

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

In the Matter of the Appeal of:

RYLAND HOMES  
49 Discovery, Suite 250  
Irvine, CA 92618

Employer

Docket. 14-R3D2-9164

**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 Ryland Homes (Employer).

**JURISDICTION**

Commencing at a time not indicated in the record, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On a later date also not known from the record, the Division issued a citation to Employer alleging three violations of occupational safety and health standards codified in California Code of Regulations, title 8.<sup>1</sup>

Employer commenced its appeal of the citation by telephone call to the Board on September 30, 2014

The Board sent Employer a letter on October 1, 2014, acknowledging Employer's phone call and informing Employer of the steps it was required to take to proceed with its appeal, and the time within which to do so, "10 calendar days from the date" of the Board's letter. No response was received from Employer.

On November 10, 2014, the Executive Officer of the Board issued an Order Dismissing Appeal (Order) in light of the lack of response from Employer.

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

Employer timely filed a petition for reconsideration.

The Division answered the petition.

### **ISSUE**

Whether to grant Employer's petition to reopen it 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).)

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.

As noted above, Employer did not respond to the Board's October 1, 2014 letter. After receiving the Order in November 2014, Employer sent the Board a letter (deemed a petition for reconsideration of the Order) to which it attached a statement of abatement which had apparently been provided to the Division at some earlier time. Employer's petition states that it participated in an informal meeting with a Division representative, and that further information was submitted addressing one of the alleged violations. Employer states that no response was received from the Division. The petition also

states: “My intention was to immediately pay the fines once the citations were finalized and a final decision was rendered.” Thus, Employer appears to admit the violations occurred.

Board regulations authorize an employer to initiate the appeal process by communicating to the Board a desire to appeal the Division action it seeks to challenge. (Board regulation § 359(a).) Board regulations further provide that if an appeal is initiated by other than the filing of an appeal form, a completed appeal form must be filed with the Board within 10 days of the Board’s written acknowledgement of the initiating communication. (Board regulation § 359.1(b).)

The Board’s October 1, 2014 letter to Employer informed it of the steps necessary to complete the filing of its appeal. One of the requirements Employer needed to satisfy was to send to the Board a filled out appeal form, and another was to send a copy of the “entire citation packet” with its appeal form. The Board’s letter included notice that failure to complete the process within the time allowed “**constitutes grounds for dismissal of your appeal.**” (Original emphasis.)

The “citation packet,” among other items, puts employers on notice that it must file its appeal with the Board, and that holding an informal conference with the Division does not protect its right to appeal. The information in the citation packet has been held to be legally sufficient to put employers on notice of their legal rights and responsibilities. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4<sup>th</sup> 43.) Employer has never provided the Board with a copy of the citation it is appealing, which is grounds to deny the petition. (*Id.*)

The citation packet also put Employer on notice that scheduling and participating in an informal conference with the Division is not sufficient to protect its appeal rights. (See *PCC Logistics*, Cal/OSHA App. 09-9059, Denial of Petition for Reconsideration (Apr. 17, 2009).)

It also appears Employer may have confused completing the appeal process with submitting a statement of abatement. We have reasoned that a misunderstanding the appeal process is not good cause for reinstating an appeal. (*19th Auto Body Center*, Cal/OSHA App. 94-9001, Denial of Petition for Reconsideration (Apr. 13, 1995).) We apply that reasoning here. Further, Employer has never, even with its petition for reconsideration, filed a completed appeal form, which itself is grounds to deny its petition. (Board regulation §§ 347(e) [definition of “completed appeal form”] and 359.1(a).)

## **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: January 13, 2015