

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

In the Matter of the Appeal of:

**M AND N CONSULTING INC., DBA A-LINE
MESSENGER SERVICE
21358 NORDHOFF STREET #105
CHATSWORTH, CA 91311**

Inspection No.

1498777

**DENIAL OF PETITION FOR
RECONSIDERATION**

Employer

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 M and N Consulting, Inc. dba A-Line Messenger Service (Employer).

JURISDICTION

On April 5, 2021, following an inspection that commenced on October 16, 2020 after an employee illness on September 13, 2020 at a place of employment maintained by Employer at 1500 East Duarte Road, Duarte, California, the Division of Occupational Safety and Health (the Division) cited Employer for a violation of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer timely appealed.

The matter was set for a duly noticed status conference on December 6, 2021. Employer failed to appear, and failed to provide an explanation for its failure to appear. Employer's appeal was dismissed on December 9, 2021. Employer then timely filed the instant Petition for Reconsideration.

ISSUE

Has Employer shown good cause for its failure to appear at a duly-noticed status conference?

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

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

- (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 AI Tune & Lube*, Cal/OSHA App. #1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) 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.

This matter was set for a status conference, via conference call, on December 6, 2021 at 2:30 p.m. before Administrative Law Judge (ALJ) Jacqueline Jones. Employer was served with a Notice of Status Conference by mail on September 17, 2021. The record shows that this Notice was sent by certified mail to the following address; the same address from which Employer's Petition was received:

ATTN: Robin Anderson
M and N Consulting Inc., DBA A-Line Messenger Service
21358 Nordhoff Street #105
Chatsworth, CA 91311

Employer did not appear at the hearing at the scheduled time and place. The record shows that ALJ Jones sent an email to Employer's representative, Robin Anderson, on December 6, 2021, notifying Employer that it had not appeared at the conference and its appeal was in danger of being dismissed. The ALJ's email stated, "I called and left a message for you at the office and on your cell phone," but, "You were not available." Employer did not respond.

The Order Dismissing Appeal issued on December 9, 2021 and became final on December 26, 2021.

Employer filed a timely Petition for Reconsideration on January 4, 2022. The Board sent Employer a Deficiency Letter on January 13, 2022, notifying Employer that its Petition lacked a verification statement and proof of service, and providing instructions for completing its Petition. Labor Code section 6616 requires verification of the petition. A proof of service must be attached to the petition stating that the employer served all parties, pursuant to Labor Code section 6619. The deadline for compliance with the verification and service requirements was five days after January 13, 2022. As of January 21, 2022, Employer had failed to do so.

Employer's Petition states that it has "suffered numerous covid 19 [sic] issues, and several technical failures." Employer specifically asserts, "Our email program crashed, taking calendar

and contacts with it. That is why no one appeared on our behalf 12/6/21.” (Petition, p. 1.) However, Employer does not provide an explanation as to why any of these factors, including an email system outage, affected its knowledge of, or ability to participate in, a telephonic Status Conference for which it received a timely and duly issued Notice by certified mail. Employer does not assert that it never received this Notice.

An employer's failure to appear at a duly noticed hearing or conference is grounds to dismiss the appeal. (*Rosal Auto Recyclers*, Cal/OSHA App. 10-1050, Denial of Petition for Reconsideration (June 4, 2012); *Agri-Feed Industries, Inc.*, Cal/OSHA App. 09-4055, Denial of Petition for Reconsideration (Dec. 6, 2010).) Section 383 of the Board's regulations, however, authorizes the Board to reinstate an appeal upon a showing of good cause, including after dismissal for failure to appear. “Good cause” is defined as “sufficient facts to establish a reasonable basis for the failure to appear.” (§ 383, subd. (c).) The Board has found good cause for failure to appear, for example, in the event of “unanticipated emergencies.” (*Ameripride Uniform*, Cal/OSHA App. 04-106, Decision After Reconsideration (Apr. 3, 2008).)

However, an employer's internal operating problems are not good cause for failure to appear. (*Ameripride Uniform, supra*, Cal/OSHA App. 04-106.) Employers are required to handle their appeals with the degree of care a reasonably prudent person would undertake in the conduct of their most important legal affairs. (See, e.g., *Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) This includes ensuring that communications from the Division and the Board are properly and timely addressed. (*SoCal Stone Fabricators, Inc.*, Cal/OSHA App. 1464711, Denial of Petition for Reconsideration (June 14, 2021).)

We find Employer has not established good cause for its failure to appear. We therefore deny reconsideration.

DECISION

For the reasons stated above, the petition for reconsideration is denied. The ALJ’s Order Dismissing Appeal 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: 02/14/2022

