

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

In the Matter of the Appeal of:

DAVID KATZ  
dba Oak Outlets Plus  
790 Palomar Street, Suite B  
Chula Vista, CA 91911

Employer

Docket Nos. 02-R6D2-1181  
through 1185

AND

02-R6D2-1186  
through 1190

**CONSOLIDATED**  
**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 David Katz dba Oak Outlets Plus (Employer).

**JURISDICTION**

On September 20, 2001, a representative of the Division of Occupational Safety and Health (the Division) conducted programmed inspections at a place of employment maintained by Employer at 790 Palomar Street, Suite B, Chula Vista, California.

On February 21, 2002, the Division issued two sets of citations to Employer. In one set Employer was cited for four serious, one regulatory and three general violations of the occupational safety and health standards and orders found in Title 8, California Code of Regulations with proposed civil penalties totaling \$15,825. Those citations have docket numbers of 02-R6D2-1181 through 1185.<sup>1</sup> In the second set of citations the Division cited Employer for four serious and seven general violations with proposed civil penalties totaling \$19,705. Those citations have docket numbers 02-R6D2-1186 through 1190.

At the commencement of the hearing before Jack Hesson, Administrative Law Judge (ALJ) of the Board, the Division moved to lower the proposed penalties by increasing the credits and adjustments following a re-evaluation of the evidence and violations involved in accordance with the Director's penalty setting criteria. The civil penalties, as amended, totaled \$13,800 for docket

---

<sup>1</sup> Unless otherwise specified all references are to sections of Title 8, California Code of Regulations.

numbers 02-R6D2-1181 through 1185 and \$6,075 for docket numbers 02-R6D2-1186 through 1190.

On November 25, 2003, the ALJ issued decisions in both cases affirming the penalties proposed by the Division at the hearing and denying Employer's request for further penalty relief.

Employer filed a timely petition for reconsideration involving both cases.

### **ISSUE**

Has Employer set forth a valid reason for reconsideration of the ALJ's denial of additional penalty relief?

### **REASON FOR DENIAL OF PETITION FOR RECONSIDERATION**

Employer's petition for reconsideration alleges that, "I am dissatisfied with the decision made. I would like to petition for reconsideration. .... I'm barely making end[s] meet."

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.

Additionally, Labor Code section 6616 provides that:

The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order or decision made and filed by the appeals board or a hearing officer to be unjust or unlawful, and every issue to be considered by the appeals board.

These requirements are mandatory. *Louis G. Beary Plastering*, Cal/OSHA App. 76-1296, Denial of Petition for Reconsideration (Nov. 14, 1977). The Board has consistently rejected petitions that do not contain sufficient detail. (See, e.g., *Lusardi Construction Company*, Cal/OSHA App. 86-318, Denial of

Petition for Reconsideration (Oct. 29, 1986); *Paterson Pacific Parchment Co.*, Cal/OSHA App. 80-1238, Denial of Petition for Reconsideration (Apr. 22, 1981).) Employer's petition fails to meet the statutory requirements. Simply alleging that one is dissatisfied with the decision of an ALJ is not sufficient reason to grant reconsideration under the above authority.

Additionally, an Employer must provide credible, convincing evidence to support relief from proposed penalties and Employer bears the burden of proof by a preponderance of evidence on all issues pertaining to financial hardship. (*DPS Plastering, Inc.* Cal/OSHA App. 00-3865, Decision After Reconsideration (Nov. 17, 2003). Upon the Board's review, it is found that that there was no error in both the ALJ's review of the evidence presented by Employer and the determination that the evidence was insufficient to establish either a basis for additional penalty relief or that Employer could not pay the reduced penalties under a reasonable payment plan.

Employer's petition was unverified. Labor Code section 6616 requires verification of petitions for reconsideration. The petition also was not served on the Division as required in Labor Code section 6619. In addition, Employer did not file a timely verification and proof of service with the Board although it should be noted that the timely filing of those documents would not change the Board's decision in this case.<sup>2</sup>

### **DECISION**

The Board affirms both of the ALJ's decisions and the assessment of civil penalties totaling \$19,875.

MARCY V. SAUNDERS, Member  
GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: February 11, 2004

---

<sup>2</sup> A letter from the Board to Employer explaining the verification and proof of service requirements was sent to Employer on December 30, 2003. The letter contained a five-day deadline to respond and indicated that Employer's petition would be subject to dismissal if no response was received. Employer did not respond.