

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

In the Matter of the Appeal of:

**CLETE SECURITY SERVICES, ESQ.  
154-A West Foothill Blvd. 370  
Upland, CA 91786**

**Employer**

Inspection No.  
**1704404**

**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 Clete Security Services, Esq. (Employer).

**JURISDICTION**

Beginning October 13, 2023, the Division of Occupational Safety and Health (the Division), conducted an inspection of a worksite maintained by Employer. On March 13, 2024, the Division issued Employer one citation alleging three violations of safety orders.<sup>1</sup> Citation 1, Item 1, asserted a General violation of section 3203, subdivision (a) [alleging that Employer failed to establish and maintain a written Injury Illness Prevention Program], Citation 1, Item 2, asserted a General violation of section 3205, subdivision (c) [alleging that Employer failed to develop, implement and maintain a Covid-19 Prevention Procedure], and Citation 1, Item 3, asserted a violation of section 3395 [alleging that Employer failed to develop, implement and maintain a Heat Illness Prevention Plan]. The Division proposed penalties of \$1,680.00.

After the Division issued the citations, Employer initiated a timely appeal, but the appeal was incomplete. Employer failed to identify the citations it was appealing by citation and item number as required. (§ 359.1, subd. (a).)

On April 29, 2024, the Board issued a Notice of Incomplete Appeal (Notice) informing Employer both of the deficiency and how to cure it (i.e., by filing an appeal form for each citation and item number). The Notice gave Employer 20 days to cure the deficiency (extended an additional five days under section 348, subdivision (c)).

On May 29, 2024, after no response was received, the Board issued an Administrative Order Dismissing Appeal.

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<sup>1</sup> Unless otherwise specified references are to California Code of Regulations title 8.

On June 12, 2024, Employer filed its appeal forms. However, because the Order had already been issued, Employer's appeal forms were construed as a timely petition for reconsideration. Employer's petition offers no explanation for its failure to respond to the Notice, nor any other rationale for why its petition should be granted.

### ISSUE

Should the Board grant the petition for reconsideration?

### REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

The Board has fully reviewed the record in this case. The Board has taken no new evidence.

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 alone to deny the petition. (*Arodz Motorsports, LLC, dba Al 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. An employer must "act with the degree of care a reasonably prudent person would undertake in dealing with his or her most important legal affairs." (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) Employer has failed to act with the requisite degree of care.

Finally, we observe that the petition was not verified and contained no proof that it had been served on the Division. Both verification and proof of service are mandatory for the filing of a petition for reconsideration. (Lab. Code §§ 6616, 6619.) Failure to satisfy either or both of those requirements is grounds to deny a petition for reconsideration. (*RMJ Construction*, Cal/OSHA App. 12-9013, Denial of Petition for Reconsideration (May 11, 2012).)

## DECISION

For the reasons stated above, the petition for reconsideration is denied. The Order is affirmed.

### OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 07/26/2024

