

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

In the Matter of the Appeal of:

FLEETLOGIX, INC.
3590 Kettner Boulevard
San Diego, CA 92101

Employer

Docket No. 14-R4D1-1252

**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 Fleetlogix, Inc. (Employer).

JURISDICTION

Commencing on December 4, 2013 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On March 19, 2014 the Division issued a citation to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer was alleged to have violated the injury reporting requirements of section 342(a) and the heat illness training requirements of section 3395(f)(1).

Employer timely appealed.

Thereafter administrative proceedings were commenced before an administrative law judge (ALJ) of the Board. The parties were duly notified that a telephonic status conference would be held on February 2, 2015 at 11:00 a.m. A representative of the Division appeared by telephone. No one appeared on behalf of Employer.

On February 4, 2015, an ALJ issued a "Notice of Intent to Dismiss Appeals" (Notice) to Employer. The Notice informed Employer that its appeal was subject to dismissal unless it were to file a motion requesting

¹ References are to California Code of Regulations, title 8 unless specified otherwise.

reinstatement of the appeal and showing sufficient facts to show that the failure to appear at the status conference was reasonable and for good cause. The Notice further informed Employer that it must do so no later than 10 days after receipt of the Notice.

No reply was received from Employer.

On February 20, 2015, the ALJ issued an Order Dismissing Appeals.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUES

Did Employer satisfy the requirements for filing a petition for reconsideration?

Did Employer show its failure to appeal was reasonable and for good cause?

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 state any of the bases set forth in Labor Code section 6617 above, which is grounds sufficient to deny the petition. (Labor Code sections 6616 [petition must set forth in detail grounds for petition], 6617; *UPS*, Cal/OSHA App. 08-2049, Denial of Petition for Reconsideration (Jun. 25, 2009), citing, *Bengard Ranch, Inc.* Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).) For present purposes we construe the petition, in the light most favorable to Employer, to assert that the ALJ acted in excess of her authority in dismissing its appeal.

Employer's petition was not verified as required by Labor Code section 6616, and was not served on the Division as required by Labor Code section 6619. Each of these two Labor Code sections uses mandatory language: a "petition shall be verified upon oath[;]" a "petition shall be served forthwith upon all parties by the [petitioner.]" (Labor Code section 6616 and 6619, respectively.) Labor Code section 15 defines "shall" as "mandatory." Failure to satisfy either or both requirements necessitates the denial of the petition. (*RMJ Construction*, Cal/OSHA App. 2012-9013, Denial of Petition for Reconsideration (May 11, 2012).)

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. Based on our independent review of the record, we find that the Order was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

The record here supports the following findings of fact:

- (1) Employer timely appealed the citation.
- (2) Employer failed to appear at the duly-noticed status conference.
- (3) Employer did not timely move for reinstatement of its appeal and support that motion with a statement showing that its failure to appear was reasonable and for good cause.

We further conclude below that Employer's petition does not establish that the failure to appear was reasonable and for good cause.

Employer's petition states that its vice-president of administration had "passed responsibility [for the citation and appeal] on to a new employee who would be handling legal matters[;]" and that the new employee failed to meet his responsibilities, and consequently is no longer an employee. Employer goes on to say that it has "learned its lesson in regards to the proper timeline in reporting hospitalization claims to your office[,]" in an apparent reference to the section 342(a) violation, although the petition says nothing about the heat illness allegation.

When an employer's appeal is dismissed for failing to follow required Board procedures, such as failing to appear at a noticed status conference or hearing, a petition for reconsideration of the dismissal must explain why the failure to appeal was reasonable and for good cause. (See *Agri-Feed Industries, Inc.*, Cal/OSHA App. 09-4055, Denial of Petition for Reconsideration (Dec. 6, 2010).)

Misunderstanding the appeal process is not good cause for a failure to appear. (*Kevin Semien*, Cal/OSHA App. 13-1499, Denial of Petition for Reconsideration (May 21, 2014).)

It appears from the petition that the failure to appear was due to one of Employer's employees failing to follow instructions and/or perform the duties assigned him. This is an "internal operating problem" of a type we have reasoned is not good cause. (*Southern California Edison*, Cal/OSHA App. 08-9062, Denial of Petition for Reconsideration (Jan. 30, 2009); *Spreckles Sugar Co.*, Cal/OSHA App. 13-0945, Denial of Petition for Reconsideration (June 25, 2014).) In *Southern California Edison*, *supra*, a manager asked his assistant to file appeal documents with the Board, but she failed to do so timely. We held there that her failure to follow instructions combined with the manager's failure to inquire whether she had done so was not good cause for the late appeal. In *Spreckles Sugar*, *supra*, one employee entered an incorrect date for a Board proceeding, left the company, and his error was not discovered until after the date had passed. There, too, we held that the failure of employees to take proper care in the handling of the appeal was not good cause. As we have often stated, employers appealing Division actions to the Board "are required to handle their appeals with the degree of care a reasonably prudent person would undertake in the conduct of its most important legal affairs." (*Mountain Cascade Inc.*, Cal/OSHA App. 2012-9096, Denial of Petition for Reconsideration (Sep. 26, 2012).)

We hold, therefore, that Employer has not complied with the requirements in the Labor Code for filing a petition for reconsideration, and that it has not shown that the failure to appear was reasonable and for good cause.

DECISION

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

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: APRIL 13, 2015