

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

A & M ORNAMENTAL IRON
1611 Railroad Street
Corona, CA 92880

Employer.

Docket No. 2015-R6D2-9132

**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 A & M Ornamental Iron (Employer).

JURISDICTION

On April 15, 2015, the Division of Occupational Safety and Health issued multiple citations to Employer alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.¹

On June 17, 2015, Employer telephoned the Board indicating its intent to appeal the citation(s) issued by the Division. Employer subsequently filed completed appeal forms.

On July 6, 2015, the Board sent Employer a letter by U.S. mail stating that it was unable to process the appeal. The letter advised Employer that the appeal appeared to have been filed late. The letter advised Employer that it must either send proof that the appeal was made timely, or make a showing of "good cause" for initiating the appeal late.

On August 19, 2015, after receiving no further documents from the Employer, the Board served and filed an Order Dismissing Appeal, which was executed by Han Ha, the Board's Interim Executive Officer.

On October 13, 2015,² Employer again filed its appeal forms with the Board. This time the appeals forms included the notation: "I am the only

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

² The forms were postmarked October 8, 2015.

person at A&M that handles all safety paperwork. I have not been at A&M on a regular basis recently due to my personal issues I am experiencing. I have been occupied by my recent divorce and separation with my 3 young children.”

On November 9, 2015, the Board issued Employer a letter stating that it was in receipt of the Appeal forms postmarked October 8, 2015, and that the forms are being treated as a petition for reconsideration. The Board advised Employer that it was required to verify its petition and serve it on all parties.

ISSUE(S)

Does the Board have jurisdiction to grant reconsideration?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

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.

Here, Employer’s petition does not state any of the bases set forth in Labor Code section 6617. Failure to state one or more grounds upon which reconsideration may be granted is grounds for denial of the petition for reconsideration. (*UPS*, Cal/OSHA App. 08-2049, Denial of Petition for Reconsideration (Jun. 25, 2009), *citing*, *Bengard Ranch, Inc.* Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).)

Even if we were to construe Employer’s petition as setting forth a basis for reconsideration that was compliant with Labor Code section 6617, the Board still could not grant Employer any relief because Employer failed to comply with mandatory time requirements for filing its petition.

Labor Code section 6614, subdivision (a), provides:

At any time within 30 days after the service of any final order or decision made and filed by the appeals board or a hearing officer, any party aggrieved directly or indirectly by any final order or decision, made and filed by the appeals board or a hearing officer under any provision contained in this division, may petition

the appeals board for reconsideration in respect to any matters determined or covered by the final order or decision and specified in the petition for reconsideration. Such petition shall be made only within the time and in the manner specified in this chapter.

This statute establishes a jurisdictional time limit within which a party may file a petition for reconsideration. (*Fisher Metal Products, Inc.*, Cal/Osha App. 15-9011, Denial of Petition for Reconsideration (Aug. 14, 2015), citing, *Mid-Coast Builders Supply, Inc. dba Mid-Coast Builders, Inc.*, Cal/OSHA App. 11-2780, Denial of Petition for Reconsideration (Apr. 10, 2013); *see also*, *Rocket Farms Herbs, Inc.*, Cal./OSHA App. 13-3549, Denial of Petition for Reconsideration (May 5, 2014).) We have no jurisdiction to grant a late petition. (*Ibid.*)

The conclusion that the Board lacks jurisdiction to hear the appeal is based both on the mandatory language of Labor Code section 6614, subdivision (a) [petition “shall be made only with the time and in the manner specified”], and on two Court of Appeal decisions which held that equivalent wording in the Workers’ Compensation Act is jurisdictional. (Lab. Code §§ 5900, 5903; *Nestle Ice Cream Co., LLC v. Workers’ Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; *Scott v. Workers’ Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.)

As noted above, the Board Order Dismissing the Appeal was filed and served on August 19, 2015. Employer’s appeal forms, dated October 13, 2015 and postmarked October 8, 2015, which were construed to be a petition, exceeded the time limit set forth in Labor Code section 6614. Therefore, the Board is without jurisdiction to hear the petition.

DECISION

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

ART CARTER, Chairman
ED LOWRY, Board Member
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: NOV 24, 2015