

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

In the Matter of the Appeal of:

**C H D S, INC
dba Curtis Drilling Company,
1249 W. Washington Avenue
Escondido, CA 92029**

Employer

Inspection No.
1666704

**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 C H D S, Inc, dba Curtis Drilling Company (Employer).

JURISDICTION

On September 15, 2023, the Division issued Employer three citations, each alleging a Serious violation (collectively, the Citations). The Citations were sent by United States Postal Service (USPS) certified mail, received and signed for at Employer's place of business on September 18, 2023. Citation 1 alleged a Serious violation of sections 1509, subdivision (a) and section 3203, subdivision (a),¹ [Injury and Illness Prevention Program], Citation 2 alleged Serious violations of section 3328, subdivision (b) [Machinery and Equipment], and Citation 3 alleged a Serious Accident-Related violation of section 1592, subdivision (e) [Warning Methods].

On December 21, 2023, Employer filed a late appeal to the Citations. On January 9, 2024, the Board sent Employer a Notice of Untimely Appeal (Notice). The Notice told Employer it had 20 days from the date of service of the Notice to submit a proof of service and declaration stating the facts on which Employer relies to show good cause why the Board should accept its late appeal. Employer did not submit a declaration to the Board or respond in any way until filing this Petition.

On February 9, 2024, Board Executive Officer Patricia Hapgood issued an Administrative Order Dismissing Appeal (Order). The Order stated that Employer's appeal: "is untimely or incomplete," that the citation(s) "are final by operation of law," and if Employer disagreed with the Order, it "could petition the Appeals Board for reconsideration within 30 days." (Order, and see Lab. Code § 6601.) Employer did not provide a timely response to the Order by March 15, 2024 (30 days from the date of the Order plus, under section 348, an additional five days for service).

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

On April 8, 2024, Employer filed its late Petition for Reconsideration.

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 does not assert any of the specific grounds for reconsideration set forth in Labor Code section 6617, which is by itself sufficient grounds to deny the Petition. (Lab. Code, §§ 6616-6617; *Arodz Motorsports, LLC, dba AI Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) Instead, Employer submits a letter dated April 8, 2024, addressed to Le, Hein, and David Rodriguez which asserts Employer's original appeals were sent on September 14, 2023, not to the Appeals Board, but to an individual named Paul Grier (this was one day before the issuance of the citation, and four days before the Citation was served via the USPS on Employer). The letter states Employer filed appeals forms and documentation through the Board's portal upon receiving notification the appeals needed to be "submitted outside of Mr. Grier." Employer's letter states: "Curtis Drilling received notice that the appeal was not submitted within the allotted time and would not be considered." The Notice to which Employer refers was sent to Employer on January 9, 2024. The Order Dismissing Appeal was sent to Employer on February 9, 2024. The Petition for Reconsideration filed on April 8, 2024, is the only response Employer made to either the Notice or Order served on it.

A petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. (Lab. Code, § 6614.)² We lack jurisdiction to grant reconsideration when a petition is filed late. (*Quintana Construction, Inc.*, Cal/OSHA App. 1198572, Denial of Petition for Reconsideration (June 24, 2020); *Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021). See also *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].)

² Under Board regulations, the time to file a petition for reconsideration is extended by five days for service, including service by email, where the party is located in California. (§ 348, subd. (c).)

Here the Board's Administrative Order was entered on February 9, 2024. Employer failed to respond to the Order within 35 days. Employer had until March 15, 2024 to file a petition for reconsideration. (Lab. Code § 6614, subd. (a); § 348, subd. (c).) Employer did not file its Petition until April 8, 2024.

Accordingly, as the Petition was untimely, the Board lacks jurisdiction to grant reconsideration in this matter.

DECISION

For the reasons stated above, Employer's Petition is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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



FILED ON: 05/23/2024