

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

In the Matter of the Appeal of:

CALIFORNIA ROYALE LLC dba
MONTE VISTA FARMING
P.O. Box 579
Denair, CA 95316

Employer

Docket 2014-R2D4-9149

**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 California Royale LLC doing business as Monte Vista Farming (Employer).

JURISDICTION

Commencing on March 14, 2014, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On August 4, 2014, the Division issued three citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹

Employer timely initiated its appeals by telephone call to the Board on August 15, 2014.

The Board acknowledged Employer's call by letter dated August 19, 2014. That letter informed Employer of the requirements it must satisfy to perfect its appeal, and further that failure to do so would constitute grounds for dismissal of the appeals.

Employer did not satisfy the requirements.

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

On October 16, 2014, the Executive Officer of the Board issued an Order Dismissing Appeal (Order) due to the circumstances summarized above.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUE(S)

Has Employer shown that its failure to complete the appeal process in the time required was due to circumstances amounting to 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).)

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.

For present purposes we will construe Employer's petition liberally and deem it to assert that the findings of fact do not support the Order.

As noted above, Board regulations allow a cited employer to initiate its appeal by telephoning the Board to indicate its intent to appeal. (Board regulation § 359.) When an employer utilizes this option to initiate an appeal, further steps are required to perfect the appeal, which steps are referenced in the acknowledgement letter dated August 19, 2014, and set forth in our regulations. (See §§ 359.1(b), 347(e).)

The record shows and Employer's petition admits that those further steps were not completed. The question then becomes whether there are reasons constituting good cause for that failure.

Employer's petition explains that its failure to follow up was an "oversight" because of "the myriad of issues at the time the appeal was due." Those were explained as a delay in getting a new hulling operation going and a harvest that was early by three weeks. Those circumstances are internal operating problems which do not constitute good cause for failure to complete the appeal process in a timely manner. (*Kaweah Construction Co.*, Cal/OSHA App. 87-9005, Denial of Petition for Reconsideration (Mar. 5, 1987).) Nor do the circumstances Employer describes amount to the type of unanticipated emergency that does constitute good cause. (See *Ameripride Uniform*, Cal/OSHA App. 04-106, Decision After Reconsideration (Apr. 3, 2008).)

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: December 30, 2014