

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

In the Matter of the Appeal of:

SPRECKLES SUGAR CO.  
395 West Keystone Road  
Brawley, CA 92227

Employer

Dockets. 13-R3D2-0945 through 0947

**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 Spreckles Sugar Co. (Employer).

**JURISDICTION**

Commencing on September 21, 2012, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On February 25, 2013, the Division issued three citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8, section 342(a).<sup>1</sup> Citation 1 alleged two general violations: § 3380(f)(1) [failure to select appropriate personal protective equipment]; and § 5157(c)(2) [permit required confined space]. Citation 2 alleged a serious violation of § 5157(d)(3) [permit required confined space]. Citation 3 alleged a “repeat other” violation of § 342(a) [failure to report serious injuries; report was made late].

Employer timely appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board, including a pre-hearing conference on September 16, 2013, one result of which was the proceeding was set for a later contested evidentiary hearing. Notice of hearing was sent

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

to the parties, followed by an amended notice of hearing changing the hearing date to March 6, 2014.

The Division appeared at the designated time and place for hearing, and Employer failed to appear.

The ALJ issued a Notice of Intent to Dismiss Appeal (Notice) to Employer on March 11, 2014. The Notice informed Employer that its appeals would be dismissed unless it timely filed a written motion containing sufficient facts to establish that the failure to appear was reasonable and for good cause.

Employer timely replied.

After considering Employer's reply, the ALJ determined Employer had not established that its failure to appear was reasonable and for good cause, and issued an Order Dismissing Appeal (Order) on April 16, 2014.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

### **ISSUE**

Did Employer establish its failure to appear was reasonable and for good cause?

### **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 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 the preponderance of the evidence in the record as a whole and appropriate under the circumstances.

The reasons given for the failure to appear are, first, that Employer's manager handling the matter at the time (which person has left the company) mis-entered the date as March 14, 2014 instead of March 6, 2014 (the actual date). Second, the error was not noticed by another manager until March 12, 2014 when he was preparing for the hearing believed to be scheduled for March 14th. An additional factor stated is that the latter manager was also dealing with his wife's fatal illness in early March, although Employer's petition admits that "this would not affect the review and handling of the case by the HR Manager/Assistant Safety Manager who were responsible for scheduling the hearing."

Employer's failure to properly record the hearing date falls within the rubric of "internal operating problem" which the Board has for many years held not to be good cause for failure to appear at a hearing or pre-hearing conference. (*Central Freight Lines, Inc.*, Cal/OSHA App. 10-1888, Denial of Petition for Reconsideration (Jan. 9, 2012).) Employer argues that the cases cited by the ALJ in the Order are distinguishable. Be that as it may, we believe our reasoning in such situations applies here.

The rationale Employer advances here is closely similar to that which we considered and rejected in *Southern California Edison*, Cal/OSHA App. 08-9062, Denial of Petition for Reconsideration (Jan. 30, 2009). Southern California Edison (SCE) filed a late appeal due to the failure of a secretary to follow her superior's instructions to send appeal documents to the Board. When SCE was denied leave to file a late appeal, it petitioned for reconsideration, arguing that it took the subject citations seriously and had detailed and specific procedures in place for handling citations. The Board rejected those arguments in denying SCE's petition. (*Southern California Edison, supra.*) In this case as well Employer's seriousness and established procedures failed to achieve their purpose. The errors made and the failure to find them until after the hearing date were internal operating problems which are not good cause for failing to appear at the duly-noticed hearing.

## **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: June 25, 2014