

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

In the Matter of the Appeal of:

**PRIORITY WORKFORCE, INC.
15941 Red Hill Avenue, Suite 100
Tustin, CA 92780**

Employer

Inspection No.

1351361

**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 (Petition) filed in the above-entitled matter by Priority Workforce, Inc. (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) issued three citations to Employer alleging three violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ The citations were issued on April 2, 2019, and Employer appealed the citations on April 23, 2019, commencing administrative proceedings before the Board.

Between Employer's appeal in April 2019 and March 23, 2024, there were numerous emails, notices, motions and other communications among the parties and the Board. On May 9, 2023, the Board sent the parties a Notice of Status Conference informing them that such conference would be held on September 11, 2023, at 10:00 a.m. Employer failed to appear. The Administrative Law Judge (ALJ) assigned to the matter notified Employer of that failure and accepted the explanation that Employer had not received notice of the conference. On September 12, 2023, the Board issued notice of another Status Conference to be held on March 11, 2024, at 11:30 a.m. Employer again failed to appear.

On March 25, 2024, the ALJ issued an Order Dismissing Appeal for Failure to Appear (Order). The Order informed Employer that it had the opportunity to show good cause for the failure to appear within 15 calendar days, that the Order would become final if Employer did not so respond, and that thereafter Employer would have an additional 30 days to file a petition for reconsideration with the Board. Board regulation section 348, subdivision (c), also provides an extra five days for transmission of a petition for reconsideration within California. Thus, Employer's Petition was due on or before 50 days after March 25, 2024, namely by May 14, 2024. Employer filed its Petition for reconsideration by facsimile on June 11, 2024. We note that Employer's Petition was dated May 22, 2024, on the "FAX" transmittal page, and September 12,

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

2023, on the text page, but even if we the facsimile transmittal date to be the date of filing (as opposed to when the Board received Employer's facsimile filing), Employer still filed eight days after the expiration of the filing period.

The Division did not answer the 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 asserts none of the statutory grounds upon which we may grant reconsideration, which is reason to deny the petition. (*Arodz Motorsports, LLC, dba A1 Tune & Lube*, Cal/OSHA App. #1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).)

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. We have taken no new evidence.

As noted, the Order was issued on March 25, 2024, and, in sum, notified Employer that it had a total of 45 days to seek relief, comprised of 15 days to show good cause and then 30 days to petition for reconsideration. That period of 45 days expired on May 9, 2024. Employer also had an additional five days within which to file, under Board regulation section 348, as noted above. Employer petitioned for reconsideration on June 11, 2024, almost one month late.

Labor Code section 6614, subdivision (a), establishes a 30-day period in which a party may petition for reconsideration. The Board lacks jurisdiction to grant reconsideration of a late-filed petition. (*Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021) citing *Amerisk Engineering Corp.*, Cal/OSHA App. 1129146, Denial of Petition for Reconsideration (Dec. 21, 2018), citing Labor Code sections 5900 and 5903; *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.) We must, accordingly, deny Employer's petition.

DECISION

For the reasons stated above, the petition for reconsideration is denied. The ALJ's Order and penalties are affirmed.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Ed Lowry, Chair
Judith S. Freyman, Board Member
Marvin Kropke, Board Member

FILED ON: 07/26/2024

