

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Huntington Glazing, Inc.

Case No. 24-0078-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected contractor Huntington Glazing, Inc. (Huntington) requested review of a Civil Wage and Penalty Assessment (Assessment) issued by the Division of Labor Standards Enforcement (DLSE) on April 5, 2024, with respect to work performed on the Live Oak Elementary School Modernization (Project) for the Castaic Union School District. Pursuant to California Code of Regulations, title 8, section 17227, on May 8, 2024, the appointed Hearing Officer, Ann Wu, served an Order to Show Cause Why Request for Review Should Not Be Dismissed as Untimely under Labor Code section 1742, subdivision (a) (OSC).¹ Section 1742, subdivision (a), mandates that a request for review be transmitted to the Labor Commissioner within 60 days after service of the Assessment.

For the reasons stated below, I find that the time limit for requesting review is mandatory and jurisdictional, and that Huntington's Request for Review was not filed timely. Accordingly, the Request for Review must be dismissed.

FACTS

DLSE issued the Assessment against Huntington on December 21, 2023. (Certification of Service attached to Assessment dated December 21, 2023.) Huntington filed a Request for Review on April 5, 2024, according to the postmark attached to the envelope containing the letter requesting review. One hundred and seven days elapsed

¹ All statutory references are to the Labor Code unless otherwise specified.

between the date DLSE issued the Assessment and the date Huntington filed the Request for Review.

Notice of the right to seek review is found at the top of page two of the Assessment. The notice states in part:

Notice of Right to Obtain Review – Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner – State of California
Civil Wage and Penalty Assessment Review Office

PO Box 32889
Long Beach, CA 90832

On May 6, 2024, DLSE filed and served an Application for Order to Show Cause Why Request for Review Should Not Be Dismissed as Untimely, and declarations and exhibits in support of the Application. On May 8, 2024, the appointed Hearing Officer set a Prehearing Conference for June 7, 2024. Also on May 8, 2024, the Hearing Officer issued an OSC and provided the parties with 20 days to file a response in writing to the Hearing Officer’s OSC, and 10 days to reply to any submission by any other party. On May 28, 2024, DLSE filed its Response to the OSC. Huntington did not file a response or reply.

The Hearing Officer held the initial Prehearing Conference on June 7, 2024. The Requesting Party did not appear. Because the time for the Requesting Party to file a reply to DLSE’s response to the OSC had not yet elapsed, the Hearing Officer continued the Prehearing Conference to July 15, 2024. Again, the Requesting Party did not appear for the Prehearing Conference on July 15, 2024, and the Requesting Party failed to appear at the following Prehearing Conference on September 16, 2024.

DISCUSSION

Section 1742, subdivision (a), provides that an affected contractor may request review of a civil wage and penalty assessment within 60 days after service of the assessment. If no hearing is requested within that period, “the assessment shall become final.” (§ 1742, subd. (a).) The applicable regulation, at title 8, section 17222, subdivision (a), restates the 60-day filing requirement, and expressly provides that, “Failure to request review within 60 days shall result in the Assessment . . . becoming final and not subject to further review under these Rules.”

Section 17227 of the regulations governs the early disposition of a request for review that appears untimely. Under the rule, the hearing officer issues an order to show cause why the request for review should not be dismissed as untimely under section 1742. The order is served on all parties and provides the parties an opportunity to respond to the order and to reply to any submission by any other party. Evidence in support or opposition to the order is submitted by affidavit or declaration. (Cal. Code Regs., tit. 8, § 17227, subds. (a) and (b).) There is no right to an oral hearing under the rule. (*Id.* subds. (b) and (c).) The rule expressly authorizes the Director to dismiss a Request for Review that is untimely under section 1742. (*Id.* subds. (c) and (d).)

This case proceeded under procedures set forth in section 17227 of the regulations. The Hearing Officer issued an OSC. DLSE filed a response. Huntington did not file a response or a reply.

The evidence in the record established that the last day to transmit a written request for review in this matter was February 26, 2024.² The Assessment became final on February 26, 2024. Therefore, under section 1742, Huntington’s Request for Review transmitted on April 5, 2024, was untimely. The Director is without jurisdiction to proceed on the untimely Request for Review. (§ 1742, subd. (a); Cal. Code Regs., tit. 8, § 17222, subd. (a); see also *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831

² The Assessment issued on December 21, 2023. The 65th day after December 21, 2023, was February 24, 2024. Since February 24, 2024 fell on a Saturday, the last day to transmit the Request for Review was Monday, February 26, 2024.

[where the time for filing is mandatory and jurisdictional, a late filing may not be excused on the grounds of mistake, inadvertence, or excusable neglect]; *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489 [same].)

Had Huntington timely filed a Request for Review, it would have vested the Director with jurisdiction to review the Assessment and to conduct a hearing as necessary. Huntington failed to do so. The time limit is mandatory and jurisdictional, and accordingly, the Assessment is final. (§ 1742, subd. (a).)

Based on the foregoing, the Director makes the following findings:

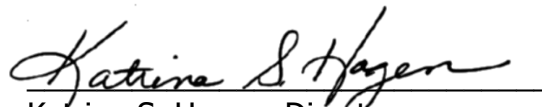
FINDINGS

1. Huntington Glazing, Inc. did not timely request review of the Civil Wage and Penalty Assessment issued December 21, 2023.
2. The Assessment became final on February 26, 2024.
3. The Director has no jurisdiction to proceed on the untimely Request for Review filed by Huntington Glazing, Inc.

ORDER

Huntington Glazing, Inc.'s Request for Review is dismissed. The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 11/4/24



Katrina S. Hagen, Director
California Department of Industrial Relations