

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

In the Matter of the Appeal of:

SAM HILL & SONS, INC.
2627 Beene Rd.
Ventura, CA 93003

Employer

Docket No. 13-R4D3-9127

**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 Sam Hill & Sons, Inc. (Employer).

JURISDICTION

The Division of Occupational Safety and Health (Division) conducted an inspection on July 3, 2012 at a jobsite in Thousand Oaks, California maintained by Employer. On December 7, 2012, the Division issued two citations to Employer alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.¹

The citation alleged a General violation of section 1541(b)(1)(A) [marking of subsurface installations prior to installation] and Serious violation of section 1541.1(a)(1) [protection for employee working inside a trench].

Employer initiated its appeals of the citations on February 21, 2013, by calling the Appeals Board. It then mailed in its appeal forms, which were received at the Board on March 6, 2013. The appeal was untimely.

ISSUE

Whether there is good cause for the Employer's filing of a late appeal.

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

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

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 petitioned for reconsideration on the basis of Labor Code section 6617(a) and (e). However, Employer's petition does not address the lateness of the appeal, or make an argument for good cause, and therefore gives the Board no grounds upon which to act. *AGS Construction Svcs.*, Cal/OSHA App. 07-R2D3-9573, Denial of Petition for Reconsideration (Apr. 3, 2008). These are sufficient grounds for denial of the petition.

Employer initiated its appeal on February 21, 2013. The last day that Employer could have timely initiated its appeal was 15 working days after receipt of the citations which were issued on December 7, 2012, and received on December 12; the last day for filing an appeal was January 4, 2013. (See Labor Code section 6601).

Employer attempted to explain the lateness of their appeal in a letter received by the Board on April 5, 2013, which states that Employer was "not familiar" with the appeals process and "believed (*in error*) that an informal conference will be conducted before we are required to file the appeal." (Italics in original). This would not have been grounds for the Board to find good cause, even if it had made it into Employer's petition. The Board has previously found that misunderstanding the process does not constitute good cause for lateness of an appeal. *Central Freight Lines, Inc.*, Cal/OSHA App. 07-R2D1-9018, Denial of Petition for Reconsideration (May 10, 2007).

The Employer also included with its letter email correspondence between the Division Enforcement Officer, a corporate officer of the Employer, and Employer's third party risk consultant, which suggested that there was miscommunication amongst the Employer's agents as they attempted to handle the citations. The Board has also addressed the issue of inefficient internal business practices, and declared that this does not rise to the level of good cause that constitutes late filing. *Cleveland Wrecking Company*, Cal/OSHA App. 92-R1D1-9054, Denial of Petition for Reconsideration, (Nov. 18, 1992). Even if the individual who makes the error is an outside consultant, that

mistake will be attributed to the Employer, and the error does not justify the granting of a good cause extension of the appeal process. *Kitagawa & Sons, Inc. dba Golden Acre Farms*, Cal/OSHA App. 03-9446, Decision After Reconsideration (Aug. 27, 2004).

DECISION

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

ED LOWRY, Board Member
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: October 25, 2013