

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

In the Matter of the Appeal of:

CHARLES DIXON dba DIXON SCIENTIFIC  
1353 Rocky Point Dr.  
Oceanside, CA 92056

Employer

Docket 13-R3D2-9155

**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 Charles Dixon, dba Dixon Scientific (Employer).

**JURISDICTION**

The Division of Occupational Safety and Health (Division) conducted an inspection on September 17, 2012 at a jobsite in Oceanside, California maintained by Employer. On March 14, 2013, the Division issued citations to Employer alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.<sup>1</sup> The citations were sent to Employer by certified mail, received and signed for at Employer's place of business on March 15, 2013.

A cited employer has 15 working days after receipt of a citation or citations to appeal. (Labor Code § 6601.)

Employer untimely appealed. The fifteenth working day after March 15, 2013 was April 8, 2013. Employer initiated its appeals of the citations on May 22, 2013, by submitting appeal forms and citation copies to the Board. On June 14, 2013, the Board issued a letter to the Employer, explaining that the appeal appeared to be late, and Employer must submit a declaration to the Board demonstrating good cause, if it wanted the Board to extend the filing period.

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

Employer submitted a reply to the Board's letter on July 17, 2013. Employer declared that when, "[w]e, Dixon Scientific, received our green envelope with all our information it went straight to our accountant Delores Chavez, and was never seen again." Employer also stated it was in the process of getting OSHA compliant, but had staffing changes in its safety program, and also was unfamiliar with the appeals process.

On October 15, 2013, an ALJ of the Board issued an order denying leave to file a late appeal, finding that Employer had not shown good cause for its late appeal. Employer petitions for reconsideration of the ALJ's Order.

### **ISSUE**

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

### **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 of the ALJ's Order Denying Leave to File Late Appeal. Although the petition for reconsideration is timely, Employer has failed to serve all parties as required by Labor Code section 6619. Failure to satisfy this requirement requires denial of the petition for reconsideration. (*Sam Wong Construction Co.*, Cal/OSHA App. 09-3433, Denial of Petition for Reconsideration (Dec. 28, 2011).)

Employer's petition, even if it had been properly served on the parties, would not contain grounds which constitute good cause for reconsideration. Employer explains that it is inexperienced in the appeals process, and has had "a lot of obstacles" thrown in its way. The Board has found that misunderstanding the appeals process does not constitute good cause for lateness. (*Central Freight Lines, Inc.*, Cal/OSHA App. 07-9018, Denial of Petition for Reconsideration (May 10, 2007).) Employer's problems with staff turnover or mail mishandling are also not good cause for a late appeal. (*Rosal Auto Recyclers, Inc., dba Continental Towing, Inc.*, Cal/OSHA App. 10-1050,

Denial of Petition for Reconsideration (Jun. 3, 2012.) An employer has an obligation to put procedures into place that will ensure its important documents are processed in a timely manner, even if one of its employees leaves its employ. (*McDonnell Douglas*, Cal/OSHA App. 93-9126, Denial of Petition for Reconsideration (Dec. 27, 1993).)

**DECISION**

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

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: JANUARY 14, 2014