

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

In the Matter of the Appeal of:

**INNOVATION CONSTRUCTION INC.
462 Hester Street
San Leandro, CA 94577**

Employer

**Inspection Number
1784640**

**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 Innovation Construction Inc. (Employer).

JURISDICTION

On April 22, 2025, the California Division of Occupational Safety and Health (Division) issued Employer two citations, alleging seven total violations of California Code of Regulations, title 8.¹ Citation 1, Item 1 alleged a General violation of section 1509, subdivision (b) [Injury and Illness Prevention Program (IIPP) – written Code of Safe Practices]; Citation 1, Item 2 alleged a General violation of section 1509, subdivision (c) [IIPP – posting Code of Safe Practices]; Citation 1, Item 3 alleged a General violation of section 1512, subdivision (b) [Emergency Medical Services – Appropriately Trained Person]; Citation 1, Item 4 alleged a General violation of section 3395, subdivision (h)(1) [Heat Illness Prevention Plan (HIPP) – Employee Training]; Citation 1, Item 5 alleged a General violation of section 3395, subdivision (h)(2) [HIPP – Supervisor Training]; Citation 1, Item 6 alleged a General violation of section 3395, subdivision (i) [HIPP – written HIPP]. Citation 2 alleged a Serious violation of section 1712, subdivision (c)(1) [Protection from Reinforcing Steel].

On or about April 23, 2025, the Division personally served the citations on Employer. On June 30, 2025, Employer initiated its appeal via telephone with the Board. In response to Employer initiating its appeal by telephone, on June 30, 2025, the Board electronically served Employer a Notice of Incomplete Appeal informing Employer it had 20 calendar days to provide a completed appeal.

On or about September 5, 2025, Employer responded to the Board’s June 30, 2025, notice by filing a completed appeal.

On October 10, 2025, the Board served a Notice of Untimely Appeal on Employer.

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

Subsequently, Employer timely filed a declaration purporting to demonstrate good cause for its late appeal.

On November 20, 2025, Presiding Administrative Law Judge Kerry Lewis (PALJ) issued an Order Denying Request for Leave to File Late Appeal.

On December 16, 2025, Employer filed a verified, properly served, and timely Petition for Reconsideration of PALJ Lewis' Order (Petition).

The Division did not answer the Petition.

ISSUE

Has Employer shown good cause for the Board to allow a late appeal?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. We have 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 the Board 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).) For present purposes we assume without deciding that Employer's petition was attempting to contend that the evidence does not support the Order.

The Board requires generally 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." (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) Further, the Board has consistently held that internal operating problems do not amount to good cause for a late appeal. (*Level 3 Construction, Inc.*, Cal/OSHA App. 14-9131, Denial of Petition for Reconsideration (Nov. 24, 2014).) The untimely filing of an appeal due to staffing shortages has previously been deemed an internal operating problem. (*Id.*, citing *Laselco Pacific*, Cal/OSHA App. 96-9084, Denial of Petition for Reconsideration (Jul. 16, 1996).)

The Board takes into consideration all 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 when making its good cause analysis for late appeals to support the "strong public policy favoring disposition of matter on their merits." (*RJS Electric*, Cal/OSHA App. 1760736, Decision After Reconsideration (Apr. 23, 2025).)

We considered the relevant facts asserted in Employer's Petition and Declaration, and the primary reason for the delay appears to be that Employer was so short-staffed and burdened with responsibility that he could not review and assess the citations. This situation delayed Employer from filing its appeal for nine weeks. While Employer seems to blame external influences (the post-COVID job market) for being short-staffed, Employer fails to identify any efforts it took to address that issue during the 21 month period after losing its project manager and the 12 month period after losing its administrative assistant. Neither the Petition nor the Declaration detail any good faith efforts to hire replacements for the two employees who left, nor do those documents describe actual specific actions taken during the nine weeks of delay before Employer notified the Board of its intent to file an appeal. Rather, the Petition argues that the delay was caused by "deliberate internal review and time spent organizing and improving warehouse conditions before deciding whether to appeal." We find Employer's arguments in the Petition are still essentially internal operating problems, which do not amount to good cause for the late appeal. (*Level 3 Construction, Inc.*, Cal/OSHA App. 14-9131)

In summary, the facts alleged in Employer's Petition and Declaration do not support finding good cause for the more than nine-week delay in filing Employer's 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 Kropke, Board Member

FILED ON: 02/11/2026

