

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

In the Matter of the Appeal of:

CALIFORNIA SECURITY &  
INVESTIGATIONS ACADEMY dba CSTA  
6130 Freeport Boulevard, Suite 202  
Sacramento, CA 95822

Employer

Docket. 15-R2D1-9190

**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 California Security & Investigations Academy dba CSTA (Employer).

**JURISDICTION**

On or about August 10, 2015 the California Division of Occupational Safety and Health (Division) issued citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.<sup>1</sup>

Employer initiated appeals of the citations by telephone call to the Board on October 13, 2015.

On October 14, 2015 the Board sent Employer a letter informing it of the steps necessary to complete the filing of its appeals. No subsequent communications were received from Employer prior to the petition for reconsideration which is the subject here.

Employer did not complete or perfect its appeal.

On December 14, 2015, the Executive Officer of the Board issued an Order Dismissing Appeal (Order) in view of the lack of further action by Employer to perfect its appeals. The Order informed Employer that it could petition the Board for reconsideration.

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

Employer timely filed a petition for reconsideration. The petition was not verified and Employer did not provide proof that it had served its petition on the Division. After receiving the petition, the Board informed Employer that it was required both to verify the petition and provide proof that it had served the petition on the Division. No verification or proof of service has been received from Employer.

The Division did not answer the petition.

### **ISSUES**

Does Employer's petition for reconsideration satisfy the mandatory requirements of the Labor Code?

Does Employer's petition establish good cause for its failure to file completed appeals of the citations?

### **REASON FOR DENIAL OF PETITION FOR RECONSIDERATION**

Labor Code section 6616 requires, in part, that a petition for reconsideration "shall be verified upon oath in the manner required for verified pleadings in courts of record[.]" We have held that failure to verify a petition is grounds to deny it. (*Fleetlogix, Inc.*, Cal/OSHA App. 14-1252, Denial of Petition for Reconsideration (Apr. 23, 2015).) Labor Code section 6619 requires that the party filing a petition for reconsideration "shall be served forthwith upon all [other] parties[.]" And, we have held a failure so to serve is also grounds to deny the petition. (*Id.*) Since Employer did not provide the Board with either verification of its petition or proof of service on the Division, the petition is denied on those bases.

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 states, in part, "(a) A completed appeal form shall be filed for each contested Division action. [¶] (b) If an appeal is initiated by other than an appeal form, a completed appeal form shall be filed with the Appeals Board within 10 days of the Appeals Board's written acknowledgement by the Appeals Board of the desire to appeal. Failure to file a completed appeal form with the Appeals Board within 10 days of written acknowledgement by the Board of the intent to appeal constitutes grounds for dismissal."<sup>2</sup> Employer has never provided the Board with appeal forms or any other documents for the citations it started to appeal, or copies of those citations themselves. Failure to do so is grounds to dismiss the appeals. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4<sup>th</sup> 43.) Employer's petition itself offers no explanation for the failure to perfect its appeal, or provide any basis upon which to find that the apparently late appeals were late for good cause.<sup>3</sup>

Briefly restated, there are ample grounds upon which to deny Employer's petition for reconsideration.

Finally, we note that while Employer argues the merits of the citations in its petition, such arguments are inappropriate in view of the failure to serve and verify the petition, the failure to complete the appeal process, and the failure to show good cause for the (apparent) late appeal. (See, *Vista Construction*, Cal/OSHA App. 14-9015, Denial of Petition for Reconsideration (May 13, 2014).)

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<sup>2</sup> "Completed appeal form is defined in section 347, subdivision (e) as "[A]ll required blanks filled in and boxes checked, with the signature of employer or employer's representative, and citation(s) appealed from attached to the appeal form."

<sup>3</sup> Appeals must be filed within 15 working days of receipt of the citation or citations being appealed. (Labor Code § 6601.) Since the citations giving rise to this matter were issued on or about August 10, 2015, and Employer's initiation of its appeal occurred on October 13, 2015, it is likely the appeals were filed late, although it is impossible from the current record to ascertain when the citations were received by Employer.

**DECISION**

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

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: FEB 22, 2016