

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

In the Matter of the Appeal of:

**MENDEZ ELECTRIC, INC.
DBA RAMS ELECTRIC and its successors
11643 Lochinvar Street
Whittier, CA 90606**

Employer

Inspection No.
1417264

**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 Mendez Electric, Inc. (Employer).

JURISDICTION

On December 5, 2019, the Division issued two citations totaling \$21,510 in proposed penalties. Citation 1, Item 1 alleges a Regulatory violation of section 342 [Reporting Work-Connected Fatalities and Serious Injuries]. Citation 1, Item 2 alleged a General violation of Section 3203 [Injury and Illness Prevention Program]. Citation 2, Item 1, alleged a Serious Accident-Related violation of Section 3657 [Elevating Employees with Lift Trucks] (the Citations).

On January 13, 2020, Employer filed an OSHAB appeal form appealing and alleging the affirmative defense of independent employee action for Item 1 and Item 2 of Citation 1 and for Citation 2. On January 26, 2020, the Bureau of Investigations (BOI) notified the Board it was investigating this case. Almost two years later, on December 6, 2022, the Board received notification from the Division that BOI's investigation was completed, and the criminal aspect of the case was closed. Thereafter in 2023, Administrative Law Judge (ALJ) Leslie E. Murad, II, held status conferences on this case which Employer attended on March 13, June 26, September 11, and December 12, 2023. No hearing was held.

On January 2, 2024, after 5 pm, Victor Mendez (Mendez) emailed Sandra Hitt at the Division on behalf of Employer stating, "I want to withdraw the appeal." Hitt forwarded the email to ALJ Murad, who wrote back to Mendez that day indicating he would grant Mendez's request. This chain of emails was not submitted by Employer with its petition. The Board is aware of this correspondence because the email chain is filed in OASIS under the entry "Email Correspondence Employer email requesting withdrawal of appeal." Also in OASIS is ALJ Murad's January 3, 2024, Order Granting Withdrawal of Appeal (Order). Employer failed to file a petition for reconsideration of the Order within 30 days, so the Order became final by operation of law on

February 7, 2024 (30 days after it was served on Employer by mail, with an additional five days for mailing under section 348, subdivision (c)).

On March 18, 2024, a Certificate for Execution for the Decision in the amount of \$21,510 was issued by the Board's Executive Officer. On May 30, 2024, the Board sent Employer a letter with information on filing a petition for reconsideration (apparently in response to a phone request for that information). On June 10, 2024, which was 124 days after the Order became final, Employer served the Board by mail with a proof of service (documenting service by mail only on the Board), a verification, and the letter the Board had sent to Employer on filing a petition for reconsideration (Employer's Petition). So there are no documents that could constitute an actual petition for reconsideration, or which provide the Board with information about the grounds for Employer's Petition. The Board notified Employer that a petition for reconsideration must be served on all parties pursuant to Labor Code section 6619. The Board has not received a proof of service indicating all parties have been properly served with a copy of Employer's Petition.

ISSUE

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.

Employer's Petition does not assert any of the specific grounds for reconsideration set forth in Labor Code section 6617, which is sufficient by itself to support denying the petition. (Lab. Code, §§ 6616-6617; *Arodz Motorsports, LLC, dba A1 Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) Even if, giving Employer the benefit of the doubt, the Petition is interpreted as arguing subdivision (d) above, Employer did not submit information or documentation from which the Board could glean the grounds upon which Employer is appealing the Order or excuse Employer's failure to timely file its Petition. Note that absent proof of a failure to receive notice of the Order, there is no excuse which would excuse Employer's failure to file timely.

A petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. (Lab. Code, § 6614.)¹ The Board lacks jurisdiction to grant reconsideration when a petition is filed late. (*Quintana Construction, Inc.*, Cal/OSHA App. 1198572, Denial of Petition for Reconsideration (June 24, 2020); *Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021). See also *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].)

The Board has fully reviewed the record in this case. We have taken no new evidence. We conclude the petition must be denied.

ALJ Murad's Order was entered on January 3, 2024, and Employer failed to file a petition for reconsideration of the Order within 30 days, so it became final by operation of law on February 7, 2024. Employer did not file its Petition until June 10, 2024.

Accordingly, as the Petition was untimely, the Board lacks jurisdiction to grant reconsideration in this matter.

DECISION

For the reasons stated above, Employer's Petition is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Ed Lowry, Chair
Judith S. Freyman, Board Member
Marvin P. Kropke, Board Member

FILED ON: 08/08/2024



¹ Under Board regulations, the time to file a petition for reconsideration is extended by five days for service, including service by email, where the party is located in California. (§ 348, subd. (c).)