

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

In the Matter of the Appeal of:

ALIKA IKAIKA ENTERPRISES INC.
dba ATTENTION TO DETAILS
P.O. Box 1838
Pleasanton, CA 94566

Employer

Docket No. 10-R1D2-1191

**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 taken this matter under submission, renders the following decision after reconsideration.

JURISDICTION

Beginning on November 9, 2009, the Division of Occupational Safety and Health (Division) commenced an accident inspection at a place of employment in California maintained by Alika Ikaika Enterprises Inc., doing business as (dba) Attention to Detail (Employer). On March 23, 2010, the Division issued one citation to Employer alleging a regulatory violation of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.¹

Employer timely appealed the citation.

Administrative proceedings were held, including the scheduling and due noticing of an evidentiary hearing before an Administrative Law Judge (ALJ) of the Board. The Division appeared at the time and place appointed for hearing, but Employer failed to appear.

Thereafter on December 16, 2011, the ALJ issued a Notice of Intent to Dismiss Appeal (Notice) which informed Employer that if it did not submit a motion presenting sufficient facts to establish that the failure to appear was for good cause, the appeal would be dismissed. Employer did not respond to the Notice within the time provided in the Notice.

¹ Unless otherwise specified, all references are to California Code of Regulations, Title 8.

On January 10, 2012, the ALJ issued an Order Dismissing Appeal (Order) in this proceeding.

Employer filed a late response to the Notice, which the Board deems a timely petition for reconsideration of the Order. The Division filed an Answer to the petition.

The Board took Employer's petition under submission by Order of February 17, 2012.

ISSUE

Whether Employer's petition set forth facts establishing good cause for the failure to appear at hearing.

EVIDENCE

Employer's verified petition for reconsideration states that its failure to appear at the hearing was due to the attempted suicide of her young son at school on the day before the scheduled hearing. The record contains no substantial contrary evidence.

DECISION AFTER RECONSIDERATION

In making this decision, the Board relies upon its independent review of the entire evidentiary record in the proceeding. The Board has taken no new evidence. The Board has also reviewed and considered the briefs and arguments of the parties.

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 is construed to assert that the evidence does not justify the findings of fact and/or that the findings of fact do not support the Order.

The Division did not provide any evidence to contradict the assertions of Employer, and so we accept as true Employer's statements made under penalty of perjury.² (*Club Fresh, LLC*, Cal/OSHA App. 06-9242, Decision After Reconsideration (Sep. 14, 2007).)

The Board has found good cause for failure to appear at hearing when "unanticipated emergencies" occurred. (*Ameripride Uniform*, Cal/OSHA App. 04-106, Decision After Reconsideration (Apr. 3, 2008), citing *Country French, CIE*, Cal/OSHA App. 77-760, Decision After Reconsideration (Jan. 30, 1978) *inter alia*.) The circumstances described by Employer in this case were unanticipated and an emergency. It is understandable that they would be sufficiently upsetting as to make a reasonably diligent person forget contemporaneous commitments.

We hold that Employer has established good cause for its failure to appear at the scheduled hearing, and therefore overrule the Order and remand this proceeding to the ALJ for the hearing to be rescheduled.

ART R. CARTER, Chairman
ED LOWRY, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: MAY 11, 2012

² We note that the ALJ did not have the benefit of Employer's explanation when the Order was issued.