

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

In the Matter of the Appeal of:

ROY SHUMARD dba ROY'S AUTO CENTER
10 West 5th Street
Eureka, CA 95501

Employer

Docket. 13-R2D1-9196

**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 Roy Shumard doing business as (dba) Roy's Auto Center (Employer).

JURISDICTION

Commencing on May 23, 2013, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On October 16, 2013, the Division issued a citation to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹

On October 29, 2013 Employer timely telephoned the Board to state its intent to appeal the citation. The Board acknowledged Employer's telephone call by letter on October 31, 2013. That letter also informed Employer that it was required to provide the Board with a filled in appeal form and a copy of the citation packet within ten calendar days of October 31, 2013. No response was received from Employer.

On December 10, 2013, the Executive Officer of the Board issued an Order Dismissing Appeal (Order) because Employer had failed to respond to the Board's October 31, 2013 letter.

Employer untimely filed a petition for reconsideration.

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

The Division did not answer the petition.

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 failed to verify its petition. Labor Code section 6616 in pertinent part mandates that a petition for reconsideration “shall be verified upon oath[.]” Failure to verify is grounds for denying a petition. (*Juana Gonzales dba Los Reyes Restaurant*, Cal/OSHA App. 10-9184, Denial of Petition for Reconsideration (Oct. 19, 2010).)

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.

The Order was served on the parties on December 10, 2013. Labor Code section 6614(a) states that a petition for reconsideration shall be filed within 30 days of the date the order or decision which is the subject of the petition is served. Further, when service is by mail within California, the time to act is extended by 5 days. (Code Civ. Pro. § 1013(a); Board Regulation § 348(c).) A petition is deemed filed when delivered or mailed to the Board. (Board Regulation § 390(a).) Thus, Employer’s petition had to be filed on or before 35 days after December 10, 2013, which date was January 14, 2014. It was deposited with on overnight delivery service on January 15, 2014, and thus deemed filed on that date, which was on day late.

The Board lacks jurisdiction to grant reconsideration when the petition is filed late. (*ADECCO Inc. Branch 5100*, Cal/OSHA App. 08-4312, Denial of Petition for Reconsideration (Aug. 25, 2010), citing *Nestle Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108.)

We note that Employer's petition attempts to explain the reason it failed to file an appeal form and copy of the citation packet as required. Even were we able to reach the merits of those contentions we would deny reconsideration. First, the petition is unverified as required, which is an independent ground to deny the petition. (*Juana Gonzalez, supra.*) Second, Employer did not deal with its appeal as a reasonably prudent person would undertake in dealing with his "most important legal affairs." (*Avexco, Inc., dba Phoenix Apparel*, Cal/OSHA App. 01-9210, Denial of Petition for Reconsideration (Mar. 26, 2002).)

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: MARCH 5, 2014