

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

**Michael Robert Sierra, an individual,  
doing business as, Sierra Sandblasting  
& Painting**

Case No.: **21-0155-PWH**

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected subcontractor, Michael Robert Sierra, doing business as Sierra Sandblasting & Painting (Sierra), requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on May 27, 2021. Pursuant to California Code of Regulations, title 8, section 17227),<sup>1</sup> on December 6, 2021, the appointed Hearing Officer, Steven A. McGinty, served an Order to Show Cause Why Request for Review Should Not Be Dismissed as Untimely under Labor Code section 1742, subdivision (a) (OSC).<sup>2</sup> Section 1742, subdivision (a), mandates that a Request for Review be transmitted to the Labor Commissioner within 60 days after service of the Assessment.

For the reasons stated below, I find that the time limit for requesting review is mandatory and jurisdictional and Sierra's Request for Review was not filed timely. Accordingly, the Request for Review must be dismissed.

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<sup>1</sup> For ease of reference, individual sections of the Department of Industrial Relations' prevailing wage hearing regulations found at California Code of Regulations, title 8, section 17201 et seq., "are referred to as 'Rules' using only their last two digits." (Rule 01, subd. (d).)

<sup>2</sup> All statutory references are to the Labor Code unless otherwise specified.

## FACTS

DLSE issued the Assessment against subcontractor Sierra and prime contractor Fast-Track Construction, a corporation, doing business as Fast-Track Construction on May 27, 2021. Sierra filed a Request for Review on August 13, 2021. Seventy-eight days elapsed between the date DLSE issued the Assessment and the date Sierra filed the Request for Review.

Notice of the right to seek review is found at the top of page two of the Assessment. The notice states in part:

### Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

State of California - Labor Commissioner  
Civil Wage and Penalty Assessment Review Office  
PO Box 32889  
Long Beach, CA 90832

The Parties were provided 20 days to file a response in writing to the Hearing Officer's OSC of December 6, 2021, and 10 days to reply to any submission by any other Party. On December 8, 2021, DLSE filed its Response to the OSC. In the Response pleadings, DLSE noted that Sierra's Request for Review was postmarked on August 13, 2021, 78 days after the date of the service of the Assessment. (Luong Chau Declaration, ¶ 6, p. 2, ll. 23-25, and Exhibit 3 attached thereto; Claudia Canas Declaration, ¶ 4, p. 2, ll. 14-15.) Further, DLSE noted that Sierra's Request for Review was received on August 18, 2021. (Claudia Canas Declaration, ¶ 4, p. 2, ll. 11-14.) Thus, DLSE urged that Sierra failed to request review timely. Further, that the Director did not have jurisdiction to proceed and the Request for Review must be dismissed.

Sierra did not file a response to the OSC. In addition, Sierra did not file a reply to DLSE's Response to the OSC.

On December 13, 2023, Notice of Prehearing Conference set for January 22, 2024 was issued by the Hearing Officer as there had been no response from the Requesting Party to the OSC. The Hearing Officer's assistant served the Notice on Sierra by first class mail. Sierra failed to appear at the Prehearing Conference held January 22, 2024.

### **DISCUSSION**

Section 1742, subdivision (a) provides that an affected contractor may request review of a civil wage and penalty assessment within 60 days after service of the assessment. If no hearing is requested within that period, "the assessment shall become final." (§ 1742, subd. (a.) Rule 22 restates the 60-day filing requirement, and expressly provides that, "Failure to request review within 60 days shall result in the Assessment becoming final and not subject to further review under these Rules."

Rule 27 governs the early disposition of a Request for Review that appears untimely. Under the rule, the Hearing Officer issues an Order to Show Cause why the Request for Review should not be dismissed as untimely under section 1742, to be served on all Parties, and provides the Parties an opportunity to respond to the Order and to reply to any submission by any other Party. Evidence submitted in support or opposition to the Order is by affidavit or declaration. (Rule 27, subds. (a) and (b).) There is no right to an oral hearing under the rule. (Rule 27, subds. (b) and (c).) The rule authorizes the Director to dismiss a Request for Review that is untimely under section 1742. (Rule 27, subds. (c) and (d).)

This case proceeded under Rule 27. The Hearing Officer issued an OSC. DLSE filed various pleadings in response. Sierra failed to file a response to the OSC or a reply to DLSE's submission. Sierra failed to appear at a prehearing conference.

The evidence in the record established that the last day to transmit a written request for review in this matter was August 2, 2021.<sup>3</sup> The Assessment became final on August 2, 2021. Therefore, under section 1742, Sierra's Request for Review transmitted on August 13, 2021, was untimely. The Director is without jurisdiction to proceed on the untimely Request for Review. (§ 1742, subd. (a); Rule 22, subd. (a); see *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831 [where the time for filing is mandatory and jurisdictional, a late filing may not be excused on the grounds of mistake, inadvertence, or excusable neglect]; *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489 [same].)

Had Sierra filed a Request for Review timely, it would have forestalled the finality of the Assessment and would have vested the Director with jurisdiction to conduct a hearing on the merits. Because the time for transmitting a Request for Review passed, there is no jurisdiction to proceed because the Assessment is final. (§ 1742, subd. (a); Rule 22, subd. ((a).) The time limit is mandatory and jurisdictional.

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<sup>3</sup> The Assessment issued on May 27, 2021. The 65th day after May 27 was July 31, 2021, a Saturday. Thus, Monday, August 2, 2021 was the last day to transmit the Request for Review. (Rule 03, subd. (a).)

Based on the foregoing, the Director makes the following findings:

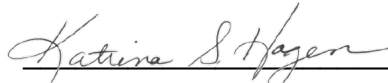
**FINDINGS**

1. Michael Robert Sierra, an individual, doing business as Sierra Sandblasting & Painting did not timely request review of the Civil Wage and Penalty Assessment issued May 27, 2021.
2. The Assessment became final on August 2, 2021.
3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by Michael Robert Sierra, an individual, doing business as Sierra Sandblasting & Painting.

**ORDER**

Michael Robert Sierra's Request for Review is dismissed. The Hearing Officer shall issue and serve a Notice of Findings on the parties.

Dated: 2/21/2024



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Katrina S. Hagen, Director  
California Department of Industrial Relations