

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

In the Matter of the Appeal of:

UKIAH FORD-LINCOLN-MERCURY, INC.  
1170 South State Street  
Ukiah, CA 95482

Employer

Docket No(s). 06-R1D5-2556  
and 2557

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having ordered reconsideration on its own motion, and after reviewing the entire record, hereby affirms the decision of the ALJ.

**JURISDICTION**

Ukiah Ford-Lincoln-Mercury, Inc., (Employer) operated a place of employment at 1170 South State Street, Ukiah, California (the site). On December 21, 2005, the Division of Occupational Safety and Health (Division) conducted an investigation of the site. Thereafter, on February 10, 2006, the Division issued citations for alleged violations of Title 8 Cal. Code of Regulations sections 3203(a) [failure to maintain an adequate, effective, written injury and illness prevention program]; 3273(a) [slippery floors in service department]; and 3314(c) [safety stands not used to prevent inadvertent movement of vehicle off repair lift].<sup>1</sup> Employer received the citations on February 13, 2006. Employer filed appeal forms with the Appeals Board on March 30, 2006, which was Employer's first contact with the Board regarding the citations at issue.

On April 11, 2006, Employer sent an unsworn statement to the Appeals Board stating it was not timely in filing its appeal because it misunderstood the appeals process, and had scheduled an informal conference with the Division on March 30, 2006, which did not result in any relief from the citations.

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<sup>1</sup> All citations are to Title 8, California Code of Regulations, unless otherwise indicated.

An Administrative Law Judge for the Board issued a Decision dated August 31, 2007 (later amended)<sup>2</sup> denying Employer's appeals because the Employer did not establish good cause for its late appeal. The Board ordered reconsideration of the Decision on its own motion on September 21, 2007, identifying the issue as "Was Employer's appeal timely?"

On September 27, 2007, Employer filed a petition for reconsideration, raising the additional issue of the propriety of the Division's motion to dismiss appeal as untimely filed. On November 15, 2007 the Board granted this petition.

The Division filed answers to both the petition for reconsideration and the Board's Order of Reconsideration (Order), and the Employer filed an answer to the Order as well.

The Board has reviewed all arguments variously presented, as well as the entire record. The Decision of the ALJ was well reasoned and supported by substantial evidence in the record, and we affirm the decision and incorporate it herein by this reference.

### **FINDINGS AND REASONS FOR DECISION**

Labor Code section 6600 provides that a cited employer has 15 working days from receipt of a citation to appeal to the Board. Labor Code section 6601 states in pertinent part: "If within 15 working days from receipt of the citation . . . the employer fails to notify the appeals board that he intends to contest the citation, . . . the citation . . . shall be deemed a final order of the appeals board and not subject to review by any court or agency. The 15-day period may be extended by the appeals board for good cause." (See also Board regulation section 359.)

Thus, the issue here is whether Employer showed good cause for its late appeal of the citations.

The Board has issued many Denials of Petitions for Reconsideration holding that Labor Code sections 6600 and 6601, and Board Regulation 359, require an employer to establish good cause for a late-filed appeal. We have specifically ruled on cases presenting facts equivalent to those here, and reached the same conclusion as the ALJ did in his decision. *SDH Construction, Cal/OSHA App. 08-9156, Denial of Petition for Reconsideration* (Jun. 20, 2008), addressed the situation where an employer misunderstood the appeals process, and undertook an informal conference with the Division before filing an appeal with the Appeals Board. We said there:

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<sup>2</sup> An Amended Decision was issued by the ALJ on September 20, 2007, which omitted superfluous wording inadvertently included in the original Decision, but made no substantive change. We refer to the Amended Decision as the Decision for brevity.

“Misunderstanding the appeal process is not good cause for a late appeal. *19<sup>th</sup> Auto Body Center*, Cal/OSHA App. 94-9001, Denial of Petition for Reconsideration (Apr. 13, 1995). Labor Code section 6601 provides that if an employer fails to notify the Board of its intent to appeal within 15 working days after receiving a citation, the citation shall be deemed to be a final order of the Board, not subject to review by any court or agency. This section also vests the Board with the discretion to extend the statutory deadline upon a showing of good cause. The Board's regulations state that an extension of the appeal period may be granted where sufficient facts are shown to establish a reasonable basis for the late filing. Board Regulation section 359(b) (8 Cal. Code Reg. § 359(b)).

“The 15-day rule is unequivocally stated on the face of the citation and thus provides adequate notice of the appeal period. (*United Inspection & Testing, Inc.*, Cal/OSHA App. 94-9011, Decision After Reconsideration (Aug. 15, 1994).)

“The Board has consistently held that waiting to file an appeal until one has the opportunity to discuss the citations with the Division is not good cause for a late appeal. *Central Freight Lines, Inc.*, Cal/OSHA App. 07-9018, Denial of Petition for Reconsideration (May 10, 2007) An employer may file an appeal without prejudicing or losing its ability to discuss the citations with the Division, and thereby protect its legal interests while seeking informal resolution of the matter.”

(*SDH Construction*, supra.) Employer's reasons for filing its appeals beyond the 15 working-day period, being identical to those of the employer in *SDH Construction*, also fail to establish good cause. As such, the statutory exception to the 15 working-day filing period has not been met.

While the timeliness of an appeal usually will be considered by an ALJ before the time of the hearing, delay in addressing the issue does not change the clear requirements of Labor Code 6601, or require a different result. There simply is no authority to allow the Board to consider a late appeal other than upon a showing of good cause.<sup>3</sup> (*MCM Construction*, Cal/OSHA App. 09-9230, Denial of Petition for Reconsideration (Nov. 5, 2009); *Murray Co. v. Occ. Safety and Health App. Bd.* (2<sup>nd</sup> Dist. 2009) 180 Cal.App. 4<sup>th</sup> 43.)

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<sup>3</sup> The ALJ appropriately limited the hearing to evidence related to whether good cause existed to allow the filing of the late appeal per labor Code 6601.

In its Petition, Employer posits that the Division's motion to dismiss had to be written and served in compliance with Rule 371 in order, essentially, to allow the Board to consider the lateness of the Appeal. This argument was rejected by the Board many years ago, and the reasoning therefore remains valid.

Employer also argues that because the Division did not respond to the Board's February 16, 1996, letter seeking comments about Employer's late appeal, the Division did not oppose the late appeal and thus the appeal should be allowed. Employer is mistaken. The authority for allowing a late appeal rests with the Board, not the Division. (Labor Code §6601, [Board Regulation section] 359(b).) Moreover, even if the Division does not oppose an employer's late appeal the Board is not obligated to grant a late appeal, absent a showing of good cause.

(*James M. Houillion*, Cal/OSHA App. 96-9080, Decision After Reconsideration (Oct. 8, 1996).) Since the citations are a final order of the Appeals Board if not appealed within the 15 working-day period, unless good cause for the late appeal is found by the Appeals Board, the citations remain final orders of the Appeals Board.

The Appeals Board has considered the decision of the ALJ and the record in light of the subsequently issued Decisions After Reconsideration and affirms the ALJ's summary of evidence, rulings, findings, and conclusions and **adopts** the **decision** in its entirety. Accordingly, the ALJ's decision is attached and incorporated herein by reference.

#### **DECISION AFTER RECONSIDERATION**

The decision of the ALJ dated February 5, 2007, denying Employer's appeals and imposing a civil penalty, is reinstated and affirmed.

ARTHUR CARTER, Chairman  
CANDICE A. TRAEGER, Board Member  
ED LOWRY, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
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