heat Illness Prevention training procedures required by GISO Group 2 Safe Practices and Personal Protection Article 10], and proposes a penalty of \$1125.

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

Employer's place of business signed for and received the citation via certified mail on March 11, 2013. Under Labor Code section 6601, Employer's appeal was due by April 2, 2013. Employer called the Appeals Board on April 3, 2013, notifying the Board of its intent to appeal. The Board received the required appeals forms from Employer on April 12, 2013.

### **ISSUE**

Whether there is good cause for the Employer's filing of a late appeal.

### **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 has asked the Board for reconsideration of its petition but includes no grounds on which that reconsideration may be based. Failure to state sufficient legal grounds upon which the petition may be granted is a valid basis for a denial. (*AGS Construction Svcs.*, Cal/OSHA App. 07-R2D3-9573, Denial of Petition for Reconsideration (Apr. 3, 2008).) Employer submitted a letter on May 6, 2013, requesting that the Board extend the filing deadline, and find good cause for Employer's late filing, due to the Employer being out of the office from March 11 to March 15, 2013. While the Employer may have been out of the office for a week, the Employer still had from March 15 to April 2, 2013 to timely file an appeal with the Board. Employer does not provide any details of circumstances that the Board could rely upon to find good cause for the delay here. In a number of past cases, the Board has explained that an Employer's internal operating issues that lead to delay beyond the statutory time frame for filing an appeal are not good cause for a late appeal. (*Sam Wong Construction Co., Inc.*, Cal/OSHA App. 09-3433, Denial of Petition for Reconsideration (Dec. 28, 2011).) On this basis, the appeal was dismissed for untimely filing.

Employer's safety consultant then submitted a Petition for Reconsideration to the Board, which was timely received on October 2, 2013. However, the Petition does not contain any legal basis alleging the ALJ's Order was faulty. As stated above, this is grounds to deny the petition outright.

*(Renewal by Anderson dba Designer Sash & Door Systems, Inc., Cal/OSHA App. 09-9290, Denial of Petition for Reconsideration (Jan. 20, 2010).)*

The petition also states that the Employer believed the filing of his initial appeal was timely, as Employer had a misunderstanding of the filing rule as 15 days to file, counted from the date the envelope was opened. Under the Board's regulation at section 6601, the time of receipt of the citation in the mail starts the clock on 15 working days to file. There is no explanation as to why Employer would hold a belief about the rule being related to the envelope opening. Such statements evidence a misunderstanding of the appeal process. The Board has previously found that alleged misunderstandings of the appeal process do not constitute good cause for a late appeal. In addition to this information being in the statute and regulations, the requirements of the 15-day rule are stated on the face of the citation and provide sufficient notice of the appeal period. (*19<sup>th</sup> Auto Body Center*, Cal/OSHA App. 94-9001, Denial of Petition for Reconsideration (Apr. 13, 1995).) Employers are required to handle their appeals with the degree of care a reasonably prudent person would undertake in the conduct of his or her most important legal affairs. (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).)

### **DECISION**

For the reasons stated above, the petition for reconsideration is denied.

ART CARTER, Chairman  
ED LOWRY, Member  
JUDITH S. FREYMAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: November 21, 2013