

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

In the Matter of the Appeal of:

**ATV, INC. dba AMERICAN TIRE DEPOT
4490 Ayers Avenue
Los Angeles, CA 90058**

Employer

Inspection No.
1457804

**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 ATV, Inc. dba American Tire Depot (Employer).

JURISDICTION

On February 12, 2020, pursuant to an inspection at a place of employment maintained by Employer in Valencia, California, the Division of Occupational Safety and Health (Division) issued one citation to Employer alleging two violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer untimely filed an appeal to the citation on June 12, 2020.

On August 7, 2020, an ALJ issued an Order denying Employer's late appeal. On September 3, 2020, the Board reinstated Employer's appeal and remanded the matter for further proceedings. On February 8, 2021, Employer failed to appear at a duly-noticed status conference. The ALJ subsequently, on February 10, 2021, issued an Order Dismissing Appeal for Failure to Appear.

On June 7, 2021, Employer untimely filed the instant Petition for Reconsideration.

The Division did not answer the petition.

ISSUE

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

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

**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.

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).) However, 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.

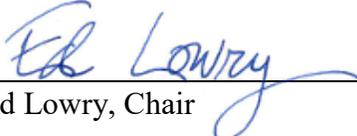
The dispositive issue is whether the petition was timely filed. The Board's record in this matter shows that the Order was served on February 10, 2021. In the absence of Employer's response within fifteen calendar days, the Order then became final. Both the Order and Labor Code section 6614, subdivision (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. Employer's petition was filed in June 2021, more than two months late.

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 ALJ's Order is affirmed.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD


Ed Lowry, Chair


Judith S. Freyman, Board Member


Marvin P. Kropke, Board Member



FILED ON: **07/09/2021**

DECLARATION OF SERVICE BY MAIL OR EMAIL

Inspection Number
1457804

I, Sarsvati Patel, declare:

1. I am at least 18 years of age, not a party to this action, and I am employed in Sacramento County at 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
2. On _____, I served a copy of the attached DENIAL OF PETITION FOR RECONSIDERATION in an envelope addressed as shown below and placed the envelope for collection and mailing on the date and at the place shown in item 3 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

3. Date mailed: _____ Place mailed: (city, state): Sacramento, CA

4. On 07/09/2021, I electronically served the document listed in item 2 as follows:

NAME OF PERSON SERVED	ELECTRONIC SERVICE ADDRESS
<u>Chris Grossgart, DOSH Legal</u>	<u>cgrossgart_doshlegal@dir.ca.gov</u>
<u>Rocio Reyes, DOSH Legal</u>	<u>rreyes_doshlegal@dir.ca.gov</u>
<u>DOSH Southern Office</u>	<u>doshlegal_la@dir.ca.gov</u>
<u>Alex Guarderas</u>	<u>aguarderas@atvtireinc.com</u>
<u>Michael J Humbach</u>	<u>michaelh@americantiredepot.com</u>
<u>Zulfiquar Merchant</u>	<u>ZMerchant@dir.ca.gov</u>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Sarsvati Patel

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)