

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

In the Matter of the Appeal of:

LIUS ENTERPRISE CONSTRUCTION CO.
920 South Beach Boulevard
Anaheim, CA 92804

Employer

Docket. 12-R3D1-9141

**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 Lius Enterprise Construction Co. (Employer).

JURISDICTION

Commencing on May 8, 2012, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On July 24, 2012, the Division issued a citation to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹

Employer timely initiated its appeal of the citation by telephoning the Board and indicating its intent to appeal. The Board acknowledged Employer's telephone call by letter dated August 2, 2012. Among other items, that letter informed Employer that it must send the Board a copy of the citation being appealed by August 13, 2012.

No copy of the citation or other response was received by the Board.

On November 19, 2012, the Executive Officer of the Board issued an Order Dismissing Appeal (Order) due to Employer's failure to provide the Board with a copy of the citation at issue.

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

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUE

Was it correct to dismiss Employer's 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's petition alleges that the evidence does not justify the findings 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.

Employer timely contacted the Board on August 1, 2012 by telephone to initiate his appeal, which call was acknowledged in writing. Employer made no further contact with the Board to perfect his appeal. Since Board Regulation section 359.1(b) requires an employer which initiates its appeal by telephone to perfect its appeal within 10 days of the Board's acknowledgment, Employer's appeal was properly dismissed. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43; *Vel Packer*, Cal/OSHA App. 10-9255, Denial of Petition for Reconsideration (Jan. 24, 2011).) As the Court of Appeal has recognized, the Board cannot process an appeal without receiving a copy of the citation at issue. (*Murray Company, supra.*) Despite being informed in the citation itself and in the Board's acknowledgement letter of August 2, 2012, Employer failed to provide the

Board with a copy of the citation until it filed its petition for reconsideration. Doing so at that time is not adequate to avoid dismissal of the unperfected appeal. (*Id.*)

We also note that Employer's petition addresses the merits of the citation, and not the crucial issue here, which is the failure to perfect the appeal.

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: January 22, 2013