

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

In the Matter of the Appeal of:

ROCKET FARMS HERBS, INC.
7909 Crossway Drive
Pico Rivera, CA 90660

Employer

Dockets: 13-R3D2-3549 through 3551

**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 Rocket Farms Herbs, Inc. (Employer).

JURISDICTION

Commencing on April 16, 2013, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On October 9, 2013, 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 appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board. On December 16, 2013 Employer failed to participate in a duly-noticed telephonic status conference, at which the Division did appear.

On December, 17, 2013 the ALJ issued an Order to Show Cause Why Sanctions Should Not Be Imposed (OSC), which gave Employer 10 days to file a showing of good cause why sanctions should not be imposed for its failure to appear.

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

The Board received no response from Employer and therefore on January 7, 2014, the ALJ issued an Order Dismissing Appeal (Order).

Employer untimely filed a petition for reconsideration.

The Division filed an answer to the petition.

ISSUE(S)

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.

Labor Code section 6614(a) specifies that a petition for reconsideration "shall" be filed within 30 days of the Board action or order at issue. As noted above, the Order was issued on January 7, 2014. Thirty days after January 7 was February 6, 2014. Employer's address of record is in California, and the Board mailed the Order to that address. Applying Code of Civil Procedure section 1013(a) extends the time within which Employer could file its petition by five days, to February 11, 2014. Also, Board Regulation section 390(a) (Title 8 California Code of Regulations section 390(a)) provides that a petition for reconsideration is "deemed filed on the date it is delivered or mailed" to the Board. It follows that Employer's petition had to be postmarked on or before February 11, 2014 to be timely. Since Employer's petition was postmarked March 21, 2014, it was late filed.

We have held that Labor Code section 6614(a) establishes a jurisdictional time limit for filing a petition for reconsideration, because the Legislature used mandatory language. (*Adecco Inc. Branch 5100*, Cal/OSHA App. 08-4312, Denial of Petition for Reconsideration (Aug. 25, 2010); *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).) The Board has no jurisdiction to grant a petition if it is filed late. (Labor Code section 6614(a); *Otis Lawrence Construction*, Cal/OSHA App. 05-9054, Denial of Petition for Reconsideration (Jun. 22, 2005).)

Our interpretation of Labor Code section 6614(a) [petition shall be filed "only within the time and manner specified in this chapter"] is consistent with two Court of Appeal cases analyzing the analogous provisions of the Worker's Compensation Act which establish the time limit for filing a petition for reconsideration in that forum. "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); referring to Labor Code sections 5900 and 5903.)

Given the closely similar language of Labor Code sections 5900, 5903, and 6614(a), we hold the Board lacks jurisdiction to grant a late petition for reconsideration.

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: MAY 5, 2014