

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

CALIFORNIA CONSTRUCTION
CONSULTANTS, INC.
P. O. Box 6849
Westlake Village, CA 91359

Employer

Docket Nos. 13-R4D1-2122
and 2123

**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 Construction Consultants, Inc. (Employer).

JURISDICTION

Commencing on April 4, 2013 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On May 23, 2013 the Division issued two citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹

Employer appealed.

After the appeals were filed, a prehearing conference to be held before an administrative law judge (ALJ) of the Board was duly noticed and scheduled. Employer failed to appear at the prehearing conference on February 18, 2014.

The ALJ issued an Order to Show Cause Why Sanctions Should Not Be Imposed (OSC) on February 25, 2014. Employer did not respond to the OSC.

On April 8, 2014, the ALJ issued an Order Dismissing Appeal (Order) due to Employer's failure to appear at the prehearing and subsequent failure to respond to the OSC.

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

Employer untimely filed a petition for reconsideration.

The Division filed an answer the petition.

ISSUE

Does the Board have jurisdiction to grant reconsideration when the petition is filed after expiration of the time for filing a petition set forth in Labor Code section 6614, subdivision (a)?

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).) For present purposes we shall construe the petition as asserting that the Order was issued in excess of the ALJ's authority, the evidence does not support the findings of fact, and/or the findings of fact do not support the Order.

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.

As noted above, the Order dismissing Employer's appeal was issued on April 8, 2014. The instant petition for reconsideration was filed on July 25, 2016. Labor Code section 6614, subdivision (a) provides that a petition for reconsideration must be filed "within 30 days after service" of the order or decision at issue. The last day for filing a petition for reconsideration of the Order was thus May 13, 2014, which day includes five days for service by mail of the Order. Employer's petition was filed more than twenty-six months after expiration of the statutory period.

We have reasoned in the past, following court authority addressing a parallel statute, that the time for filing a petition for reconsideration is jurisdictional. (Lab. Code § 6614, subd. (a); *A & M Ornamental Iron*, Cal/OSHA App. 15-9132, Denial of Petition for Reconsideration (Nov. 24, 2015), citing *Nestle Ice Cream Co., LLC v. Workers' Compensation Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; *Scott v. Workers' Compensation Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [Board without jurisdiction to grant late filed petition].) That reasoning applies here, and we therefore hold we have no jurisdiction to grant Employer's petition.

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: September 8, 2016