

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

In the Matter of the Appeal of:

IRWIN INDUSTRIES
1580 W. Carson St.
Long Beach, CA 90810

Employer

Docket. 2013-R6D4-9063

**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 Irwin Industries (Employer).

JURISDICTION

The Division of Occupational Safety and Health (Division) conducted an inspection on May 30, 2012 at a jobsite in El Segundo, California maintained by Employer. On August 9, 2012 the Division issued one citation with nine items to Employer, alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.¹

Citation 1, Item 1 alleges a regulatory violation of section 14300.40(a) [failure to use provide recordkeeping documents. Item 2 alleges a general violation of section 5144(e)(1) [failure to provide medical evaluation information]. Item 3 is a general violation which alleges a violation of section 5144(c)(1) [failure to have a written respiratory protection program]. Item 4 is a general violation alleging a violation of section 5157(c)(4) [failure to have a confined space entry program]. Item 5 is a general violation of section 3202(a) [failure to have an effective Illness and Injury Prevention Program]. Item 6 is a general violation of section 1509(b) [failure to adopt a code of safe practices]. Item 7 is a general violation of section 3395(f)(3)² [failure to train on heat illness prevention]. Item 8 is a general violation of section 5144(f)(2) [failure to fit test employees for respirator use]. Item 9 is a general violation of section 3314(g) [failure to establish a hazardous energy control program].

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

² The Division's citation has a typo - the specified section is 3395.

Employer's place of business signed for and received the citation via certified mail on August 16, 2012. Employer untimely appealed the citations on January 28, 2013. On July 8, 2013, an Order Dismissing Appeal was issued by the Board on the basis that the Employer failed to submit the completed appeal forms and submit copies of citations to the Board within 10 days of acknowledgement by the Board of the intent to appeal, or providing good cause for filing a late appeal. Employer filed a petition for reconsideration on November 7, 2013.

ISSUE

Does the Board have jurisdiction to grant reconsideration?

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 has asked the Board for reconsideration of its petition based on (a).

Employer's petition also acknowledges that the petition itself has been filed late.

A petition for reconsideration must be filed within 30 days of the date of the Order being appealed. This is a requirement of the Labor Code at section 6614(a), which states "[s]uch petition shall be made only within the time and in the manner specified in this chapter." Employer was over 80 days late in filing its petition for reconsideration, and consequentially, the Board is without jurisdiction to grant reconsideration. (*Dialysis Company*, Cal/OSHA App. 98-9197, Denial of Petition for Reconsideration (Feb. 22, 1999), *Cicileo Landscapes, Inc.*, Cal/OSHA App. 11-9180, Denial of Petition for Reconsideration (Nov. 29, 2012).)

Were we able to reach the merits of Employer's petition, we would deny it. Employer recognizes that it has failed to file the citations or appeal timely, and failed to submit an explanation showing good cause for the lateness. These problems did not come to the attention of the appropriate individuals in

Employer's management chain until the deadline for filing a timely petition for reconsideration had also passed. Having requested an informal conference and submitted abatement documentation to the Division, Employer mistakenly believed it had taken the necessary steps to begin the appeals process. Such problems in the internal processing and handling of the citations and misunderstanding of the appeal process have been held not to constitute good cause for a late appeal.

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: December 24, 2013