STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

In the Matter of the Request for Review of:

Silver Creek Industries, Inc.,
Gary M. Garcia dba Garrett Construction

Case Nos: **22-0231-PWH**
22-0278-PWH

From a Civil Wage and Penalty Assessment issued by:

Division of Labor Standards Enforcement

DECISION OF THE DIRECTOR OF INDUSTRIAL RELATIONS

Affected prime contractor Silver Creek Industries, Inc. (Silver Creek) and subcontractor, Gary M. Garcia dba Garrett Construction (Garcia), each submitted a Request for Review of the Civil Wage and Penalty Assessment (Assessment) served by the Division of Labor Standards Enforcement (DLSE) on June 24, 2022, with respect to work performed by Garcia for the Manhattan Beach Unified School District (Awarding Body) in connection with the Grand View Modernization (Project) located in Los Angeles County. The Assessment asserted that $41,144.01 in unpaid wages and $13,550 in penalties were owed.

The Enforcing Agency, DLSE, sought to have each Request for Review dismissed for untimeliness, and in the case of Silver Creek, because the Request for Review was deficient. Pursuant to California Code of Regulations, title 8, section 17227, on February 8, 2023, the appointed Hearing Officer, Mirna Solis, served an Order to Show Cause Why Request for Review Should Not Be Dismissed (OSC). Section 1742, subdivision (a), mandates that a request for review be transmitted to the Labor Commissioner within 60 days after service of the Assessment.[1]

For the reasons stated below, I find that the time limit for requesting review is mandatory and jurisdictional, and that Garcia's Request for Review was not filed timely. Accordingly, Garcia's Request for Review must be dismissed. Silver Creek filed the

[1] All statutory references are to the Labor Code unless otherwise specified.

Request for Review timely and the Request for Review was sufficient under Rule 22, subdivision (e) [Cal. Code Regs., tit. 8, § 17222, subd. (e)].[2] Therefore, the Silver Creek matter, case no. 22-0231-PWH, is remanded to the Hearing Officer for further proceedings.

FACTS

DLSE served the Assessment on Silver Creek and Garcia on June 24, 2022. (Certificate of Service of Civil Wage and Penalty Assessment.) Silver Creek transmitted a written request to the Labor Commissioner's Civil Wage and Penalty Assessment Review Office dated and postmarked July 19, 2022. The written request stated:

> To Whom it May Concern:
>
> By way of introduction, I'm the In-House Counsel for Silver Creek Industries, LLC. This correspondence shall serve as Silver Creek's request to be present at and participate [in a] formal hearing set for the above referenced matter.
>
> Your continued cooperation is appreciated.
>
> Sincerely, ...

Garcia's Request for Review was postmarked September 2, 2022. Twenty-five days elapsed between the date DLSE served the Assessment and the date Silver Creek transmitted its request. Seventy days elapsed between the date DLSE served the Assessment and the date Garcia transmitted his request.

Notice of the right to seek review is found at the top of page three of the Assessment. The notice states in part:

> **Notice of Right to Obtain Review – Formal Hearing**
>
> In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the

[2] For ease of reference, individual sections of the Department of Industrial Relations prevailing wage hearing regulations found at California Code of Regulations, title 8, section 17201 et seq., are referred to as "Rules" using only their last two digits. (Rule 01, subd. (d).)

Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner – State of California
Civil Wage and Penalty Assessment Review Office
PO Box 32889
Long Beach, CA 90832

On January 27, 2023, DLSE filed a Motion to Dismiss each Request for Review based on untimely filing and for failure to file a proper Request for Review. DLSE argued Silver Creek's Request for Review should be dismissed because it made "[n]o actual request for review contained in [its] letter," failed to state the basis for contesting the Assessment, failed to refer to the Assessment's date, and did not include a copy of the Assessment. DLSE argued Garcia's Request for Review should also be dismissed as untimely because it was filed 69 days after service of the Assessment. DLSE argued further that Garcia's Request for Review did not state a basis for challenging the Assessment other than asserting that Silver Creek failed to pay them and, therefore, he could not pay his workers.

On February 8, 2023, the appointed Hearing Officer, Mirna Solís, served both Requesting Parties with an Order to Show Cause (OSC) why their Request for Review should not be dismissed. The Requesting Parties were afforded until February 27, 2023, to respond to the OSC. Also, the matter was scheduled for a Prehearing Conference on March 13, 2023.

Neither Requesting Party responded to the OSC. In addition, they did not appear at the Prehearing Conference.

DISCUSSION

Section 1742 mandates that a written request for review be transmitted to the office of the Labor Commissioner that appears on the Assessment within 60 days after service of the Assessment. If no hearing is requested within that period, "the assessment shall become final." (§ 1742, subd. (a).) Rule 22, subdivision (a), restates the 60-day filing requirement, and expressly provides that, "Failure to request review within 60 days shall result in the Assessment . . . becoming final and not subject to further review under these Rules."

Rule 27 governs the early disposition of a request for review that appears untimely. Under the rule, the hearing officer issues an order to show cause why the request for review should not be dismissed as untimely under section 1742. The order is served on all parties and provides the parties an opportunity to respond to the order and to reply to any submission by any other party. Evidence in support or opposition to the order is submitted by affidavit or declaration. (Rule 27, subds. (a) and (b).) There is no right to an oral hearing under the rule. (*Id.* subds. (b) and (c).) The rule expressly authorizes the Director to dismiss a Request for Review that is untimely under section 1742. (*Id.* subds. (c) and (d).)

This case proceeded under Rule 27. The Hearing Officer issued an OSC. Neither Requesting Party filed a response.

The evidence in the record established that the last day to transmit a written request for review in this matter was August 29, 2022.[3] The Assessment became final on August 29, 2022. Therefore, under section 1742, Silver Creek's Request for Review transmitted on July 19, 2022, was timely. However, Garcia's Request for Review transmitted on September 2, 2022, was untimely. The Director is without jurisdiction to proceed on the untimely Request for Review. (§ 1742, subd. (a); Rule 22, subd. (a); see also *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831 [where the time for filing is mandatory and jurisdictional, a late filing may not be excused on the grounds of

[3] The Assessment issued on June 24, 2022. The sixtieth day following service of the Notice was August 23, 2022. When service of the Assessment is by first class mail, the right to request review is extended by five days. (Rule 03, subd. (c).) The 65th day after June 24, 2022, was August 28, 222. Since August 28, 2022, was a Sunday, the last day to transmit the Request for Review was extended to the next Working Day, Monday, August 29, 2022. (Rule 03, subd. (a).)

mistake, inadvertence, or excusable neglect]; *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489 [same].)

Had Garcia filed a Request for Review timely, he would have vested the Director with jurisdiction to review the Assessment and to conduct a hearing as necessary. Garcia failed to do so. The time limit is mandatory and jurisdictional, and accordingly, the Assessment is final as to Garcia. (§ 1742, subd. (a).)

Silver Creek's Request for Review was Sufficient Under Rule 22.

DLSE's remaining arguments do not support dismissal of Silver Creek's Request for Review. Rule 22, subdivision (e) states:

> A Request for Review either shall clearly identify the Assessment or Notice from which review is sought, including the date of the Assessment or Notice, or it shall include a copy of the Assessment or Notice as an attachment. A Request for Review shall also set forth the basis upon which the Assessment or Notice is being contested. A Request for Review shall be liberally construed in favor of its sufficiency; however, the Hearing Officer may require the Party seeking review to provide a further specification of the issues or claims being contested and a specification of the basis for contesting those matters.

DLSE argued Silver Creek's Request for Review should be dismissed for failure to do the following: (1) specify it sought a "request for review"; (2) state the basis for challenging the Assessment; (3) refer to the Assessment's date; and (4) did not include a copy of the Assessment. Notwithstanding, Rule 22, subdivision (e), states that a request for review shall be liberally construed in favor of its sufficiency. Although Silver Creek failed to use the words "request for review," they sought a "formal hearing" and identified DLSE's case number. That was sufficient to identify an intent to challenge the Assessment and be heard.

Further, unlike Rule 22, subdivision (a), which specifically states that an untimely filed request for review is "not subject to further review under these Rules," subdivision (e) provides no consequence for failure to fully comply with the requirements of Rule 22, subdivision (e). Rather, subdivision (e) allows for a requesting party to cure any deficient request for review by filing additional information concerning the requesting party's contentions with respect to the assessment. Accordingly, DLSE's Motion to Dismiss Silver Creek's Request for Review is denied.

Based on the foregoing, the Director makes the following findings:

FINDINGS

1. Gary M. Garcia dba Garrett Construction did not timely request review of the June 24, 2022, Civil Wage and Penalty Assessment.
2. The Civil Wage and Penalty Assessment became final on August 29, 2022.
3. The Director has no jurisdiction to proceed on the untimely filed Request for Review by Garcia.
4. Silver Creek Industries, Inc., filed a timely Request for Review of the Civil Wage and Penalty Assessment served by DLSE on June 24, 2022.
5. Silver Creek Industries, Inc.'s Request for Review was sufficient to identify an intent to challenge the Civil Wage and Penalty Assessment at a formal hearing on the merits.

ORDERS

Gary M. Garcia's Request for Review is dismissed. Case No. 22-0231-PWH, the Silver Creek Industries, Inc. Request for Review, is remanded to the Hearing Officer for further proceedings.

The Hearing Officer shall issue a Notice of Findings that shall be served with this Decision on the parties.

Dated: 6/30/26

Jennifer Osborn, Director
California Department of Industrial Relations