

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

In the Matter of the Appeal of:

QUEST DIAGNOSTICS NICHOLS INSTITUTE

Employer

Inspection No.

1555357

**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 Quest Diagnostics Nichols Institute (Employer).

JURISDICTION

Beginning September 16, 2021, the Division of Occupational Safety and Health (the Division), conducted an inspection of a worksite maintained by Employer.

On March 7, 2022, the Division issued one citation to Employer, alleging two violations of California Code of Regulations, title 8.¹ Citation 1, Item 1, asserted a General violation of section 3203, subdivision (a), alleging that Employer failed to establish, implement, and maintain an effective injury and illness prevention plan. Citation 1, Item 2, asserted a General violation of section 3650, subdivisions (t)(7) and (17), alleging that Employer failed to ensure that industrial trucks were operated in a safe manner.

Employer initiated an appeal of the citations on April 11, 2022. However, Employer did not file an appeal form for each citation. On May 10, 2022, the Board issued to Employer a Notice of Incomplete Appeal (Notice), advising Employer that its appeal could not be processed because it was incomplete. Employer was advised to cure the deficiencies within 20 days of service of the Notice to avoid dismissal.

On July 22, 2022, after receiving no further documents from Employer, the Appeals Board issued to Employer an Administrative Order Dismissing Appeal (Order).

On January 20, 2023, Employer filed a petition for reconsideration, requesting reconsideration of the Administrative Order Dismissing Appeal. The petition for reconsideration generally addresses the merits of the citations.

¹ Unless otherwise specified, all section references are to California Code of Regulations, title 8.

ISSUE

Does the Board have jurisdiction to grant reconsideration in this matter?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

The Board has fully reviewed the record in this case. Based on our independent review of the record, we find that the Order was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances. The Board has taken no new evidence.

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 asserts none of the statutory grounds upon which we may grant reconsideration, which is reason to deny the petition. (*Arodz Motorsports, LLC, dba A1 Tune & Lube*, Cal/OSHA App. #1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) However, even if we were to construe the petition to assert one or more of the statutory grounds in Labor Code section 6617, we could not grant reconsideration.

The dispositive issue is whether the petition was timely filed. The Board's record in this matter shows that the Order was served on July 22, 2022. Both the Order and Labor Code section 6614, subdivision (a) gave Employer notice that a party may petition the Board for reconsideration within 30 days after service of the decision or order at issue. Employer's petition was filed on January 20, 2023, several months late.

We lack jurisdiction to grant reconsideration when the petition is filed late. (*Amerisk Engineering Corp.*, Cal/OSHA App. 1129146, Denial of Petition for Reconsideration (Dec. 21, 2018), citing Labor Code sections 5900 and 5903; *Nestle Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; citing *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.)

DECISION

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin P. Kropke, Board Member

FILED ON: 03/06/2023

