

**STATE OF CALIFORNIA**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**

In the Matter of the Request for Review of:

**Genesis Innovators, Inc.**

Case No.: **19-0242-PWH**

From a Civil Wage and Penalty Assessment issued by:

**Division of Labor Standards Enforcement**

**DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS**

Affected contractor Genesis Innovators, Inc. (Genesis) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on February 7, 2019. Pursuant to California Code of Regulations, title 8, section 17227), on July 10, 2019, 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>1</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, this Decision finds that the time limit for requesting review is mandatory and jurisdictional and Genesis' Request for Review was not filed timely. Accordingly, the Request for Review must be dismissed.

**FACTS**

DLSE issued the Assessment against Genesis on February 7, 2019. (Declaration of Jenifer J. Aikman in Support of DLSE's Application for Order to Show Cause (Aikman Declaration, ¶¶ 2-3, and Exhibits 1 and 2 attached thereto.) Genesis filed a Request for Review on May 22, 2019. (Aikman Declaration, ¶¶ 5-6, and Exhibits 4 and 5 attached

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise specified.

thereto.) One hundred and four (104) days elapsed between the date DLSE issued the Assessment and the date Genesis filed the Request for Review. (Aikman Declaration, ¶ 7, and Exhibit 6 attached thereto.)

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 ten days to file a response in writing to the Hearing Officer's OSC of July 10, 2019, and five days to reply to any submission by any other Party. On July 17, 2019, DLSE filed its Response to the Order to Show Cause. The Hearing Officer did not receive any other Response or Reply.

**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.) The applicable regulation at title 8, section 17222, 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."

Section 17227 of the regulations 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. The Order is 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 in support or opposition to the Order is submitted by affidavit or declaration. (Cal. Code of Regs., tit. 8, § 17227, subds. (a) and (b).) The rule expressly authorizes the Director to dismiss a Request for Review that is untimely under section 1742. (*Id.*, subds. (c) and (d).)

This case proceeded under procedures set forth in section 17227 of the regulations. The Hearing Officer issued an OSC. DLSE was the only party to file a response.

The evidence in the record established that the last day to transmit a written request for review in this matter was April 15, 2019.<sup>2</sup> The Assessment became final on April 15, 2019. Therefore, under section 1742, Genesis's Request for Review transmitted on May 22, 2019, was untimely. The Director is without jurisdiction to proceed on the untimely Request for Review. (§ 1742, subd. (a); Cal. Code Regs., tit. 8, § 17222, subd. (a); see also *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 Genesis timely filed a Request for Review, it would have vested the Director with jurisdiction to review the Assessment and conduct a hearing as necessary. Genesis failed to do so. The time limit is mandatory and jurisdictional, and accordingly the Assessment is final. (§ 1742, subd. (a).)

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<sup>2</sup> The Assessment issued on February 7, 2019. The 65th day after February 7 (60 days, plus five days for service by mail), was April 13, 2019, a Saturday. Thus, Monday, April 15, 2019, was the last day to transmit the Request for Review.

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

**FINDINGS**

1. Genesis Innovators, Inc. did not timely request review of the Civil Wage and Penalty Assessment issued February 7, 2019.
2. The Assessment became final on April 15, 2019.
3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by Genesis Innovators, Inc.

**ORDER**

Genesis Innovators, Inc.'s Request for Review is dismissed. The Hearing Officer shall issue and serve a Notice of Findings on the parties.

Dated: December 24, 2019

          /s/ Victoria Hassid  
Victoria Hassid  
Chief Deputy Director<sup>3</sup>  
Department of Industrial Relations

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<sup>3</sup> See Government Code sections 7 and 11200.4