

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

In the Matter of the Appeal of:

**RAFIDAIN, INC. DBA GENIE CAR WASH & OIL
CHANGE**

Employer

Inspection No.

1162918

**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 Rafidain, Inc. dba Genie Car Wash and Oil Change (Employer).

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. Based on our independent review of the record, we find that the Order Denying Late Appeal was based on a preponderance of evidence in the record, and was 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 for reconsideration is on the basis of subsections (c) and (e).

Employer received one regulatory and one serious citation, which were issued by the Division on July 26, 2016, and received at Employer's place of business on July 29, 2016. Employer filed an appeal of the citations on October 17, 2016, well outside of the 15-day window for timely filing. (Section 359.11 [Perfecting an appeal].) The Board issued a Notice of Untimely Appeal to Employer on November 1, 2016, and Employer responded via a written declaration, stating that Employer never received the citation package, but only became aware of

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

the citations when it received a collection notice from the Department of Industrial Relations. The Board issued an Order Denying Late Appeal on February 28, 2017. In that Order, an Administrative Law Judge (ALJ) of the Board explained that the Division submitted a copy of a certified mail receipt indicating that the citation package was delivered to an individual at Employer's address on July 29, 2016, and that this was the same address where the collection notice was received by Employer on September 26, 2016. The ALJ concluded that Employer had not shown good cause for the late appeal, as Employer's failure to handle its mail in a timely fashion is an internal operating problem, which is not good cause for a late appeal. (*Dynaelectric Company dba Wasatch Electric*, Cal/OSHA App. 1083985, Denial of Petition for Reconsideration (Jan. 27, 2017).)

Employer now files for reconsideration of the ALJ's Order.

In its petition, Employer explains that it abated the alleged violative conditions, and provided evidence to the Division of abatement "within days." (Petition, p. 4.) It appears that Employer may have confused the requirement to file abatement documents with the Division for the deadline for filing its appeal. Misunderstanding the appeal process is not good cause for a late appeal. (*Ryland Homes*, Cal/OSHA App.14-9164, Denial of Petition for Reconsideration (Jan. 13, 2015).) The citation package itself distinctly states the 15-day requirement for filing an appeal, is legally sufficient to put cited employers on notice of their various rights and responsibilities when appealing. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43; *Truck Accessories Group, LLC*, Cal/OSHA App. 60-9019, Denial of Petition for Reconsideration (Apr. 26, 2016).)

Furthermore, "Board precedent requires employers to handle their appeals with the degree of care a reasonably prudent person would undertake in the conduct of its most important legal affairs." (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) While Employer describes its lateness as "an oversight or mistake in judgment," such oversight does not constitute good cause under Labor Code section 6601. Rather, Employer's failure to handle incoming mail a timely fashion is an internal operating problem, which is not good cause for a late appeal. (*Dynaelectric Company dba Wasatch Electric*, Cal/OSHA App. 1083985, Denial of Petition for Reconsideration (Jan. 27, 2017).)

DECISION

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Art R. Carter, Chairman
Ed Lowry, Board Member
Judith S. Freyman, Board Member

FILED ON: 05/12/2017

