

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

In the Matter of the Appeal of:

TAD VAN NGUYEN dba TAD VAN NGUYEN  
3512 Geary Boulevard  
San Francisco, CA 94118

Employer

Docket. 13-R1D1-9163

**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 filed in the above entitled matter by Tad Van Nguyen dba Tad Van Nguyen (Employer).

**JURISDICTION**

The Division of Occupational Safety and Health (Division) conducted an inspection on June 20, 2013 at a jobsite in San Francisco, California maintained by Employer. On August 29, 2013, the Division issued seven citations to Employer alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.<sup>1</sup>

Citation 1 includes 9 items: Item 1, general violation of Section 1509(a) [failure to establish IIPP], Item 2, general violation of Section 1509(c) [failure to post Code of Safe Practices], Item 3, general violation of Section 3395(f)(3) [failure to comply with heat standard], Item 4, general violation of 3276(e)(11) [failure to extend side rails of metal extension ladder minimum of 36 inches when used to access scaffold], Item 5, general violation 3276(e)(9) [failure to tie, block or secure metal extension ladder], Item 6, general violation of 3276(e)(15)(D) [failure to ensure employees do not stand on top rungs of extension ladder], Item 7, general violation of 3276(e)(1) [failure to maintain 32-foot long extension ladder in good condition], Item 8, general violation of 3276(f) [failure to provide training in safe use of ladders], Item 9, general violation of 1637(k)(1) [failure to ensure erection of 32 foot high wooden scaffold was performed under supervision of qualified person].

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

Citation 2 alleges a serious violation of section 1640(b)(1) [failure to ensure that the uprights of the 32 foot scaffold were spliced with square butt joints and provided with scabs]. Citation 3 through 7 are classified as serious, and are related to the 32 foot scaffold. Total penalties proposed are \$10,575.

Employer received the citations via certified mail and timely telephoned the Appeals Board on September 6, 2013, indicating its intent to appeal the citations issued by the Division. The Appeals Board on September 9, 2013, sent Employer a letter informing Employer of responsibility under Appeals Board Regulation section 359.1(b) to complete and return an appeal form including a copy of the citation(s) for each citation to be appealed. These forms must be completed within 10 days of acknowledgment by the Board of intent to Appeal. The Board did not receive the forms by October 21, 2013, and an Order Dismissing Appeal was filed.

### **ISSUE**

Whether Employer's appeal was properly dismissed?

### **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 argues its petition on the basis of (a) and (e), stating that he at first believed his informal conference with the Division to have been the appeal proceeding. From that meeting, Employer had a misunderstanding that the District Manager would arrange for a hearing date.

Employer properly initiated its appeals of the citations, but failed to correctly complete the process, as the appeal forms submitted by Employer are incomplete; Employer did not include a copy of the citations which it appeals. A completed appeal form under Board regulations is defined as having the "citation(s) appealed from attached to the appeal form." (See section 347(e), *G.A. Higgins, Inc.*, Cal/OSHA App. 12-9109, Denial of Petition for Reconsideration (Nov. 14, 2012).) This information is plainly stated on the appeal form. Employer has not provided any explanation for the deficiency. The Board's order to dismiss can be upheld on this failure to submit the

required copies of citations. (*Renewal by Andersen, dba Designer Sash & Door Systems, Inc.*, Cal/OSHA App. 09-9290, Denial of Petition for Reconsideration (Jan. 20, 2010); *Murray Company v. California Occupational Safety and Health Appeals Board* (2009) 180 Cal. App. 4<sup>th</sup> 43).)

### **DECISION**

For the reasons stated above, the petition for reconsideration is denied.

ART CARTER, Chairman  
ED LOWRY, Member  
JUDITH S. FREYMAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: January 6, 2014