

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

In the Matter of the Appeal of:

**ROLLING FRITO-LAY SALES, LP.
4485 S. Minnewawa Avenue, #108
Fresno, CA 93725**

Employer

**Inspection No.
1748579**

**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 Rolling Frito-Lay Sales, LP (Employer).

JURISDICTION

On October 31, 2024, the Division of Occupational Safety and Health (the Division) issued two citations to Employer.

Pursuant to California Code of Regulations, title 8, 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 an appeal within 15 working days of receipt of the citations.

The Appeals Board requested that the Division provide proof of service of the citations. In response, the Division submitted a copy of a signed certified mail receipt, demonstrating that the citations were served on November 1, 2024. Thus, the appeal deadline was November 25, 2024. (§ 359, subd. (d).) Employer's appeal was initiated via telephone on December 2, 2024.

Employer filed a request to file a late appeal, pursuant to Section 359 and Labor Code section 6601, asserting that good cause existed to file the late appeal. On February 5, 2025, Employer's Sales Region Safety Manager, Chris Smith (Smith) submitted a declaration asserting that, "[a]t some point during the month of November, the envelope was placed on the Zone Business Manager's desk." Smith asserted that the citations were not forwarded to him until November 25, 2024, because the Zone Business Manager was out of the office for "more than two weeks" during November. After the citations were discovered and forwarded to Smith there was further delay during the week of Thanksgiving as Smith "made every effort to investigate the alleged citations during this holiday week." Smith ultimately initiated the appeal by calling the Appeals Board's office on December 2, 2024.

On February 24, 2025, the assigned ALJ issued an Order Denying Late Appeal finding that Employer had not stated good cause for the late appeal. The ALJ observed that there were multiple problems with Smith's explanation for the delay in filing the appeal.

On June 10, 2025, Employer submitted a Petition for Reconsideration (Petition) asking the Board to overturn the ALJ's Order. The Petition repeated the same relevant factual assertions made before the ALJ.

ISSUE

Does the Board have jurisdiction to consider the Petition?

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).)

As previously mentioned, the Order was issued on February 24, 2025, and noted that Employer had 30 days to petition for reconsideration. Including a five-day period for transmission of the Order to Employer, the time to petition expired on March 30, 2025. Employer did not file its petition until June 10, 2025, making its petition late.

Labor Code section 6614, subdivision (a), establishes a 30-day period in which a party may petition for reconsideration. The Board **lacks jurisdiction** to grant reconsideration of a late-filed petition. (*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).) Here, Employer did not file its petition within the time required by law; therefore, we lack to jurisdiction to consider it.

DECISION

For the reasons stated above, the petition for reconsideration is denied. The Order 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: 07/25/2025

