

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

In the Matter of the Appeal of:

ALCAUTER INC  
dba HEMET AUTO SPA & DETAIL  
24490 Eastgate Drive  
Diamond Bar, CA 91755

Employer

Docket: 15-R3D3-9057

**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 Alcauter Inc dba Hemet Auto Spa & Detail (Employer).

**JURISDICTION**

The Division of Occupational Safety and Health (Division) conducted an inspection on July 21, 2014, at a place of employment in Hemet, California maintained by Employer. On December 17, 2014, the Division issued one citation 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 includes 5 Items. The Items include alleged violations of reporting requirements, as well as Illness and Injury Prevention Program, Heat Illness Prevention, and Hazard Communication Program requirements.

Total penalties proposed are \$6,425.

Employer received the citations via certified mail and telephoned the Appeals Board on January 26, 2015, indicating its intent to appeal the citations issued by the Division. As the Administrative Law Judge (ALJ) noted in his Order Denying Leave to File Late Appeal, this telephone call to indicate intent to appeal was late; Employer had until January 12, 2015, to inform the Board of its intent to appeal. The Appeals Board sent Employer a letter informing Employer of its responsibility under Appeals Board Regulation

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

section 359.1(b) to complete and return an appeal form, including a copy of the citation(s) for each citation to be appealed. Employer's forms were received by the Board on January 29, 2015.

### **ISSUE**

Did Employer establish good cause for its 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 argues its petition on the basis of (a), (c), and (e). Employer explains that he filed his appeal late due to overseas travel. Employer left the country on December 14, 2014, and did not return until January 21, 2015. He did not learn of the citation until he returned to his place of business on January 23, 2015.

The Board may grant an extension of the appeal filing period under Labor Code section 6601 only where the Employer is able to establish that good cause exists for late filing. Prior Board Decisions After Reconsideration have made it clear that employers have a duty to treat the citations received from the Division as they would other important legal matters. (*Ray Cammack Shows, Inc.*, Cal/OSHA App. 02-9240, Denial of Petition for Reconsideration (Apr. 30, 2003).) The Board has specifically stated: "Waiting to deal with or respond to citations until one returns to the office from an absence is not good cause for late appeal." (*Barnard Impregilo Healy JV*, Cal/OSHA App. 14-9013, Denial of Petition for Reconsideration (Apr. 30, 2014), citing, *Pro Services*, Cal/OSHA App. 93-9018, Denial of Petition for Reconsideration (Jul. 28, 1993); *California Expanded Metal Products Co.*, Cal/OSHA App. 99-9010, Denial of Petition for Reconsideration (May 12, 1999).)

The ALJ has correctly applied this good cause rule, found in a number of prior Board Decisions After Reconsideration, to the facts of this situation, and we decline to disturb the ruling.

## **DECISION**

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

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: JUN 22, 2015