

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

In the Matter of the Appeal of:

**J's AUTOMOTIVE REPAIR
1002 S. Hathaway Street, Unit D
Santa Ana, CA 92705**

Employer

Inspection No.
1565034

**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 J's Automotive Repair (Employer).

JURISDICTION

On March 28, 2022, the Division issued Employer one citation, with three items (the Citation), with penalties totaling \$840.00. Citation 1, Item 1 asserted a General violation of section 3203, subdivision (a)¹ [failure to establish, implement, and maintain an effective injury and illness prevention program]. Citation 1, Item 2 asserted a General violation of section 3205, subdivision (c) [failure to establish a written COVID-19 Prevention Program]. Citation 1, Item 3 asserted a General violation of section 5194, subdivision (e)(1) [failure to develop, implement, and maintain a written hazard communication program].

On April 22, 2022, Employer initiated an appeal.

On August 29, 2022, the Board issued a Notice of Untimely Appeal. Employer did not respond. On September 28, 2022, the Board entered an Administrative Order Dismissing Appeal (Order). On October 5, 2022, Employer filed a response to the Order, which we deem to be a Petition for Reconsideration (Petition).

ISSUE

Has Employer demonstrated good cause for its late appeal?

¹ Unless otherwise specified, references are to title 8 of the California Code of Regulations.

**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 by itself sufficient grounds to deny the Petition. (Lab. Code, §§ 6616-6617; *Arodz Motorsports, LLC, dba AI Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) However, the Board may construe the Petition, in the light most favorable to Employer, as asserting the evidence does not justify the findings of fact and the findings of fact do not support the Order. (Lab. Code, § 6617, subds. (c) and (e), respectively.)

The Board has fully reviewed the record in this case, including the arguments presented in the Petition. We have taken no new evidence. We conclude the Petition must be denied.

Labor Code section 6600, and section 359 of the Board's regulations, require that an employer must indicate its intent to appeal a citation within 15 working days of its receipt. (§ 359; Lab. Code §§ 6600 and 6602.) Here, it is undisputed that Employer initiated its appeal on April 22, 2022. Therefore, the Board must determine whether Employer received the Citation more than 15 working days before April 22, 2022.

Employer has indicated two dates on which it "received" the Citation. According to the Appeal Form signed and submitted by Employer, it received the Citation on April 22, 2022. According to the Appeal Form attached to the Board's Notice of Docketed Appeal, Employer received the Citation on April 18, 2022. If the Board were to credit either as the date of Employer's receipt of the Citation, Employer's appeal would be timely.

However, the record indicates Employer received the Citation earlier. On May 10, 2022, the Board issued the Division a Request for Proof of Service, requesting its "return receipt or proof of service demonstrating the date when employer received the citation(s)." On May 13, 2022, the Division responded by providing a USPS Certified Mail Return Receipt. The return receipt indicates that on March 29, 2022, the Citation was delivered to Employer's address and left with an unspecified individual. The fifteenth working day after March 29 was April 20, 2022.² Employer did not initiate its appeal until April 22, 2022. Thus, Employer's appeal was untimely.

² This calculation excludes César Chávez Day, which the State of California recognizes as a holiday.

The Board may extend the appeal period if Employer establishes good cause for the late filing. (§ 359, subd. (d); Lab. Code § 6601.) Employers may establish good cause for filing a late appeal “by a declaration containing a statement that any facts therein are based upon the personal knowledge of the declarant.” (§ 359, subd. (e).)

As noted above, the Board issued Employer a Notice of Untimely Appeal on August 29, 2022, specifically advising Employer of its right to submit a declaration setting forth facts that show good cause for the late appeal. The Notice of Untimely Appeal further specified that Employer was required to submit a response, if any, within 20 days of service of the Notice. Employer failed to respond. Employer did not submit anything else to the Board until after the Order Dismissing Appeal was issued. Thus, Employer has failed to demonstrate good cause for its late appeal. We deny the Petition on that basis. (See Lab. Code § 6601.)

Additionally, Labor Code section 6619 requires that a petition for reconsideration be served on the opposing party, and failure to satisfy that requirement is grounds to deny a petition. (*Hospitality Wood Products*, Cal/OSHA App. 1426393, Denial of Petition for Reconsideration (May 29, 2020).) Here, Employer failed to serve the Division with a copy of its Petition. On November 1, 2022, the Board informed Employer that it was required to do so, and further informed Employer that it must provide the Board with a proof of service within five days. No response or proof of service has been received from Employer. Employer’s failure to satisfy the requirements of Labor Code section 6619 is an independently sufficient basis for our denial of Employer’s Petition.

DECISION

For the reasons stated above, Employer’s petition for reconsideration is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 12/02/2022

