

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

In the Matter of the Appeal of:

S&D CARWASH NORTHGATE, LLC
P. O. Box 2703
Carmichael, CA 95609

Employer

Docket. 13-R2D1-9210

**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 S&D Carwash Northgate, LLC (Employer).

JURISDICTION

Commencing on July 25, 2013, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On October 21, 2013, 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 timely initiated its appeals by telephoning the Board and stating its intent to appeal on November 7, 2013. The Board acknowledged Employer's telephone call by letter on November 8, 2013, and further informed Employer that it was required to send filled out appeal forms and a copy of the entire citation packet to the Board within 10 calendar days of the date of the Board's letter. No response was received from Employer.

On December 18, 2013, the Executive Officer of the Board issued an Order Dismissing Appeal (Order) because Employer had not responded to the Board's November 8, 2013 letter.

Employer timely filed a petition for reconsideration.

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

The Division did not answer the petition.

ISSUE

Was the Order correct in dismissing Employer's 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 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).) Construing the petition in the light most favorable to Employer, however, it may be deemed to assert that the evidence does not support the findings of fact.

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.

Employer admits it made a mistake in handling its appeals. It sent a confirmation of abatement to the Division in the apparent belief that doing so was filing appeal forms with the Board. That misunderstanding was unreasonable; we have held that the information in the appeal packet is legally sufficient to put a cited employer on notice of its rights and obligations in the appeals process. (*Facundo Carrillo dba Happy's Autobody & Paint Shop*, Cal/OSHA App. 13-9065, Denial of Petition for Reconsideration (Aug. 16, 2013), citing *Murray Company v. California Occupational Safety and Health*

Appeals Bd. (2009) 180 Cal.App.4th 43.) Board precedent also states that misunderstanding the appeal process is not good cause for reinstatement of an appeal. (*19th Auto Body Center*, Cal/OSHA App. 94-9001, Denial of Petition for Reconsideration (Apr. 13, 1995).)

Employer filed completed appeal forms with its petition for reconsideration. Filing filed in appeal forms and the citation packet for the first time when one files its petition for reconsideration has been held not grounds to reinstate an appeal. (*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: MARCH 5, 2014