

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

In the Matter of the Appeal of:

STEVEN D. ANDERSON  
dba ANDERSON CONSTRUCTION  
1639 Anacapa Drive  
Camarillo, CA 93010

Employer

Docket 12-R6D5-9181

**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 Steven D. Anderson dba Anderson Construction (Employer).

**JURISDICTION**

On September 18, 2012, Employer telephoned the Board indicating its intent to appeal one or more citations issued by the Division of Occupational Safety and Health (Division).

On September 20, 2012, the Board wrote to Employer confirming Employer's September 18<sup>th</sup> telephone call, and informing it that it was required to send the Board completed appeal form(s) and a copy or copies of each citation being appealed. The Board's letter further stated that Employer had until September 28, 2012, to comply.

No response was received from Employer.

On December 31, 2012, the (Acting) Executive Officer of the Board issued an Order Dismissing Appeal (Order). The Order stated that Board Regulation section 359.1(b) requires completed appeal forms to be filed for each contested citation within 10 days of the Board's acknowledgement of an employer's intent to appeal.<sup>1</sup>

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<sup>1</sup> References are to California Code of Regulations, Title 8, unless otherwise specified.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

**ISSUE(S)**

Was the dismissal of Employer's appeal appropriate?

**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).) We liberally construe the petition to assert that the evidence does not justify the findings of fact, and/or the findings of fact do not support the Order. (Labor Code section 6617 (c) and (e) respectively.)

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.

There is little in the administrative record in this proceeding due to its procedural history. It appears Employer received two citations from the Division, but we are unable to determine whether that is the case or what violations were alleged. We have never received a copy of any citation or citations Employer attempted to appeal.

Board Regulation section 359.1(a) requires a “completed appeal form” be filed for each citation or other Division action being contested. Board Regulation section 347(e) defines “completed appeal form” to be one with “all required blanks filled in and boxes checked, with the signature of employer or employer’s representative, and citation(s) appealed attached to the appeal form.”

It appears from the petition that Employer attempted to file its appeals online with the Board, and sent copies of the appeal forms to the Division’s Labor Enforcement Task Force’s District Manager. The Board has not established any means of filing an appeal on line, nor do our regulations authorize doing so, although an appeal form is available on the Board’s website.

Employer has not provided the Board with a copy of the citations which it is attempting to appeal at any time, not even with its petition for reconsideration. Providing a copy of the citations being appealed is a required element of filing a completed appeal form with the Board. (Board Regulation §§ 347(e) and 359.1.) Since Employer has not filed completed appeal forms with the Board, its appeal was properly dismissed. Its petition for reconsideration also must be denied because completed appeal forms are required by Board rule, and failure to file them is grounds to dismiss an appeal and deny a petition. (*Id.*; *Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43 [Board must have copy of citation in order to process appeal].)

Although there are two Board precedents where misfiled appeals were allowed, the facts here distinguish them from the present circumstances. In *Starlight Welding, Inc.*, Cal/OSHA App. 93-9094, Decision After Reconsideration (Feb. 17, 1994) and *Harris & Ruth Painting Contracting, Inc.*, Cal/OSHA App. 86-9024, Grant of Petition for Reconsideration and Order (Nov. 17, 1986)), the cited employer misdirected its appeal forms and documents to the Division instead of the Board. The appeals when mis-filed by those two employers were completed, and in both cases the oversights were corrected by filing completed appeal forms with the Board. Here, in contrast, we infer from Employer’s petition that completed appeal forms were not filed with the Division, and as already stated have never been filed with the Board.

We hold, therefore, that Employer has failed to file completed appeal forms with the Board, and that its appeal(s) were properly dismissed.

**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 11, 2013