

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

In the Matter of the Appeal of:

**GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT
P.O. BOX 29000, Presidio Station
San Francisco, CA 94129**

Employer

**Inspection No.
1764053**

**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 the Division of Occupational Safety and Health (Employer).

JURISDICTION

On December 27, 2024, the Division issued two citations, with eight items, to Golden Gate Bridge, Highway & Transportation District (Employer). The citations were delivered to Employer on December 31, 2024, making Employer's appeal deadline January 23, 2025. Employer initiated its appeals on January 29, 2025.

On April 25, 2025, the Appeals Board issued a Notice of Untimely Appeal to Employer. In response, on April 30, 2025, Employer filed a request to have its appeals considered timely accompanied by the declaration of Employer's attorney, Molly L. Kaban (Kaban).

Kaban's declaration sets forth that on January 18, 2025, she became extremely ill with pneumonia and was unable to work in any capacity. The declaration further avers that Kaban did not return to work until on or about January 28, 2025. Kaban's declaration indicates that based upon a review of her emails and calendar, she discovered that the appeal timeframe had passed for the citations.

in this matter and, upon this discovery, Kaban filed an intent to appeal through OASIS on January 29, 2025. Kaban also indicates that she attempted to file a request for a late appeal through OASIS on January 28, 2025, but found she was unable to do so. The declaration appears to explain that, after calling and speaking to someone, Employer delivered late appeal papers to the Division's district office in San Francisco on January 31, 2025.

The Division filed an opposition to Employer's request. The Division asserted, among other things, that Kaban's firm had other attorneys that could have initiated Employer's appeal. Additionally, the Division asserted that Employer failed to establish how the onset of pneumonia prevented Kaban from filing appeals of the citations.

On May 14, 2025, the ALJ issued an Order Granting Late Appeals, finding that “Employer set forth sufficient information to demonstrate a reasonable basis for the late appeals because the delay appears to result from incapacity due to illness and a prompt appeal of the citations upon recovery from the illness. Therefore, good cause is found for granting Employer’s late appeal.”

ISSUE

Should the Board reverse the ALJ’s Order Granting Late Appeal?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

While the Division’s petition is 13-pages in length, the gist of it is simple. The Division asserts that the attorney’s illness did not constitute good cause for the late appeal. The Division asserts that the attorney works in a law firm and that another attorney should have filed the document. The Division argues, “While sickness and vacations of company personnel may cause inconvenience, such factors are not persuasive where the company has other ‘competent representatives,’ who could have handled the matter in their absence.” (Petition, p. 7.) The Division asserts that “Employer’s failure to establish and/or utilize business policies or procedures to continue operating the business in the event of his illness is an “internal operating problem” and not good cause for failure to complete the appeal process. [Citations]” (Petition, p. 9.)

The Division’s petition also asserts all the usual maxims surrounding untimely appeals. The Division asserts that 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.” (Petition, pp. 5-6, citing *Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) The Division asserts that the failure of an employee or representative to respond to a citation within the time established by the Labor Code is not good cause for a late appeal. (Petition, p. 5, citing *Kulchin-Condon & Associates*, Cal/OSHA App. 96-9054, Denial of Petition for Reconsideration (May 29, 1996); *McLean Steel, Inc.*, Cal/OSHA App. 87-9002, Denial of Petition for Reconsideration (Mar. 27, 1987)). The Division also asserts that “Employers have an affirmative obligation to put procedures in place that will ensure that important documents are properly handled and processed in a timely manner. [Citation]” (Petition, p. 6.)

However, as the Board recently held, while it is guided by the aforementioned maxims, “they must be considered in the context of the relevant facts, including, without limitation: the reasons for the delay, the length of the delay, whether the delay arose in part to external influences, employer’s good faith efforts, and the credibility of the declarant.” (*RJS Electric*, Cal/OSHA App. 1760736, Decision After Reconsideration (Apr. 23, 2025).) The Board also observed that “the respective weight assigned to each fact, or combination thereof, will properly depend on the circumstances of each case, although the trier of fact must always be mindful of the strong public policy favoring disposition of matters on their merits. [Citation]” (*Ibid.*)

After a careful consideration of the declaration of Kaban, we concur with the decision of the ALJ and conclude that good cause exists to permit the late appeal. We conclude that, in combination, the attorney's illness, the relatively short duration of the delay, and the attorney's other efforts upon learning of the error, sufficiently demonstrated good cause for the late appeal.

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: 07/28/2025