

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

In the Matter of the Appeal of:

HOFFMAN'S FOOD MANAGEMENT
COMPANY, LLC
1102 Pacific Ave.
Santa Cruz, CA 95060

Employer

Docket. 12-R6D7-9156

**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 Hoffman's Food Management Company, LLC (Employer).

JURISDICTION

Commencing on April 4, 2012, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On May 11, 2012, the Division issued two citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹

Employer initiated its appeal by telephone call to the Board on June 20, 2012, and perfected its appeal by mailing a completed appeal form to the Board on June 26, 2012.²

On August 3, 2012 the Board wrote both parties. The letter to Employer stated that its appeal appeared to be late, and further informed Employer that a declaration showing the late appeal was reasonable and for good cause was required. The letter to the Division requested proof of service of the citations on Employer. Employer responded but included no substantive statement.

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

² "Completed appeal form" is defined in Board Regulation section 347(e).

The Division provided proof that the citations were mailed on May 11, 2012 and received on May 14, 2012.

On December 5, 2012, an Administrative Law Judge (ALJ) of the Board issued an Order Denying-Dismissing Late Appeals (Order).

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUE

Did Employer establish good cause for its late appeal?

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).) We will, however, construe Employer's petition in its favor as asserting that the evidence does not support the findings of fact and/or the findings do not support the Order.

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

substantial evidence in the record as a whole and appropriate under the circumstances.

After being notified that its appeals were late and informed that the appeals were subject to dismissal unless it provided a statement showing good cause, Employer submitted merely a declaration stating that all statements it had made were true. As the Order pointed out, there were no substantive statements at all accompanying Employer's response, therefore nothing upon which to make a determination of good cause. The ALJ accordingly denied late appeals and dismissed.

Employer's petition states that the explanation for the late appeal was inadvertently omitted from its response to the Board's August 3, 2012 letter. The petition indicates that Employer believed that if it came into compliance with the requirements of the safety orders it was alleged to have violated there would be no penalty assessed. Employer further believed it was unnecessary to appeal once it came into compliance.³

To the contrary, it is well established in Board precedent that misunderstanding the appeal process is not good cause for a late appeal. (*19th Auto Body Center*, Cal/OSHA App. 94-9001, Denial of Petition for Reconsideration (Apr. 13, 1995).)

DECISION

For the reasons stated above, the petition for reconsideration is denied, and the penalty for Citation 2 of \$6,300.00 is affirmed.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: March 7, 2013

³ Employer's petition explains that it has provided a guard for the bread sheeter, the device which was the subject of Citation 2, which alleged an unguarded point of operation in violation of section 3999(b).