

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

MASTER RECYCLING, INC.
1980 Reservoir Street
Pomona, CA 91766

Employer

Docket Nos. 16-R6D2-1049
through 1051

**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 Marster Recycling, Inc. (Employer).

JURISDICTION

Commencing on November 16, 2015, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On January 6, 2016 the Division issued three citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹

Employer timely appealed.

Thereafter administrative proceedings were begun before an administrative law judge (ALJ) of the Board. On April 12, 2016 the parties were duly notified that a Prehearing Conference was to be held among the parties and the ALJ on June 27, 2016. A representative of the Division attended the Prehearing Conference, but Employer did not appear or attend.

On June 29, 2016 the ALJ sent Employer a "Notice of Intent to Dismiss Appeals" which informed Employer that unless it submitted a written statement setting forth facts sufficient to establish that the failure to attend the Prehearing Conference was reasonable and for good cause, its appeals would be dismissed. Employer did not respond to the Notice of Intent.

¹ References are to California Code of Regulations, title 8 unless specified otherwise.

On July 18, 2016, the ALJ issued an Order Dismissing Appeal (Order).

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUES

Did Employer satisfy the statutory requirements for filing a petition for reconsideration?

Did Employer's petition establish that the failure to attend the Prehearing Conference was reasonable and for good cause?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

Employer's petition for reconsideration, as submitted to the Board, was not verified and did not include proof that it had been served upon the Division. Labor Code sections 6616 and 6619, respectively, require that a petition for reconsideration be verified upon oath and served on the opposing party. Failure to fulfill either or both requirements is grounds to deny the petition. (*Sam's Gardening*, Cal/OSHA App. 13-2769, Denial of Petition for Reconsideration (July 14, 2015).)

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 further 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 (June 25, 2009), citing, *Bengard Ranch, Inc.* Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).)

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.

Although unnecessary in light of the other deficiencies of Employer's petition, we also point out that it would fail on its merits. Employer's petition states, in pertinent part, that its failure to attend the Prehearing Conference was due to a recent "change in management in the front office and warehouse. Therefore there was no one available to attend the hearing on June 27, 2016." Such circumstances are among what we have numerous times called "internal operating problems" which we have reasoned are not good cause for a failure to attend a duly-noticed proceeding. (*Central Freight Lines, Inc.*, Cal/OSHA App. 10-1888 Denial of Petition for Reconsideration (Jan. 9, 2012).) That reasoning and long line of authority apply here.

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: September 30, 2016