

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

In the Matter of the Appeal of:

BIG Q AUTO REPAIR, LLC
640 W. Fourth Street, Unit 117
Long Beach, CA 90802

Employer

Docket. 16-R6D5-9060

**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 Big Q Auto Repair LLC (Employer).

JURISDICTION

Commencing on December 11, 2015, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On February 5, 2016, the Division issued two citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Citation 1 alleged six items as follows: Item 1 alleged a general violation of § 2500.8, subdivision (a), use of flexible [electric] cords; Item 2 alleged a general violation of § 3328, subdivision (b), failure to inspect equipment and machinery as recommended by manufacturer; Item 3 alleged a general violation of § 3382, subdivision (a), failure to have employees use face and eye protection; Item 4 alleged a general violation of § 3384, subdivision (a), failure to provide hand protection to employees; Item 5 alleged a general violation of § 5194, subdivision (e)(1), failure to implement and maintain a written hazard communication program; Item 6 alleged a general violation of § 6151, subdivision (c)(1), failure to identify or secure portable fire extinguishers. Citation 2 alleged a serious violation of section 3577, subdivision (b), failure to guard a bench grinder's abrasive wheel.

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

Employer timely initiated its appeals of the citations by telephone call to the Board communicating its intent to appeal. Employer made this call to the Board on February 22, 2016.

The Board acknowledged Employer's appeal initiation by letter on February 23, 2016. In addition to acknowledging Employer's intent to appeal, the Board's letter informed Employer of the steps it had to take to perfect its appeal, such as sending the Board a filled out appeal form and a copy of the citations being appealed. The letter also informed Employer that it had to submit those additional documents within 10 days of the date of the Board's letter, and that failure to do so constitutes grounds for dismissal of the appeals.

None of the required documents or any other response was received from Employer.

Accordingly, on April 7, 2016 the Executive Officer of the Board issued an Order Dismissing Appeal (Order).

Employer timely filed a petition for reconsideration.

The Division filed an answer to the petition.

ISSUE

Has Employer established good cause for its failure to timely perfect its appeal?

FINDINGS OF FACT

Employer timely initiated its appeals of the citations.

Employer did not timely perfect its appeals.

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.

Employer's petition does not state any of the bases set forth in Labor Code section 6617 above, which is grounds sufficient to deny the petition. (Labor Code sections 6616 [petition must set forth in detail grounds for petition], 6617; *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).)

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 was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

Board regulation section 359.1, subdivision (b) requires a completed appeal form² to be filed for each appealed citation within 10 days of acknowledgement by the Appeals Board of Employer's intent to appeal. Although we have authority and discretion to extend the time to perfect an appeal, there must be a showing of good cause. (See Labor Code section 6601.)

Employer's petition for reconsideration takes responsibility for the violations and states that they have all been corrected. It seeks "[C]lemency for these violations as I have taken action to ensure that these safety issues would never occur again." What Employer's petition does not provide, explicitly or implicitly, is any reason or explanation for the failure timely to perfect its appeals. Employer's petition, in failing to address the failure to perfect its appeals, necessarily fails to state good cause for that failure as well. There is no informational or evidentiary basis in the record on which to base a finding of good cause and we cannot assume facts not in evidence. (*Gary Bothun dba Bothun Turkey Farm*, Cal/OSHA App. 15-0137, Denial of Petition for Reconsideration (Mar. 15, 2016).) Although Employer did submit appeal forms with its petition for reconsideration, doing so at that stage of a proceeding is not timely or grounds for relief. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43.)

² Board regulation section 347, subdivision (e), defines "completed appeal form" to mean, a filled in form with a copy of the citation or citations being appealed attached.

DECISION

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

ART R. CARTER, Chairman
JUDITH S. FREYMAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: JUN 16, 2016