

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

In the Matter of the Appeal of:

NATHAN AHDOOT dba
SUMMITRIDGE BEVERLY HILLS, LLC
1551 Summitridge Drive
Beverly Hills, CA 90210

Employer

Docket. 12-R4D1-9154

**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 Nathan Ahdoot doing business as Summitridge Beverly Hills, LLC (Employer).

JURISDICTION

Commencing on November 30, 2011 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On March 5, 2012 the Division issued two citations alleging violations of California workplace safety standards to Employer. The citations were sent to Employer by certified mail as required by Labor Code section 6317 on March 12, 2012 but returned to the Division by the U.S. Postal Service marked "unclaimed" on May 9, 2012. The Division then sent the citations to Employer by regular mail on May 14, 2012.

Employer telephoned the Board on July 27, 2012, to initiate its appeal, which the Board acknowledged by letter on July 30, 2012. After receiving its written appeal, the Board informed Employer that its appeal was both incomplete and apparently late.

Employer responded with an explanation detailing health issues Mr. Ahdoot was suffering.

Subsequently an administrative law judge (ALJ) of the Board issued an Order Denying Leave to File Late Appeal (Order) on October 16, 2012. The Order found that Employer did not handle the appeal with the appropriate degree of diligence even in light of Mr. Ahdoot's, its principal's health problems.

Employer filed a petition for reconsideration on August 18, 2015. Since Labor Code section 6614, subdivision (a), provides that a petition for reconsideration shall be filed within 30 days of service of the Board order or decision at issue, Employer's petition was the about 33 months late.

The Division filed an answer to the petition.

ISSUE

Does the Board have jurisdiction to grant reconsideration in this matter?

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 explicitly, but may be construed to maintain that the evidence does not justify the findings of fact and/or that the findings of fact do not support the Order.

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. At a minimum the Order does not indicate the ALJ abused his discretion under the circumstances.

The central issue we confront here, however, is one of jurisdiction. The California Courts of Appeal have at least twice ruled that Labor Code sections 5900 and 5903, provisions of the Worker's Compensation Act analogous to Labor Code section 6614, subdivision (a), is jurisdictional in effect. (*Nestle Ice Cream Co., LLC v. Workers' Compensation Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; *Scott v. Workers' Compensation Appeals Bd.* (1981) 122 Cal.App.3d 979, 984). As the Courts have put it, the Workers' Compensation Appeals Board is without jurisdiction to grant reconsideration if the petition is filed late. We have often received petitions for reconsideration which were filed late, and have held, following the reasoning of the Courts of Appeal, that we, too, are without jurisdiction to grant reconsideration of a late-filed petition. We apply that reasoning here as well. (*Mid-Coast Builders Supply, Inc. dba Mid-Coast Builders, Inc.*, Cal/OSHA App. 11-2780, Denial of Petition for Reconsideration (Apr. 10, 2013).)

Thus, although we are not unsympathetic to Mr. Ahdoot's plight, we hold we must deny the 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: OCT 02, 2015