

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

In the Matter of the Appeal of:

SAM'S GARDENING
853 Penarth Avenue
Walnut, CA 91789

Employer

Docket. 13-R4D4-2769

**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 Sam's Gardening (Employer).

JURISDICTION

Commencing on June 27, 2013 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On August 22, 2013 the Division issued one citation 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 a duly-noticed contested evidentiary hearing.

On May 1, 2015 the ALJ issued a Decision (Decision) which upheld the violations alleged in the citation and imposed civil penalties, with a provision that Employer could defray the penalties by a series of monthly payments.

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

Employer timely filed a petition for reconsideration. Employer's petition was neither verified under penalty of perjury nor shown to have been served on the Division.

The Division did not answer the petition.

ISSUE

May the Board take Employer's petition under submission in view of Employer's failure to satisfy the requirements of Labor Code sections 6616 and 6619?

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's petition does not state any of the bases set forth in Labor Code section 6617 above, which is grounds sufficient to deny the petition. (Labor Code sections 6616 [petition must set forth in detail grounds for petition], 6617; *UPS*, Cal/OSHA App. 08-2049, Denial of Petition for Reconsideration (Jun. 25, 2009), citing, *Bengard Ranch, Inc.*, Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).)

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 Decision was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

We noted above that Employer's petition was not verified and did not contain a proof of service. In processing Employer's petition Board staff noted those deficiencies and, by letter of June 8, 2015 informed Employer that it is

required to provide both a verification and proof of service. No response was had.

As pertinent here, the Labor Code imposes two mandatory requirements on a party which petitions for reconsideration. The petitioning party “shall” verify its petition, and “shall” serve it on the other party or parties. (Labor Code §§ 6616 and 6619, respectively.) “Shall” is mandatory. (Labor Code § 15.) Failure to verify one’s petition requires the petition be denied. (*Juana Gonzalez dba Los Reyes Restaurant*, Cal/OSHA App. 10-9184, Denial of Petition for Reconsideration (Oct. 19, 2010).) Likewise, failure to serve one’s petition on the other party or parties necessitates its denial. (*Wooriman Corporation*, Cal/OSHA App. 11-9040, Denial of Petition for Reconsideration (Apr. 11, 2011).) It follows that we must deny Employer’s petition.

DECISION

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

ART R. CARTER, Chairman
ED LOWRY, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: JUL 14, 2015