

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

In the Matter of the Appeal of:

INTERNATIONAL PITA BREAD, INC.  
2730 Fawn Circle  
La Verne, CA 91750

Employer

Docket 14-R4D1-9153

**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 International Pita Bread., Inc. (Employer).

**JURISDICTION**

On September 19, 2014, a representative of Employer telephoned the Board and initiated an appeal of citations issued by the California Division of Occupational Safety and Health (Division) alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.<sup>1</sup>

The Board sent Employer's representative a letter on September 22, 2014 acknowledging Employer's appeal initiation and providing information on the steps necessary to perfect the appeals. Among other items, the Board's letter informed Employer's representative that it was necessary to submit to the Board a completed appeal form and a copy of the entire citation package for each citation being appealed within 10 calendar days of the date of the Board's letter. The Board's letter further stated: "**Failure to meet this deadline constitutes grounds for dismissal of your appeal.**" (Original emphasis.)

No response was received from Employer or its representative.

On October 24, 2014, the Board's Executive Officer issued an Order Dismissing Appeal (Order) in view of that lack of response.

Employer timely filed a petition for reconsideration.

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<sup>1</sup> References are to California Code of Regulations, Title 8 unless specified otherwise.

The Division did not answer the petition.

### **ISSUES**

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

Did Employer establish good cause for its failure to perfect its 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)
- (d) That the evidence does not justify the findings of fact.
- (e) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (f) 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).) Here we liberally construe Employer's petition as asserting that the findings of fact 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 a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

#### **I. The Petition Does Not Satisfy Applicable Statutory Requirements.**

The Labor Code mandates a series of requirements which must be satisfied by a petition for reconsideration. Labor Code section 6616, among

other provisions, requires a petition to “be verified under oath[.]” which was not done in this case. Labor Code section 6619 requires that the petitioner provide the Board with proof that the petition was served on the other party or parties to the proceeding. Employer has not provided the Board with proof that it has served its petition on the Division. Failure to satisfy either the verification or service requirement, or both, is grounds to deny the petition. (*Aero-Vac Alloys and Forge, Inc.*, Cal/OSHA App. 11-9135, Denial of Petition for Reconsideration (Oct. 5, 2011).)

II. Employer Did Not Establish Good Cause for Failure to Perfect Its Appeal.

Board regulations permit an appeal to be commenced by telephoning the Board to indicate one’s intent to appeal a citation or citations, as Employer did in this proceeding. (Board regulation § 359.) In such an event, Board regulation section 359.1(b) further requires that a completed appeal be submitted within 10 days. That requirement was pointed out to Employer in the Board’s September 22, 2014 letter acknowledging its telephone call. Board regulation section 347(e) defines “completed appeal form” to mean a fully filled out form to which is attached a copy of the citation being appealed.

No documents were received by Employer in response to the Board’s September 22, 2014 letter.

When Employer filed the document we here treat as its petition for reconsideration, it included appeal forms appealing three citations, but failed to send copies of the citations themselves. Thus, Employer has still not filed a “completed appeal form” for any of the three citations at issue, which is an independent reason to deny its petition. (Board regulations §§ 359.1(b), 347(e).) Further, even if Employer had sent completed appeal forms with its petition, doing so at that time would not be sufficient to cure the prior failure to do so. (*Murray Company*, Cal/OSHA App. 07-9190, Denial of Petition for Reconsideration (Nov. 14, 2007).)

Lastly, though we need not decide on this basis, we point out that the reason advanced in Employer’s petition for its failure timely to respond to the Board’s September 22, 2014 letter was “confusion” of the paperwork involving a separate appeal. Misunderstanding the appeal process is not good cause for a late appeal or failure to adhere to appeal procedures. (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001); see *Murray Company*, *supra*.)

**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: December 31, 2014