

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

In the Matter of the Appeal of:

NORTHWOOD DESIGN PARTNERS, INC.
1201 San Luis Obispo Street
Hayward, CA 94544

Employer

Docket 12-R1D4-9021

**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 Northwood Design Partners, Inc. (Employer).

JURISDICTION

Commencing on July 17, 2012, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On September 19, 2012, the Division issued three citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹ On September 24, 2012 Employer received the citations by certified mail and signed the acknowledgement of receipt.

Employer untimely initiated its appeals by telephone call to the Board on November 7, 2012.

After Employer's telephone initiation, the Board determined that appeals were late and informed Employer that they would be dismissed unless it provided a verified declaration establishing good cause for the late appeals.

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

Employer submitted a verified declaration in response. An Administrative Law Judge (ALJ) of the Board determined Employer's response did not establish good cause for the late appeals and on March 7, 2013, issued an Order Denying Leave to File Late Appeal (Order)

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUE

Whether Employer has established good cause for its late appeals.

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 contends the evidence does not justify the findings of fact and 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 substantial evidence in the record as a whole and appropriate under the circumstances.

Labor Code section 6600 provides that an employer must appeal a citation issued by the Division within 15 working days of receipt of the citation. Labor Code section 6601 further provides that if an employer does not appeal within that time the citation becomes final by operation of law, and further that the Board may extend the appeal period "for good cause."

Employer received the subject citations on September 24, 2012. The statutory deadline for filing its appeal was October 15, 2012. Employer's initial communication to the Board indicating its intent to appeal was made by telephone on November 7, 2012, 23 days after expiration of the appeal deadline.

In its first response to notice from the Board that its appeals were late and subject to dismissal unless it established good cause, Employer replied that it either misunderstood the appeal process or was misinformed by the Division regarding the time allowed for filing its appeals. The ALJ's Order held that Employer's proffered explanation did not equate to good cause.

We agree with that holding. First, "Citation and Notice of Penalty," the documents sent to Employer informing it of the alleged violations, have been held to be legally sufficient to put Employer on notice of its rights and obligations respecting appeals. (*Murray Company v. California Occupational Safety and Health Appeals Board* (2009) 180 Cal.App.4th 43; *Sculpt Gardens, Inc.*, Cal/OSHA App. 11-9108, Denial of Petition for Reconsideration (Sep. 14, 2011).) For example, the Citation and Notification of Penalty received by Employer state, *inter alia*, on page 1, "**YOU HAVE A RIGHT** to contest this Citation and Notification of Penalty by filing an appeal with the Occupational Safety and Health Appeals Board. To initiate your appeal, you **must** contact the Appeals Board, in writing or by telephone, within 15 working days from the date of receipt of this Citation." (Original emphases.) On page 2 there is a line reading "**APPEAL RIGHTS**" (original emphasis) followed by a paragraph stating, *inter alia*, "The Appeals Board is a separate entity from the Division of Occupational Safety and Health (Division) [.] To initiate an appeal from a Citation and Notification of Penalty, you must contact the Appeals Board, in writing or by telephone, within 15 working days from the date of receipt of a Citation." Page 2 also includes the following two sentences: "Failure to file a completed appeal form with the Appeals Board may result in dismissal of the appeal." and, "An informal conference with the Division does not constitute an appeal and does not stay the 15 working day appeal period." (Original underlining.) Consistent with the quoted statements for the Citation and Notification of Penalty, we have held that waiting to hold an informal conference with the Division before filing an appeal is not good cause for a late appeal. (*Equity Windows & Siding, Inc.*, Cal/OSHA App. 11-9061, Denial of Petition for Reconsideration (Jun. 2, 2011).) Further, regarding Employer's admitted possible misunderstanding of the appeal process; such 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).)

In its petition for reconsideration Employer changes the rationale it advances in its attempt to establish good cause. It now claims that the inspector's initial conduct during the inspection was improper, and further seeks to blame the inspector for misleading it regarding the time allowed to appeal.

We are troubled by the change in emphasis at this stage. Had Employer believed its assertions in the petition to have been the true cause for his late appeals, it seems Employer would have made those points in its initial response to the ALJ. Also, Employer admits in its

petition for reconsideration that the “inspection did uncover several violations,” which “were corrected within two days[,]” though also stating Employer’s belief they “are redundant charges.” (Petition, p. 2.)

In view of the information provided to Employer in the Citation and Notification of Penalty, Employer’s inconsistent contentions in its attempts to show good cause for the late appeals, admissions of having committed violations, and applicable case authority and Board precedent, we hold that Employer has failed to establish good cause for its late appeal.

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: MAY 24, 2013