

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

In the Matter of the Appeal of:

HEMMINGSSEN CONSTRUCTION CO., INC.
1841 Northcrest Drive
Crescent City, CA 95531

Employer

Docket No. 07-R2D3-9277

**DECISION AFTER
RECONSIDERATION AND
ORDER OF REMAND**

The Occupational Safety and Health Appeals Board (Board), having taken this matter under reconsideration on its own motion and granted the petition for reconsideration filed by Hemmingsen Construction Co., Inc. (Employer), issues this Decision after Reconsideration and Order of Remand pursuant to the authority vested in it by the California Labor Code.

JURISDICTION

On September 26, 2006, a representative of the Division of Occupational Safety and Health (Division) conducted an inspection at 1437 Harrold Street, Crescent City, California, a place of employment where Employer was working. The Division issued Employer various citations for violations of Title 8 occupational safety and health standards, which Employer appealed.

The issuance date stated on the citations is October 19, 2006. Employer initiated its appeal on December 8, 2006 and filed its appeal forms on December 21, 2006. On March 5, 2007, the Board informed Employer that its appeal appeared to be untimely. Employer responded on March 8, 2007, explained that it did not receive the citations until December 5, 2006, and argued that the appeal was timely filed. An Order Denying Leave to File Late Appeal issued on June 28, 2007.

The Board ordered reconsideration of the Order on July 27, 2007 and Employer filed its petition for reconsideration the same day. The Division filed an Answer to Employer's petition on August 29, 2007. The Board took Employer's petition for reconsideration under submission on September 14, 2007.

ISSUE

Did Employer appeal in a timely manner?

FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION

In its Answer to Employer's petition for reconsideration, the Division urged the Board to grant Employer's petition. The Division conceded that it originally sent Employer's citations to the wrong address and had to reissue them. Indeed, despite the October 19, 2006 issuance date stated on the citations, the citation coversheet bears a stamp from the Division's Redding district office indicating that they were received by that office on November 17, 2007. A notation with the stamp reflects that the citations were resent by the district office on November 29, 2007. Employer also provided a copy of an envelope from the Division, sent certified mail, which contains a United States post office mark indicating that the envelope was delivered to Employer on December 5, 2007, as Employer contends. The weight of the evidence strongly supports a finding that Employer did not receive the citations at issue until December 5, 2006.

California Labor Code section 6600 affords an employer 15 working days from receipt of a citation to appeal. It is undisputed that Employer initiated its appeal on December 8, 2007 and filed a completed appeal form on December 21, 2006. Given our conclusion that Employer did not receive its citations until December 5, 2006, we find that Employer's appeal was timely filed.

ORDER

Because Employer's appeal was timely, we conclude that the Order Denying Leave to File Late Appeal is invalid and we rescind that order and remand this matter to the Appeals Board's appeals initiation unit for further proceedings.

CANDICE A. TRAEGER, Chairwoman
ROBERT PACHECO, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: February 13, 2008