

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

In the Matter of the Appeal of:

A L S FASHION, INC.
656 S. Los Angeles Street
Los Angeles, CA 90014

Employer

Docket. 14-R6D5-9046

**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 A L S Fashion, Inc. (Employer).

JURISDICTION

Commencing on October 16, 2013, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On December 2, 2013, the Division issued three citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹ The citations were mailed to Employer by certified mail as required by Labor Code section 6317. The citations were received and signed for at Employer's place of business on December 5, 2013.

Employer contacted the Board on January 17, 2014 to communicate its intent to appeal the citations, and on January 30, 2014 filed completed appeal forms with the Board.

On February 4, 2014 the Board acknowledged receipt of Employer's appeal forms by letter. That letter further informed Employer that its appeals appeared to be filed late, and that Employer could submit a declaration explaining either that the appeals were timely or establishing good cause for lateness. The Board also requested the Division provide it with proof of when Employer received the citations.

¹ References are to California Code of Regulations, Title 8 unless specified otherwise.

The Division provided documents showing that the citations were delivered to Employer at 4:05 p.m. on December 5, 2013, and the certified mail was signed for by "Rafael O." at Employer's business address in Los Angeles.

Employer also provided a sworn declaration which stated he was out of the country when the citations were delivered and that there had not been a closing conference with the Division after its inspection of Employer's premises.

The Administrative Law Judge assigned to this matter considered the foregoing and on April 23, 2014 issued an Order Denying Leave to File Late Appeal (Order). The Order found that under the circumstances Employer had not established good cause for filing its appeal late.

Employer timely filed a petition for reconsideration of the Order.

The Division answered the petition.

ISSUE

Do the reasons Employer gave for filing its appeals late establish good cause?

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's petition does not state any of the bases set forth in Labor Code section 6617 above, which is grounds sufficient to deny the petition. (Labor Code sections 6616 [petition must set forth in detail grounds for petition], 6617; *UPS*, Cal/OSHA App. 08-2049, Denial of Petition for Reconsideration (Jun. 25, 2009), citing, *Bengard Ranch, Inc.* Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).) Construed in the light most favorable to Employer the petition may be viewed as contending that the findings of fact do not support the Order.

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. Based on our independent review of the record, we find that the Order was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

We begin our analysis with Labor Code section 6601, which states, “If within 15 working days from receipt of the citation or notice of civil penalty issued by the division, the employer fails to notify the appeals board that he intends to contest the citation or notice of proposed penalty, . . . , the citation or notice of penalty shall be deemed a final order of the appeals board and not subject to review by any court or agency. The 15-day period may be extended by the appeals board for good cause.” The citations at issue were delivered by certified mail as required and signed for by an individual at Employer’s business address on December 5, 2013. (Labor Code section 6317.) The fifteenth working day after December 5 was December 27, 2013. Employer initiated its appeal on January 17, 2014, 21 days late.

Employer’s owner contends three circumstances established good cause for the late appeals. First, Employer states there was no closing conference with DOSH which would have alerted him that citations were imminent. Second, the owner states he left the country on vacation before the citations were delivered to his establishment, and did not return until after the appeal period had expired. Third, he states he does not understand English. The above assertions do not amount to good cause. We examine each in turn.

First, we point out there is no statutory requirement that the Division hold a closing conference. (*Duran’s Body Shop*, Cal/OSHA App. 82-369, Decision After Reconsideration (Oct. 3, 1985).) Thus, that the Division may not have done so is not good cause for Employer’s failing to file it appeal timely. The delivery of the citations and accompanying information was legally adequate notice to Employer that it had to take action within a certain time to preserve its legal rights. (*Kenyon Plastering, Inc.*, Cal/OSHA App. 08-9178, Denial of Petition for Reconsideration (Aug. 12, 2008).)

Second, we have previously reasoned that cited employers should consider their appeals of citations to be among their most important legal affairs, and be handled accordingly. (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) We have further reasoned that businesses in California must establish means of dealing with such important legal matters in the absence of principals or members of management, and that failing to do so is “an internal operating problem” which is not good cause for a late appeal. (*Food Town (IGA) J. Gill International, Inc.*, Cal/OSHA App. 98-9312, Denial of Petition for Reconsideration (Mar. 23, 1999).) Going on vacation without making arrangements for the handling of important matters which may arise during one’s absence is a specific example

of an internal operating problem which is not good cause for a late appeal. (*La Pizza Grotto*, Cal/OSHA App. 07-9520, Denial of Petition for Reconsideration (Apr. 11, 2008).)

Lastly, we have also reasoned that one's inability to understand English is not good cause for misunderstanding the appeal process. (*Sam Wong Construction Co.*, Cal/OSHA App. 09-3433, Denial of Petition for Reconsideration (Dec. 28, 2011).)

We find that our reasoning on the points Employer raises apply here, and conclude that none of the reasons Employer gives for appealing late is good cause for the late appeal.

DECISION

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

ART R. CARTER, Chairman
ED LOWRY, Member
JUDITH S. FREYMAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: JULY 8, 2014