

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

In the Matter of the Appeal of:

**BRENTWOOD HOME LLC
701 Burning Tree Road
Fullerton, CA 92833**

Employer

Inspection No.

1515891

**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 Brentwood Home LLC (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) issued two citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer timely initiated appeals of the citations.

An administrative law judge (ALJ) of the Board scheduled a status conference to be held on June 6, 2022, and the parties were duly noticed. The Division appeared, but Employer did not.

The ALJ issued an Order Dismissing Appeal for Failure to Appear (Order) on June 10, 2022. The Order informed Employer that its appeal would be dismissed with prejudice unless it objected to the Order within 15 calendar days of the Order and showed good cause or a compelling reason for the failure to appear. The Order as stated:

PLEASE NOTE THAT IF YOU DO NOT RESPOND TO THIS ORDER WITHIN 15 CALENDAR DAYS FROM THE DATE THIS ORDER IS DATED AS INSTRUCTED ABOVE, THIS DISMISSAL ORDER WILL BE FINAL. IF THIS ORDER IS FINAL BECAUSE YOU HAVE NOT TIMELY RESPONDED TO THIS ORDER, YOU MAY FILE A PETITION FOR RECONSIDERATION WITHIN 30 DAYS FROM THE DATE THIS ORDER IS FINAL.

(Original emphasis.)

No response was received from Employer.

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

On October 26, 2022, Employer's representative filed a petition for reconsideration of the Order. The petition addressed the merits of the citations and did not make any showing of good cause for its failure to appeal.

Employer's petition for reconsideration was untimely.

The Division did not answer the 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 contends the Order was issued in excess of the ALJ's authority and that the evidence does not justify the findings of fact.

Labor Code section 6614, subdivision (a) provides that a petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. The Order was issued on June 10, 2022, stated it would become final in 15 calendar days, that is on June 25, 2022, and further informed Employer that it had 30 more days to file a petition for reconsideration. (See quotation above.) The time to seek reconsideration expired on July 26, 2022. Employer filed its petition on October 26, 2022, three months late.

We lack jurisdiction to grant reconsideration when the petition is filed late. (*Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021) citing *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.)

In addition, 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.

DECISION

For the reasons stated above, the petition for reconsideration is denied. The ALJ's Order and penalties are affirmed.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member

FILED ON: 11/30/2022

