

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

In the Matter of the Appeal of:

ABDUL G. ZADEH dba ISLAND AUTO  
PARTS WAREHOUSE, INC.  
484 E. Redlands Blvd.  
San Bernardino, CA 92408

Employer

Dockets 12-R3D3-1213 and 1214

**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 Abdul G. Zadeh dba Island Auto Parts Warehouse, Inc. (Employer).

**JURISDICTION**

Commencing on October 12, 2011, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On March 29, 2012, the Division issued two citations to Employer alleging four violations of occupational safety and health standards codified in California Code of Regulations, Title 8.<sup>1</sup>

Employer timely appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board, including a duly-noticed evidentiary hearing. At that hearing the Division moved to reclassify one of the alleged violations to a “notice in lieu of citation” with zero penalties, and to reduce the penalty of another violation. Employer moved to limit its appeal to a plea of financial hardship and to request a payment plan in the event any penalty was imposed; it withdrew all other grounds of appeal. The motions were granted.

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

On February 13, 2013 the ALJ issued a Decision (Decision) holding that Employer had not met its burden to show a degree of financial hardship which warranted penalty reduction. She therefore affirmed and imposed a penalty, adjusted as noted, of \$15,885.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

### **ISSUES**

Has Employer satisfied the statutory requirements for filing a petition for reconsideration?

Was the Decision correct in finding Employer had not met its burden of proving financial hardship?

### **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 contends the ALJ acted in excess of powers, the evidence does not justify the findings of fact, and/or the findings of fact do not support the Decision. (Labor Code section 6617(a), (c), and (e) respectively.)

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 petition for reconsideration was not served and verified as required by the Labor Code, and must be denied for those reasons. In addition, we further find that the Decision was based on substantial evidence in the record as a whole and appropriate under the circumstances.

Labor Code sections 6616 and 6619, respectively, make it mandatory that a petition for reconsideration be verified under oath and served on the opposing party. Failure to satisfy either requirement is grounds for denial of a petition. (*Ludivina Lopez-Hernandez dba Olivas Tires and Wheels*, Cal/OSHA App. 11-1965, Denial of Petition for Reconsideration (Dec. 10, 2012).)

When the Board received Employer's petition it included neither the required verification nor any proof of service on the Division. The Board sent a letter to Employer on March 13, 2013, reminding it of the requirement to verify and serve its petition. No response was received. Accordingly, we deny Employer's petition for failure to fulfill the statutory requirements for filing a petition.

Were we to reach the merits of the petition we would deny on that basis as well.

Employer claims in his petition that he is experiencing financial distress, and offers to provide further documentation in support of that claim, saying he did not know he had the burden of proof. Misunderstanding the appeal process is not grounds for relief. (*19<sup>th</sup> Auto Body Center*, Cal/OSHA App. 94-9001, Denial of Petition for Reconsideration (Apr. 13, 1995).) Also, Employer's conduct at the hearing, during which he attempted to show the nature and extent of his financial difficulties, contradicts his current claim that he did not know he had the burden of proof. For example, he introduced several exhibits relating to the business's financial condition. (See Decision, pp. 3-4.)

Employer's petition disputes the merits of two of the alleged violations. Having waived all defenses to the alleged violations, the violations were established as a matter of law, and disputing their merits is not permitted at this stage of the proceeding. (*Construction Equipment Company aka LT Farms*, Cal/OSHA App. 11-2278, Denial of Petition for Reconsideration (Oct. 25, 2012) [employer may not challenge merits of citation after stipulating violation occurred].)

And, in any event, the points Employer raises are neither dispositive nor persuasive. He argues that the fire which was the result of the violation alleged in Citation 2, flammable vapors, was not due to "gasoline vapors." While apparently true, the point is not dispositive because Citation 2 does not refer to gasoline vapors, but to the ignition of flammable vapors released from an aerosol paint can. Employer's argument, based on this alleged distinction, is not well-founded.

Employer also disputes the merits of the section 342(a) violation [failure to report serious injury to an employee], pointing out that he was injured in the accident. What Employer ignores is that one of his employees was more seriously injured, suffering third degree burns over 30 per cent of his body.

Thus, the reporting requirement was triggered by the accident, and Employer failed to report, so the violation was established. Moreover, Employer acknowledges he did not know of the reporting requirement. Ignorance of the law is not excuse for non-compliance. (*Epsilon Electronics, Inc. dba Power Acoustik Electronics*, 09-2325, Decision After Reconsideration (Dec. 24, 2012) citing *Nick's Lighthouse*, Cal/OSHA App. 05-3086, Denial of Petition for Reconsideration (Jun. 8, 2007).)

### **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: APRIL 26, 2013