

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

In the Matter of the Appeal of:

**ADJ GROUP LLC dba GLOBAL TRUSS
AMERICA LLC
4295 Charter Street
Los Angeles, CA 90058**

Employer

Inspection No.
1262198

**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 ADJ Group, LLC doing business as Global Truss America, LLC (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) issued four citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ The citations were issued on November 14, 2017. Although Employer's appeal was untimely, it established good cause and a late appeal was granted by order of an administrative law judge (ALJ) of the Board on May 18, 2018.

Subsequently, the Board order issued three notices of prehearing conferences to the parties. Notice for the first conference was issued on March 28, 2019, to be held on July 22, 2019. A second notice was sent on August 6, 2019, to be held on October 21, 2019. The final notice was sent on October 22, 2019, for November 18, 2019.

Employer failed to appear at the November 18, 2019, prehearing conference. The ALJ issued an Order Dismissing Appeal for Failure to Appear (Order) on November 19, 2019. The Order informed Employer that it had the opportunity within the time stated in the Order to either make a showing of good cause for the failure to appear or file a petition for reconsideration with the Board.

On March 2, 2021, Board staff sent a letter to Employer in response to its request for information about filing a petition for reconsideration.

On August 13, 2021, Employer filed a petition for reconsideration, which was untimely.

The Division did not answer the petition.

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

ISSUE

Does the Board have jurisdiction to grant reconsideration in this matter?

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 was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances. We have taken no new evidence.

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 asserts none of the statutory grounds upon which we may grant reconsideration, which is reason to deny the petition. (*Arodz Motorsports, LLC, dba A1 Tune & Lube*, Cal/OSHA App. #1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) And, even if we were to construe the petition to assert one or more of the statutory grounds in Labor Code section 6617, we could not grant reconsideration.

Employer's petition states that the Board did not contact the appropriate person, as Employer had requested, for first prehearing conference on July 22, 2019. While the record in this matter does not reveal why, we note that the prehearing was rescheduled for October 2019 and then for November 2019. We infer that the second notice, sent August 6, 2019, setting the prehearing for October 21, 2019, was sent because Employer's representative was not able to attend the July prehearing. The third notice again rescheduled the prehearing either to accommodate one or more of the parties or the Board's schedule. In any event, because the July 2019 prehearing was rescheduled, the dismissal of Employer's appeal was not a result of a failure to appear at that event.

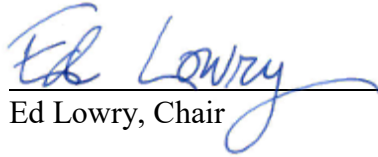
The dispositive issue is whether the petition was timely filed. The Board's record in this matter shows that the Order was served on November 19, 2019. Employer's petition was due on or before January 3, 2020, but filed in August 2021, more than one year late. Even Employer's inquiry about filing a petition for reconsideration in March 2021 was more than a year after the time to petition had expired. Both the Order and Labor Code section 6614, subdivision (a) gave Employer notice that a party may petition the Board for reconsideration within 30 days after service of the decision or order at issue.

We lack jurisdiction to grant reconsideration when the petition is filed late. (*Amerisk Engineering Corp.*, Cal/OSHA App. # 1129146, Denial of Petition for Reconsideration (Dec. 21, 2018), citing Labor Code sections 5900 and 5903; *Nestle Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; citing *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.)

DECISION

For the reasons stated above, the petition for reconsideration is denied. The Order and penalties proposed in the citations are affirmed.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD



Ed Lowry, Chair



Judith S. Freyman, Board Member



Marvin P. Kropke, Board Member



FILED ON: **09/16/2021**