

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

In the Matter of the Appeal of:

BROWNSTONE UPHOLSTERY
CORPORATION, INC.
6423 Bandini Boulevard
Commerce, CA 90040

Employer

Dockets. 13-R6D5-1090 through 1094

**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 Brownstone Upholstery Corporation (Employer).

JURISDICTION

The Division of Occupational Safety and Health (Division) conducted an inspection on November 28, 2012 at a place of employment maintained by Employer in Commerce, California. On February 22, 2013, the Division issued six citations to Employer alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.¹

Employer initiated its appeals of five citations on March 14, 2013, by calling the Appeals Board. It then mailed in its appeal forms, which were received at the Board on March 28, 2013. On July 24, 2013, the Appeals Board served Employer with notice of a pre-hearing conference, to be held on September 30, 2013. Employer failed to participate in the conference. An order to show cause was issued on October 9, 2013, providing Employer with an opportunity to show cause, in writing, why sanctions should not be imposed. Employer did not respond. On January 9, 2014, the Administrative Law Judge (ALJ) dismissed the Employer's appeal, for failure to respond.

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

ISSUE

Whether Employer established good cause for its failure to attend the pre-hearing conference.

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; this failure is sufficient grounds upon which deny the petition. (Labor Code sections 6616, 6617; *S & D Carwash Northgate, LLC*, Denial of Petition for Reconsideration, Cal/OSHA App. 13-9210 (Mar. 5, 2014), citing *UPS*, Cal/OSHA App. 08-2049, Denial of Petition for Reconsideration (Jun. 25, 2009).) Reading the petition in a light most favorable to Employer, the Board may find it asserts that the evidence does not justify the findings of fact, and/or that the findings of fact do not support the order or decision.

Employer failed to participate in the pre-hearing conference, and in its petition, leaves unanswered the question of why it missed that duly-noticed call, or failed to respond to the order to show cause. The Board charges each employer with handling their appeals with the same care that a reasonably prudent person would give to their most important legal affairs. (*Haddads Cleaners LLC dba Five Star Cleaners*, Cal/OSHA App. 09-2358, Denial of Petition for Reconsideration (Nov. 29, 2012); *Ray Cammack Shows, Inc.*, Cal/OSHA App. 02-9240, Denial of Petition for Reconsideration (Apr. 30, 2003).) Employer has provided no information which would allow the Board to find good cause for these lapses. Under the Board's rules of practice and procedure, the Board is authorized to apply sanctions to a party who fails to appear at a pre-hearing conference. (Section 374(c) and *Steve Woodlief Plastering*, Cal/OSHA App. 07-2909, Denial of Petition for Reconsideration (Sep. 19, 2008).) The ALJ's actions dismissing Employer's appeal were appropriate in this instance.

DECISION

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

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: MARCH 28, 2014