

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

In the Matter of the Appeal of:

MID-COAST BUILDERS SUPPLY, INC.
dba MID-COAST BUILDERS, INC.
P.O. Box 3290
Camarillo, CA 93011,

Employer

Docket 11-R4D3-2780

**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 the California Division of Occupational Safety and Health (Division).

JURISDICTION

Commencing on August 15, 2011, the Division conducted an inspection of a place of employment in California maintained by Employer.

On October 12, 2011, the Division issued two citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹

Employer timely appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board, including an evidentiary hearing. At the hearing the parties stipulated to resolution of the issues presented by Citation 1, Items 1 through 3. As a result, only Citation 1, Item 4 and Citation 2 remained for the ALJ to decide.

On January 22, 2013 the ALJ issued a Decision (Decision) which sustained the violation alleged in Citation 1, Item 4, and granted Employer's appeal of Citation 2.

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

The Division untimely filed a petition for reconsideration.

Employer filed an answer to the petition.

ISSUE

Whether the Board has jurisdiction to grant the Division's petition.

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

As noted above, the Decision was issued on January 22, 2013. It was served to the parties on the same day. (Decision, Transmittal, Proof of Service.)

Labor Code section 6614(a) provides, in pertinent part, that "At any time within 30 days after service of any final order or decision made and filed by the appeals board or a hearing officer, [an aggrieved party may petition the Board for reconsideration.] Such petition shall be made only within the time and in the manner specified in this chapter."

Because service of the Decision was made by mail upon persons in California, the time to file a petition for reconsideration is extended by 5 days for mailing, meaning the Division's petition had to have been filed within 35 days of the date of service. (See Code of Civil Procedure § 1013(a); Board Regulation § 348(c).) The 35th day after January 22, 2013 was February 26, 2013. (The nine days from January 23 through 31 plus the first 26 days in February total 35 days.). In addition, Board Regulation section 390 provides that a petition for reconsideration is "deemed filed on the date it is delivered or mailed to the Appeals Board." Thus, the Division's petition was both signed and postmarked on February 27, 2013, one day late.

Board precedent holds that Labor Code section 6614(a) established a jurisdictional time limit for filing a petition for reconsideration, because the Legislature used mandatory language. (*Daniel Santos Estrada*, Cal/OSHA App. 09-9251, Denial of Petition for Reconsideration (Jan. 21, 2010); *Mission Hills Construction Co.*, Cal/OSHA App. 07-9302, Denial of Petition for Reconsideration (Oct. 19, 2009); *Galaxie Universal Corp. dba Gamco*, Cal/OSHA App. 06-859, Denial of Petition for Reconsideration (Nov. 12, 2008).) Accordingly, we are without jurisdiction to grant a petition if it is filed late. (Labor Code section 6614(a) [petition shall be filed "only within the time and manner specified in this chapter."]; *Otis Lawrence Construction*, Cal/OSHA App. 05-9054, Denial of Petition for Reconsideration (Jun. 22, 2005).)

Two Courts of Appeal have reached the same conclusion when analyzing Labor Code sections 5900 and 5903, Worker's Compensation Act provisions having language equivalent to that of Labor Code section 6614(a). Those two Courts held, "The [Workers' Compensation Appeals] Board is without jurisdiction to grant an untimely petition [for reconsideration]." (*Nestle Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; citing *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.) In view of the Courts' interpretation of analogous Worker's Compensation Act language, the Board has held that the Legislature intended Labor Code section 6614(a) to establish a jurisdictional time limit for petitioning for reconsideration. (*Adecco Inc. Branch 5100*, Cal/OSHA App. 08-4312, Denial of Petition for Reconsideration (Aug. 25, 2010).)

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: APRIL 10, 2013