

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

In the Matter of the Appeal of:

**LOS ANGELES POLICE DEPARTMENT
100 W. FIRST STREET, MS 400
LOS ANGELES, CA 90012**

Employer

**Inspection No.
1599318**

**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 (Petition) filed in the above-entitled matter by the Los Angeles Police Department (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) started an inspection at a place of employment in California maintained by Employer on or about June 6, 2022. On November 23, 2022, the Division issued one citation to Employer alleging one regulatory and two general violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer timely appealed.

The matter was assigned to an administrative law judge (ALJ) of the Board for appeal proceedings. The record shows that Employer failed to participate in a duly noticed status conference before the ALJ on September 2, 2025, and failed to make a showing that the failure to appear was for good cause. Accordingly, on September 12, 2025, the ALJ issued an Order Dismissing Appeal for Failure to Appear (Order). The Order noted that Employer had failed to appear at an earlier status conference on February 26, 2024. The Order provided Employer the opportunity to establish that its failure to appear was for good cause, stating that Employer had 15 days to respond, and that if Employer failed to respond in that time the Order would become final. In addition, the Order stated that Employer had the opportunity to file a petition for reconsideration within 30 days from the date the Order became final. Employer did not file a response to the Order and instead timely filed its Petition with the Board.

The Division did not answer the Petition.

ISSUE

Did Employer establish good cause for its failure to appear?

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

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. We have taken no new evidence.

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.

The Petition states none of the statutory grounds upon which reconsideration may be granted, which is one basis for denying the Petition. (Lab. Code § 6617; *Busy Bee Painting, Inc.*, Cal/OSHA App. 1701088, Denial of Petition for Reconsideration (Feb. 6, 2025).) In such circumstances the Board will construe a petition in a manner favorable to the employer. (See *Lead Reclamation Services*, Cal/OSHA App. 1120934, Denial of Petition for Reconsideration (June 20, 2017).)

The record shows that the status conference was properly noticed, and that Employer did not appear.

Beyond a summary two page document requesting permission to file a petition for reconsideration, Employer's Petition consists of declarations by a Deputy City Attorney, a City Attorney Coordinator II, and a Senior Personnel Analyst, all for the City of Los Angeles. The declarations state that Employer indicated that it elected U.S. Postal Service as the preferred method of service when it filed its appeal form with the Board, and included three identical copies of the form with the declarations. That appeal form was signed by the Deputy City Attorney who was one of the three declarants and dated December 27, 2022.

The appeal form dated December 27, 2022, (December 27 form) was never received by the Board prior to being included as an exhibit to Employer's Petition. The appeal form which is part of the record in this matter is an appeal form signed and dated December 28, 2022, (December 28 form) and date-stamped as received by fax on December 30, 2022. The December 28 form selected email as the preferred method of service from the Board. We further note that the December 27 appeal form was prepared using an outdated version of the Board's appeal form (Rev 9/16), and the December 28 form used the then-current version (Rev 10/20).

Labor Code section 6611 provides that an employer's failure to appear is grounds to dismiss the appeal unless employer demonstrates that the failure was for good cause. (*Fabrication*

Technologies Industries, Inc., Cal/OSHA App. 1437646, Denial of Petition for Reconsideration (Feb. 22, 2021).)

It is the employer’s burden to establish that its failure to appear was for good cause. (*Kevin Semien*, Cal/OSHA App. 13-1499, Denial of Petition for Reconsideration (May 21, 2014).) The Board has held that good cause means “a substantial reason, one that affords a legal excuse.” (*Michael Muhareb dba Old Mill Caf *, Cal/OSHA App. 1763124, Denial of Petition for Reconsideration (May 6, 2025) (citation omitted).)

The Board has repeatedly stated that certain circumstances do not constitute good cause, including internal operating problems on the employer’s part which result in the employer not receiving time-sensitive communications. (*Fabrication Technologies Industries, Inc.*, *supra*, Cal/OSHA App. 1437646.) The Board’s long-established precedent is clear that failure to receive mail or email due to internal operating problems or miscommunications does not amount to good cause. (*Id.*)

The sole appeal form received by the Board selected email as the preferred method of service from the Board. It may well be that different people within Employer’s organization were attempting to respond to the citation by filing an appeal, and it is apparent that there was confusion and/or lack of communication among them such that only one of those possible attempts was submitted to the Board. Employer offers no explanation for that breakdown and misunderstanding. Employer also offers no explanation for which the Deputy City Attorney was not checking his email or why, if there had been an internal decision to change the person handling the appeal the Board was not informed of the change as required. (Board Regulation   355.1, subs. (b), (c).) Based on the foregoing deficiencies in Petitioner’s showing, Petitioner fails to demonstrate good cause.

Moreover, even if the appeal form dated December 27 had been received by the Board, it would have been superseded by the form dated December 28 and received by fax on December 30, 2022.

///

///

///

DECISION

For the reasons stated above, Employer's Petition is denied. The Order is affirmed.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin P. Kropke, Board Member



FILED ON: 11/20/2025