

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

In the Matter of the Appeal of:

STARSLIDE SECURITY AND INVESTIGATION
1930 S. Brea Canyon Rd., Ste. 220
Diamond Bar, CA 91765

Employer

Docket. 14-R3D3-9136

**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 Starside Security and Investigation (Employer).

JURISDICTION

Commencing on October 18, 2013 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On January 10, 2014 the Division issued two citations to Employer alleging a total of nine violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹

Employer initiated its appeals by telephoning the Board on July 18, 2014 and indicating its intention to appeal the citations. The Board acknowledged Employer's call by letter on July 21, 2014.

Employer sent completed appeal forms and copies of the citations to the Board, which was received on August 4, 2014.

The Board responded by letters to the parties on August 12, 2014. The Board's letter to Employer informed it that the appeals appeared to be untimely. That letter further informed Employer that if the appeals were late the appeals could be accepted provided Employer provided a declaration establishing that the lateness was reasonable and for good cause. The Board's

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

letter to the Division requested verification that the citations were delivered to Employer as required by statute and the date of delivery.

The Division provided documentation establishing that the citations had been sent to Employer by certified mail as required and received on January 15, 2014.

No response to the Board's August 12, 2014 letter to Employer was received. Accordingly, on September 30, 2014 the Board's Executive Officer issued an "Order Dismissing Appeal" (Order).

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUE

Did Employer established that its late appeal was reasonable and for good cause?

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.

Employer received the citations on January 13, 2014 at its offices in California. Its appeal documents were received at the Board on August 4, 2014. Labor Code section 6601 provides in pertinent part that a cited employer must appeal the citation or citations within fifteen working days of when it receives the citation(s). Employer was required to initiate or file its appeal on or before February 6, 2014. Employer therefore was approximately six months late in appealing. Labor Code section 6601 also provides that a citation which is not appealed in time becomes a final order of the Board, not subject to review by any court. The Board may extend the appeal period for good cause shown.

The reasons given for the late appeal do not establish that the late appeal was reasonable and for good cause. It appears Employer did not act on the citations until it received “the notice to try an (sic) levy Starside for Los Angeles Superior Court.” It further appears that it was after Employer received the court papers that it contacted the Division’s inspector regarding the citations.

The alleged violations occurred in Parker Dam, California. Employer asserts that Parker Dam (the dam itself, not the municipality) is on federal land on the border of California and Arizona. The dam sits astride the Colorado River and straddles the state line, which in the area runs in the river channel, though it is not known if the land is federal, state, private or some combination.

It is also not clear from the petition where the guard shack and other facilities or office(s) which are guarded by Employer are located. Labor Code section 6616 states a petition for reconsideration “shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order . . . to be unjust or unlawful[.]” Viewed in the light most favorable to Employer, we deem its claim to include those areas or facilities as to which it provides security services. We will then take official notice of the area involved, as it includes fixed geographical locations and features and the boundary between Arizona and California. (Evid. Code §§ 451, 452.) From Google Maps, it appears that except for the dam itself, the associated facilities and installations are all on the California side of the Colorado River. The power plant is in California, and the petition does not argue that the alleged violations occurred in Arizona or that the location in question is solely subject to federal jurisdiction. (See Labor Code § 6618 [issues not raised by petition waived].) Given that there are various dam-related facilities in California, that the municipality of Parker Dam, California has a zip code, and that the citations

appear to have been issued with respect to (alleged) violations observed in California, it may be deduced that the Division had jurisdiction to issue the citations.

Employer petitions on the basis that it believed “everything was handled, and was told by the inspector that the case was closed.” Even granting that Employer abated the alleged violations, the petition does not make clear when it did so or when it contacted the inspector. Nor is it revealed when the inspector allegedly made the attributed statement. It may well have been after the notice of levy was received, as pointed out above. For example, if Employer contacted the inspector after the appeal period had expired, the inspector would have been technically correct in stating the case was “closed,” as the unappealed citations had become “final order[s]” of the Board. (Labor Code § 6601.)

We have frequently reasoned that misunderstanding the appeal process is not good cause for a late appeal. (*Mohammed Arshad dba A & Z Auto Body Shop*, Cal/OSHA App. 11-9204, Denial of Petition for Reconsideration (Jan. 20, 2012).) That reasoning applies to the present circumstances. It appears that Employer believed that abating the alleged violations and/or referring the problems to the federal Bureau of Reclamation because it believed “some of the violations were [the Bureau’s]” was sufficient to resolve the citations. This is not correct; having been cited, Employer had to file appeals with the Board in a timely fashion to preserve its legal rights. (Labor Code § 6601.) The citation package so informs Employer of its legal rights and obligations including its right to appeal and the time within which to do so. That information has been held to be legally adequate to put employers on notice of their rights and obligations. (*Murray Company v. California Occupational Safety and Health Appeals Bd.* (2009) 180 Cal.App.4th 43.)

Even though we have considered, above, the factual points raised by Employer with allowance for their lack of clarity, the petition is still deficient because it does not satisfy the requirements of Labor Code section 6616 to “set forth specifically and in full detail the grounds upon which” Employer contends the Order was in error. Failure to do so is grounds to deny the petition. (*Luis Michel dba Luis Cueva Michel*, Cal/OSHA App. 08-9147, Denial of Petition for Reconsideration (May 28, 2008).) And, taken in its entirety the petition may fairly be read to show that Employer took no action to appeal the citations until the notice of levy arrived because it incorrectly believed its discussions with the Bureau of Reclamation and the Division, as well as its own actions in abatement, resolved the matter.

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 19, 2014