

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

In the Matter of the Appeal of:

PAUL DOMINGUEZ, BUILDING
CONTRACTOR INC.
P.O. Box 145
Morgan Hill, CA 95038

Employer

Docket No. 2014-R6D7-9193

**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 Paul Dominguez, Building Contractor Inc. (Employer).

JURISDICTION

Commencing on or about November 2014, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On or about November 7, 2014, the Division issued a citation to Employer alleging four violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹

Employer timely initiated its appeal by telephone call to the Board on November 20, 2014.² The Board acknowledged Employer's telephone call by letter on November 24, 2014. That letter informed Employer of the actions it was required to take to perfect its appeal and the time within which to do so. No response was received from Employer.

On January 16, 2015 the Executive Officer of the Board issued an Order Dismissing Appeal (Order). The Order stated that Employer had initiated its appeal, that the Board acknowledged the initiation, and that no further

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

² The record does not clearly indicate whether the appeal was timely, though indications are it was so. We give Employer the benefit of the doubt and assume the appeal was commenced within the time prescribed by Labor Code section 6601.

response or documents had been received from Employer. Accordingly, Employer's appeal was dismissed.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUE

Did the Order err in dismissing Employer's 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], and 6617; *Security Paving, Inc.*, Cal/OSHA App. 13-0771, Denial of Petition for Reconsideration (Dec. 31, 2014); *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).)

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 establishes the following facts:

- (1) The Board's November 24, 2014 letter to Employer informed it that to perfect its appeal Employer was required to submit a filled in appeal form and a copy of the citation it was appealing.
- (2) The letter further instructed Employer to provide those documents to the Board within ten days of November 24, 2014, and stated that **"Failure to meet the deadline constitutes grounds for dismissal of your appeal."** (Original emphasis.)
- (3) At no time has Employer complied with the requirements of the Board's November 24, 2014 letter; we have never received from Employer a completed appeal form or a copy of the citation at issue.

Failing timely to furnish a copy of the citation being appealed is grounds to dismiss an appeal. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43, (hereafter *Murray*.) In *Murray, supra*, the cited employer did not perfect its appeal by sending the Board copies of the citations at issue. When the appeal was dismissed, as here, for failure to furnish the required documents, Murray Company filed a petition for reconsideration and included copies of the citations with its petition. The Board held that submitting a copy of the citations at issue for the first time with one's petition for reconsideration was not timely and denied reconsideration. (*Murray Company*, Cal/OSHA App. 07-9190, Denial of Petition for Reconsideration (Nov. 14, 2007).) Murray Company sought judicial review of the Board's denial. Subsequently both the superior court and the Court of Appeal affirmed the Board's decision. (*Murray, supra*, 180 Cal.App.4th 43.)

We hold here that since it is not sufficient or timely to provide for the first time copies of the citations being appealed with a petition for reconsideration, then neither is it sufficient to seek reconsideration without ever furnishing us a copy of the citation which is the subject of the appeal. (See *Murray, supra*, 180 Cal.App.4th 43.)

Moreover, Employer offers no explanation for the failure to perfect its appeal or provide us a copy of the citation at issue, and instead argues the merits of the citation. We have reasoned that arguing the merits of a citation in a petition for reconsideration when the appeal itself has been dismissed due to the employer's failure to perfect the appeal is not appropriate. (*Vista Construction*, Cal/OSHA App. 14-9015, Denial of Petition for Reconsideration (May 13, 2014).) We apply that reasoning here.

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 8, 2015