

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

In the Matter of the Appeal of:

**S'TOP ROOFING COMPANY, INC.
1514 Underwood Avenue
San Francisco, CA 94124**

Employer

Inspection No.

1490346

**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 S'Top Roofing Company, Inc. (Employer).

JURISDICTION

On February 8, 2021, the Division of Occupational Safety and Health (the Division) issued three citations to S'Top Roofing Company, Inc. (Employer). Pursuant to California Code of Regulations, title 8¹, section 359, and Labor Code sections 6600 and 6602, Employer was required to file an appeal or notify the Appeals Board of its intent to file appeals within 15 working days of receipt of the citations. Due to the COVID-19 pandemic, Governor Newsom extended the statutory filing deadline an additional 15 days for all appeals that were due prior to June 30, 2021. (Exec. Order N-71-20 (June 30, 2020).)

According to the United States Postal Service (USPS) certified mail tracking information, Employer received the citations on February 16, 2021. As such, the statutory filing deadline was March 9, 2021, extended to March 24, 2021, by Executive Order N-71-20. Employer's appeal was received by the Appeals Board on July 27, 2021.

On October 31, 2021, Employer was electronically served with a Notice of Late Appeal. Section 359 and Labor Code section 6601 allow an employer to submit a written statement that contains sufficient facts to show or establish a reasonable basis for the late filing. On November 24, 2021, Employer filed a Declaration for Late Appeal (Declaration). Judge Kerry Lewis, Administrative Law Judge (ALJ) of the Board, concluded that Employer's Declaration failed to set forth the good cause necessary for the Board to grant its request to file a late appeal. An Order Denying Late Appeal issued on December 17, 2021, and became final fifteen calendar days later. The Board received Employer's Petition for Reconsideration on January 18, 2022.

ISSUE

Has Employer demonstrated good cause for filing a late appeal?

¹ All references are to California Code of Regulations, title 8 unless otherwise indicated.

**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 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).) The Board has fully reviewed the record in this case. 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.

Employer's Petition repeats the statements in its Declaration, without providing additional facts. Employer's Petition states:

We moved our office address during the summer of 2020 and although I filed and paid for a 1 year mailing address forwarding to our current address. In and around October to Early December 2020, our local postal office was delayed with backed up mail and lack of couriers. The manager was able to confirm we would be receiving our letters and mail by a minimum of a week or two after arrival at the post office. During this time, I would still have to periodically stop by the old address to pick up letters intended for S'TOP roofing. This was after I paid to have letters forwarded, this is still an issue with our couriers.

(Petition, p. 1.)

The ALJ found this explanation insufficient to establish good cause when offered in Employer's Declaration. For the same reasons, Employer's Petition does not establish a basis for the Board to reinstate Employer's appeal.

First, as the ALJ pointed out, USPS tracking information indicates that the citations were delivered on February 16, 2021, eight days after they were mailed by the Division. Employer's representative, Amber Kim (Kim) does not state the date on which she claims Employer received the citations, so the USPS records are presumed to be accurate. Even if we were to accept Employer's assertions, Employer described the delays as a week or two for forwarding.

Employer’s Petition does not explain why it took more than five months for Employer to file its appeal after receipt of the citations.

Second, the information regarding a cited employer’s appeal rights included with the citation is legally adequate to give notice of those rights and the steps necessary to exercise them. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43; *Knight Transportation Port Service, LLC*, Cal/OSHA App. 15-9225, Denial of Petition for Reconsideration (Mar. 21, 2016).) The “Citation and Notification of Penalty” packet served on Employer contains detailed information regarding filing an appeal, including the timeline for filing. Employer failed to heed the instructions set forth clearly in the citation packet.

Finally, employers are required to handle their appeals with the degree of care a reasonably prudent person would undertake in the conduct of their most important legal affairs. (See, e.g., *Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) This includes ensuring that communications from the Division and the Board are properly and timely handled. (*SoCal Stone Fabricators, Inc.*, Cal/OSHA App. 1464711, Denial of Petition for Reconsideration (June 14, 2021).) Despite the purported issues Employer’s business was having with receiving its mail, there is no evidence that Employer took action to file its appeal promptly, indicating a lack of due care with this important legal affair.

We find Employer has not established good cause for its late appeal. We therefore deny reconsideration.

DECISION

For the reasons stated above, the petition for reconsideration is denied. The ALJ’s Order Dismissing Appeal is affirmed.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair

/s/ Judith S. Freyman, Board Member

/s/ Marvin P. Kropke, Board Member

FILED ON: 02/07/2022

