

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

In the Matter of the Appeal of:

HOFFMEYER COMPANY, INC.  
12310 Woodruff Avenue  
Downey, CA 90241

Employer

Docket No. 03-R4D2-9044

**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 Hoffmeyer Company, Inc. (Employer).

**JURISDICTION**

Employer initiated an appeal by a letter dated December 8, 1996. The letter was mailed to the Occupational Safety and Health Appeals Board (Board) on December 27, 1996. On December 31, 1996, the Board sent an appeal form to Employer. On February 25, 1997, the Board closed Employer's file because the appeal form was not completed and returned. A letter confirming the closing of the file was mailed to Employer on that date.

On September 9, 2002, Employer phoned the Board and requested that its appeal be re-opened. Another appeal form was sent to Employer on September 30, 2002. On October 15, 2002, the Board received the completed appeal form from Employer.

On March 18, 2003, the Board found that there was not good cause for Employer's delay of almost six years in requesting that its appeal be reopened and ordered that Employer's appeal remained closed.

On June 23, 2003, Employer filed a petition for reconsideration of the Board's order.

**ISSUE**

Does the Board have jurisdiction to reopen Employer's appeal?

**REASONS FOR DENIAL  
OF  
PETITION FOR RECONSIDERATION**

Labor Code section 6614(a) sets forth the deadline for filing a petition for reconsideration from an ALJ decision or an order of the Board:

At any time within 30 days after the service of any final order or decision made and filed by the appeals board or a hearing officer, any [aggrieved] party . . . may petition the appeals board for reconsideration . . . . Such petition shall be made only within the time and in the manner specified in this chapter.

A regulation of the Board provides that “[t]he petition for reconsideration shall be filed at the Appeals Board in Sacramento, California, and shall be deemed filed on the date it is delivered or mailed to the Appeals Board.” (8 Cal. Code Regs. § 390(a).)

In the present case, the order dismissing the appeals was served by mail on the parties on March 18, 2003. Because the order was served by mail, the time for filing a petition for reconsideration was extended by 5 days. (See Title 8, Cal. Code Regs. § 348(c).) Thus, the last day to file a petition for reconsideration challenging the order was April 22, 2003, which was 35 days after service of the order. The petition for reconsideration filed by Employer almost two months later on June 23, 2003, is well past the statutory deadline.

Longstanding Board precedent establishes that the Board does not have jurisdiction to accept the petition. The Board has consistently held that the requirement that a petition for reconsideration be mailed or delivered to the Appeals Board within 30 days of the issuance of the decision or order to be reconsidered is jurisdictional and the Board is without power to enlarge the time for the filing of a petition for reconsideration. (*Unocal Corporation*, Cal/OSHA App. 92-639 Denial of Petition for Reconsideration (May 13, 1993) citing *Dalton Construction Company*, Cal/OSHA App. 83-987 Denial of Petition for Reconsideration (Feb. 7, 1985).) The deadline for filing a petition for reconsideration is jurisdictional and even a petition filed one day beyond the deadline must be denied. (See *Beutler Heating & Air Conditioning, Inc.*, Cal/OSHA App. 93-2220 Denial of Petition for Reconsideration (Mar. 16, 1995) and *Edwin D. Chapman*, Cal/OSHA App. 81-331 Denial of Petition for Reconsideration (Oct. 1, 1981).)

The courts and other adjudicatory agencies have reached the same conclusion when interpreting similar statutory filing deadlines. It is well established that if a time limitation for filing a document with an agency is jurisdictional, and a document is filed beyond the time limit, neither the agency nor the court may grant relief since they lack jurisdiction over the matter. (See

*Humbert v. Castro Valley County Fire Protection Dist.*, (1963) 214 Cal.App.2d 1, 9.)

The Board finds that Employer did not file its petition for reconsideration within the statutorily prescribed time. Therefore, the Board is without jurisdiction to review the order issued March 18, 2003. Accordingly, the order dismissing the appeal is final and not subject to review by any court or agency.

### **DECISION**

Based upon the above, the petition for reconsideration is denied as untimely. The Board has no jurisdiction to reconsider the now final Order Dismissing Appeal.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: August 12, 2003