

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

In the Matter of the Appeal of:

**2 & 3 ELECTRIC  
441 Brady Avenue  
Montebello, CA 90640**

**Employer**

Inspection No.

**1159345**

**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 2 & 3 Electric (Employer).

**JURISDICTION**

On or about November 10, 2016, the Division of Occupational Safety and Health (Division) issued seven citations to Employer alleging eight violations, two General and six Serious, of occupational safety and health standards codified in California Code of Regulations, title 8.<sup>1</sup> Proposed penalties totaled \$65,000.

Employer failed to initiate an appeal of the Citations within the 15 working day time frame provided by section 359, subdivision (d), and Labor Code section 6601.

After Employer received a collection notice from the Division, issued on January 10, 2017, Employer contacted the Board, on January 24, 2017, stating its intent to appeal the Citations, but failed to provide a completed appeal form for each citation and item number being appealed, and a copy of the citation package.

The Board issued Employer a Notice of Incomplete Appeal on January 25, 2017, with instructions for completing its appeal. Employer responded on January 29, 2017, with another incomplete appeal. Employer failed to provide the required documents to the Board, and in addition provided no explanation demonstrating good cause as to why its appeal was untimely. (§ 359, subd. (d); Lab. Code, § 6601.)

On March 10, 2017, the Board issued an Administrative Order Dismissing Appeal (Order) for failure to submit a complete and/or timely appeal.

---

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

On October 3, 2022, more than five years later, Employer filed yet another incomplete appeal, which the Board construes as an untimely Petition for Reconsideration (Petition). The Petition was unverified and lacked proof of service. (§ 391.1; Lab. Code, § 6616.) The Board issued Employer a Deficiency Letter on October 4, 2022, providing instructions for verification and service of the untimely Petition.

## 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.

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 AI 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, because the Petition is late.

The Board's record in this matter shows that the Order was served on March 10, 2017. 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 October 3, 2022, more than five years 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.)

Moreover, even if the Petition were timely, the Board would not grant reconsideration, for several reasons.

Despite being provided with instructions both in the original citation package from the Division and in a Notice of Incomplete Appeal from the Board, Employer has never filed a complete appeal, including a completed appeal form for each citation being appealed and a copy of the citation package. The information the Division sent to Employer with the subject citations has been held legally sufficient to put Employer on notice of its rights and obligations respecting the citations, including its rights of appeal. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43.) Employer's most recent submission, which the Board construes as Employer's Petition, includes only one appeal form for all seven citations, with the handwritten note, "All citations are appealed." The citation package is not included, except for the Notice of Proposed Penalties, which provides the only available guidance as to the number and classifications of the alleged violations. Again, this is in itself sufficient grounds to deny the Petition. (*Acapulco Polishing Corporation, Cal/OSHA App. 1285466, Denial of Petition for Reconsideration* (Oct. 31, 2018).)

In addition, Employer has been dilatory in handling its appeal. Not only has Employer failed to submit a completed appeal, Employer failed to initiate its appeal within the 15 working day time frame, stated in the citation package and provided by section 359, subdivision (d), and Labor Code section 6601. At no point has Employer asserted that the citations were not correctly addressed or not received, or offered any other evidence that might show, or tend to show, good cause for its late appeal. (§ 359, subd. (d); Lab. Code, § 6601.) It only initiated its appeal after receiving a collection notice from the Division.

The Board served Employer with a Notice of Incomplete Appeal, on January 25, 2017, with information on how to complete its appeal, which Employer did not observe. Employer's appeal was subsequently dismissed as incomplete and/or untimely. Employer delayed over five years between the time its appeal was dismissed, on March 10, 2017, and filing its deficient Petition, on October 3, 2022.

Employer has altogether failed to handle its appeal "with the degree of care a reasonably prudent person would undertake in dealing with his or her most important legal affairs." (*Timothy J. Kock, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration* (Nov. 20, 2001).) Again, even if the Board had jurisdiction to grant a late petition, Employer's dereliction in pursuing its appeal would be grounds to deny the Petition.

The Board has held that section 6614 is a jurisdictional time limit for filing a petition for reconsideration. (*Amerisk Engineering Corp., supra, Cal/OSHA App. 1129146.*) The Board does not have the authority to grant a late petition, even if we were inclined to do so; which, for the stated reasons, we are not.

**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: 10/21/2022

