

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

In the Matter of the Appeal of:

**BOULAY CONSTRUCTION
2272 Sierra Meadows Dr., Ste. B
Rocklin, CA 95677**

Employer

Inspection Number

1625267

**DENIAL OF PETITION FOR
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Appeals Board or Board), acting pursuant to authority vested in it, and having previously taken Boulay Construction's (Boulay or Employer) Petition for Reconsideration (Petition) under submission, renders the following denial of the Petition filed by the Division of Occupational Safety and Health (the Division).

JURISDICTION

The Division opened its inspection of Employer on September 29, 2022, following a report of a serious injury suffered by an employee. On November 29, 2022, the Division cited Employer for violating three safety orders set forth in title 8 of the California Code of Regulations.¹ Citation 1, Item 1, asserted a Regulatory violation of section 342, subdivision (a) [failure to report a serious injury]. Citation 1, Item 2, asserted a General violation of section 3995, subdivision (i) [failure to establish, implement, and maintain a Heat Illness Prevention Plan (HIPP)]. Citation 2, Item 1, asserted a Serious violation of section 1621, subdivision (a) [failure to provide railings for employees working at height].

Employer filed a timely appeal of the citations and asserted affirmative defenses. After Employer appealed the citations, the Division asserts that it repeatedly requested Employer's accident investigation report, including any photos, only to be met with claims of privilege.

As part of the discovery process, on November 19, 2025, the Division took Donald J. Boulay's deposition. During the deposition Employer made several objections based on privilege.

Following the deposition the Division filed a Motion to Compel Discovery on December 17, 2025. Employer opposed the motion to compel. On February 10, 2026, the ALJ ordered Employer to produce the following:

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

1) All non-privileged or redacted documents and things responsive to document request numbers 1 through 3 of the Notice and Request, which are identified again in the Motion.

2) Written responses to the Division's deposition questions, enumerated as numbers 4 through 27 in the Division's Motion.

3) A Privilege Log for document request numbers 1 through 3 and deposition questions numbers 4 through 27 identifying all documents and redactions claimed to be protected by attorney client and work product privileges. The Privilege Log shall with specificity identify and provide:

- a. Bates numbers for the responsive item
- b. Type of item (interview, photograph, video, memorandum, report, etc.)
- c. A description of the item's contents
- d. The date of creation
- e. The particular person or persons who authored the item
- f. The recipient or recipients of the item
- g. The custodian of the item
- h. The action taken (redacted or withheld)
- i. The privileges or objections and application

On March 23, 2026, Employer contends it complied with the order compelling production.

On March 27, 2026, the Division filed a Motion to Enforce Discovery Order, alleging Employer failed to comply with the order compelling production. Employer opposed the motion to enforce. A hearing on the motion was held on April 24, 2026.

On May 11, 2026, the ALJ issued an Order granting the Division's Motion to Enforce Discovery Order, ordering Employer to provide written answers to deposition questions and photographs identified in Employer's privilege log.

On May 29, 2026, Employer filed its timely Petition challenging the ALJ's May 11, 2026, Order.

On June 16, 2026, the Division filed its own petition for reconsideration and an answer to Employer's May 29, 2026, Petition.

ISSUES

- 1) Does the Board have jurisdiction to consider the Division's petition for reconsideration?

REASONS FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6617 and its counterpart, section 390.1, set forth five grounds for a petition for reconsideration. Labor Code section 6617 states,

The petition for reconsideration may be based upon one or more of the following grounds and no other:

- (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 Division's petition for reconsideration is made on the grounds that the ALJ exceeded her powers in granting the amendment, the evidence does not justify the findings of fact, and the findings of fact do not support the Order. (petition for reconsideration, p. 3.)

DECISION

Labor Code section 6614, subdivision (a), establishes a 30-day period in which a party may file a petition for reconsideration. Section 348, subdivision (c), adds five additional days to file a petition for reconsideration when a decision is served by mail. The Board lacks jurisdiction to grant reconsideration of a late-filed petition. (*Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021) citing *Amerisk Engineering Corp.*, Cal/OSHA App. 1129146, Denial of Petition for Reconsideration (Dec. 21, 2018), citing Labor Code sections 5900 and 5903; *Nestle Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108; citing *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984.)

The Division had until June 15, 2026, to file its petition for reconsideration of the ALJ's May 11, 2026, Order. The Division filed its petition for reconsideration on June 16, 2026. The Division did not file its petition for reconsideration within the time required by law; therefore, we lack jurisdiction to consider it.

Despite the Division's petition for reconsideration being untimely filed, it was accompanied by a timely answer. Accordingly, we will consider all arguments made by the Division responsive to Employer's Petition to the extent that they were properly raised in the Answer. It is only the new relief requested by the Division in its petition for reconsideration over which we lack jurisdiction.

For the reasons stated above, the Division's petition for reconsideration is denied but its answer will be considered.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Ed Lowry, Chair ***ABSENT***

/s/ Judith S. Freyman, Board Member

/s/ Marvin Kropke, Board Member

FILED ON: 07/30/2026

