

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

In the Matter of the Appeal of:
**R&P CONCRETE PUMP SERVICE, INC.
dba PATRIOT CONCRETE & PUMP SERVICE
14819 CLARK AVENUE
HACIENDA HEIGHTS, CA 91745**

Inspection No.
1590457
**DENIAL OF PETITION FOR
RECONSIDERATION**

Employer

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 R&P Concrete Pump Service, Inc. dba Patriot Concrete & Pump Service (Employer).

JURISDICTION

Beginning on April 19, 2022, through June 14, 2022, the Division of Occupational Safety and Health (the Division) investigated a fatal injury suffered by an employee at a job site maintained by Employer.

On June 16, 2022, the Division issued to Employer one Citation alleging nine violations of safety orders.¹ Citation 1, Item 1, alleged a Regulatory violation of section 342, subdivision (a) [failure to immediately report a work-related fatality]. Item 2 alleged a Regulatory violation of section 14300.4, subdivision (a) [failure to keep records of work-related illnesses, injuries, and fatalities]. Item 3 alleged a General violation of section 1509, subdivision (a), with reference to section 3203, subdivision (a) [failure to establish an Illness and Injury Prevention Program]. Item 4 alleged a General violation of section 1509, subdivision (b) [failure to adopt a written Code of Safe Practices]. Item 5 alleged a General violation of section 3395, subdivision (i) [failure to establish a written Heat Illness Prevention Plan]. Item 6 alleged a General violation of section 3395, subdivision (h) [failure to train employees on heat illness prevention]. Item 7 alleged a General violation of section 1511, subdivision (b) [failure to make a thorough survey of the job site prior to the presence of employees]. Item 8 alleged a General violation of section 1512, subdivision (b) [failure to ensure the availability of a suitable number of persons appropriately trained to render first aid at the job site]. Item 9 alleged a General violation of section 1512, subdivision (c) [failure to provide a first aid kit to employees on a construction site]. Proposed penalties totaled \$7,685.00.

After the Division issued the citation, Employer initiated a timely appeal, but the appeal was incomplete. Employer failed to identify the citations it was appealing by citation and item number as required. (§ 359.1, subd. (a).)

¹ Unless otherwise specified, section references are to California Code of Regulations, title 8.

On January 18, 2023, the Board issued a Notice of Incomplete Appeal (Notice) informing Employer both of the deficiency and how to cure it (i.e., by providing required information for each citation and item number under appeal). The Notice gave Employer 20 days to cure the deficiency (extended an additional five days under section 348, subdivision (c)).

When no timely response was received, the Board dismissed the appeal via an Administrative Order Dismissing Appeal (Order), served on February 13, 2023. The Order stated, “If you disagree with this order, you may petition the Appeals Board for reconsideration within 30 days.” (Lab. Code, § 6614.) Board regulation section 348, subdivision (c), also provides an extra five days for transmission of a petition for reconsideration within California.

Employer was therefore required to file a petition for reconsideration by March 19, 2023.

On July 8, 2024, Employer again filed the same incomplete appeal form, with the addition of a handwritten note, stating, “Please see included documents. Mr. Roulson [the deceased employee] died of natural causes at the hospital, not on the job. Please dismiss this false claim.” Employer also submitted the autopsy report of the deceased employee. Viewed in the light most favorable to Employer, these documents were construed as an untimely petition for reconsideration.

ISSUE

Does the Board have jurisdiction to grant Employer’s petition?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

The Board has fully reviewed the record in this case. We have taken no new evidence. 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 itself is reason to deny the petition. (*Arodz Motorsports, LLC, dba Al Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).)

We also note that Employer has never provided all information necessary to complete its appeal, which is grounds to dismiss the appeal. (§ 359.1, subd. (b).)

Finally, Employer’s petition is untimely. The Order dismissing Employer’s appeal was served on February 13, 2023. Labor Code section 6614, subdivision (a), establishes a 30-day period in which a party may petition for reconsideration. Board regulation section 348, subdivision (c), also provides an extra five days for transmission of a petition for reconsideration within California. Employer was therefore required to file a petition for reconsideration by March 19, 2023. Employer filed the documents that the Board construes as its petition for reconsideration on July 8, 2024.

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.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 08/22/2024

