

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

In the Matter of the Appeal of:

**BUTCH POPE ENGINEERING, INC.
P.O. Box 1675
Nipomo, CA 93444**

Employer

Inspection No.
1402729

**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 Butch Pope Engineering, Inc. (Employer).

JURISDICTION

On November 4, 2019, the Division issued Butch Pope Engineering, Inc. (Employer) a Citation alleging a Serious violation of section 1541.1, subdivision (a), ¹ [failure to provide cave-in protection for employees working inside an excavation greater than five feet in depth] (the Citation). Employer timely appealed the Citation. In its appeal forms, Employer provided its email address, and advised that its preferred method of service is via email.

On January 20, 2022, Administrative Law Judge Howard Chernin (ALJ Chernin) issued a Notice of Video Prehearing Conference, scheduled for April 25, 2022. The Notice of Video Prehearing Conference was served on Employer via email. Employer failed to appear for the Prehearing Conference.

On April 25, 2022, ALJ Chernin issued an Order Dismissing Appeal for Failure to Appear (Order). The Order stated that Employer “has not provided any sufficient explanation for its failure to appear.” Accordingly, ALJ Chernin ordered the matter dismissed, unless Employer provided “good cause or a compelling reason for not appearing” within 15 calendar days from the date of service. The Order was also served on Employer via email. Employer did not respond to the Order.

On November 10, 2022, Employer filed this Petition for Reconsideration (Petition).

¹ Unless otherwise specified, references are to title 8 of the California Code of Regulations.

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's Petition does not assert any of the specific grounds for reconsideration set forth in Labor Code section 6617, which is by itself sufficient grounds to deny the Petition. (Lab. Code, §§ 6616-6617; *Arodz Motorsports, LLC, dba Al Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).)

Instead, Employer alleges the following in support:

As the owner and person responsible for this, I, Butch Pope did not receive notice of the hearing. I was told it was e-mailed and recently sent a copy after the fact. I have spent a great deal of time on this and if in review of this you will see several zoom meeting [sic] with judges and OSHA. I have given records and documents to prove our position on this case. There is no way I would have not just failed to continue. [sic] In our last meeting I believe we made a very convincing argument this should be dropped in our favor. I supplied photos and documents to support my position. I believe we have already supplied the court with all the information to clear this case up. During our last two zooms the issuing agent was not available for comment. OSHA had offered a reduced fine, my response was it was not the money but the principle that we were not operating unsafely or out of compliance. If there is any further proof needed on our side I am happy to produce.

(Employer's Petition, p. 1.)

The Board has fully reviewed the record in this case, including the arguments presented in the Petition. We have taken no new evidence. We conclude the Petition must be denied.

Labor Code section 6614, subdivision (a) provides that a petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. We lack jurisdiction to grant reconsideration when a petition is filed late. (*Quintana Construction, Inc.*, Cal/OSHA App. 1198572, Denial of Petition for Reconsideration (June 24, 2020); *Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021).)

Here, ALJ Chernin's Order was entered and served on April 25, 2022. At most, Employer had until May 30, 2022 to file a petition for reconsideration. (Lab. Code § 6614, subd. (a); Code Civ. Proc., §1013, subd. (a).) However, Employer failed to file a petition for reconsideration until November 10, 2022, nearly seven months later. Employer has provided no explanation or evidence that would provide good cause for this delay.

Accordingly, the Board lacks jurisdiction to grant reconsideration in this matter.

DECISION

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin P. Kropke, Board Member

FILED ON: 12/05/2022

