

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

In the Matter of the Appeal of:

**ACS STAFFING, INC.
9858 Artesia Boulevard
Bellflower, CA 90706**

Employer

Inspection No.
1600527

**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 ACS Staffing, Inc. (Employer).

JURISDICTION

On October 20, 2022, the Division of Occupational Safety and Health (Division) issued two Citations to ACS Staffing, Inc. (Employer). Citation 1, Item 1, alleged a Serious violation of section 3385, subdivision (a)¹ [failure to require or provide appropriate foot protection]. Citation 2, Item 1, alleged a Serious violation of section 3650, subdivision (t)(12) [failure to ensure clear path before moving powered industrial truck]. The citations proposed \$37,125 in penalties.

Employer timely appealed both citations.

On March 16, 2023, ALJ Chernin issued a Notice of Video Prehearing Conference, scheduled for April 17, 2023. The Notice of Video Prehearing Conference was served via email on Mirna Sevilla (Sevilla), Employer's Director and designated contact, at her designated email address.

Employer failed to appear for the April 17, 2023 Prehearing Conference.

On April 18, 2023, ALJ Chernin issued an Order Dismissing Appeal for Failure to Appear (Order). The Order stated that Employer "did not appear at this scheduled time and has not provided any sufficient explanation for its failure to appear." The Order indicated the matter would be dismissed unless Employer provided "good cause or a compelling reason for not appearing" within 15 calendar days from the date of service. The Order also indicated that, if Employer failed to respond within 15 days, the Order would become final, and that Employer may file a petition

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

for reconsideration within 30 days of the date the Order became final. The Order was served on Employer via email.

Employer did not respond to the Order. The Order became final 15 days later on May 2, 2023.

On July 14, 2023, Employer filed this Petition for Reconsideration (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's Petition does not assert any of the specific grounds for reconsideration set forth in Labor Code section 6617, which is sufficient by itself to support denying 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:

Dear Appeals Board:

I am writing to you regarding the abovementioned [sic] Inspection Number for our company.

An appeal was submitted to OSHA, which was granted and at the time of appeal hearing date, no one from ACS Staffing was present to state our case on the appeal.

This has just come to my attention, as my Human Resources Manager was the person who was assigned to attend the appeal and failed to due to having been ill post-op in March during the month of April.

Our office has been short-staffed, including having 30% on furlough due to a significant decline in sales. And while other staff attempted to cover HR matters in her absence, we failed in making an appearance to address this matter with the Board.

To which I take full responsibility and deeply apologize.

I please to you to reconsider on this matter and to give us another opportunity to present our appeal to you.

Look forward to your review and response to my request.

Respectfully,

Mirna Sevilla

(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.

A petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. (Lab. Code, § 6614.)² 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). See also *Nestle Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108 [citing *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984].)

Here, ALJ Chernin's Order was entered on April 18, 2023. Employer failed to respond to the Order within 15 days, so it became final on May 2, 2023. At most, Employer had until June 6, 2023 to file a petition for reconsideration. (Lab. Code § 6614, subd. (a); § 348, subd. (c).) However, Employer did not file its Petition until July 14, 2023.

Accordingly, Employer's Petition is untimely, and the Board lacks jurisdiction to grant it.

DECISION

For the reasons stated above, Employer's Petition is denied.

² Under Board regulations, the time to file a petition for reconsideration is extended by five days for service, including service by email, where the party is located in California. (§ 348, subd. (c).)

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair

/s/ Judith S. Freyman, Board Member

/s/ Marvin P. Kropke, Board Member

FILED ON: 08/28/2023

