

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

In the Matter of the Appeal of:

**BUSY BEE PAINTING, INC.
3401 Citrus Street
Oxnard, CA 93036**

Employer

Inspection No.
1701088

**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 Busy Bee Painting, Inc. (Employer).

JURISDICTION

On October 27, 2023, the Division of Occupational Safety and Health (Division) issued Busy Bee Painting, Inc. (Employer) citations, including: Citation 1, Item 1, a Regulatory violation of section 14300.40, subdivision (a)¹ [failure to provide mandatory records to government representative]; Citation 1, Item 2, a General violation of section 3203 [failure to maintain effective Injury and Illness Prevention Plan]; Citation 1, Item 3, a General violation of section 3395, subdivision (i) [failure to establish implement or maintain heat illness prevention program]; Citation 2, Item 1, a Serious violation of section 1509, subdivision (a) [failure to identify and correct hazards before permitting employee to work on 12-foot high roof]; and Citation 3, Item 1, a Serious, Accident-Related violation of section 1670 [failure to ensure adequate guardrails or other fall protection at elevated locations] [collectively, the Citations].

Employer timely appealed the Citations, and the matter was assigned to ALJ Chernin.

On March 13, 2024, ALJ Chernin issued a Notice of Status Conference (Notice), scheduling a status conference for September 9, 2024, at 3:30 p.m. The Notice was served on Employer via U.S. Mail, in accordance with Employer's designated preference for service.

Employer failed to appear for the July 24, 2023, status conference.

On September 12, 2024, ALJ Chernin issued an Order Dismissing Appeal for Failure to Appear (Order). The Order stated that Employer "has not provided any sufficient explanation for its failure to appear." Further, the Order stated that the matter would be dismissed unless Employer provided "good cause or a compelling reason for not appearing" within 15 calendar days from the date of service. The Order was also served on Employer via U.S. Mail.

¹ Unless otherwise specified, references are to title 8 of the California Code of Regulations.

Employer did not respond to the Order.

On December 26, 2024, Employer filed a Petition for Reconsideration (Petition). Employer's Petition does not offer any explanation for Employer's failure to appear at the noticed status conference. Instead, the Petition disputes the merits of the citations. Employer submitted no other documents or evidence in support of its Petition.

ISSUE

Does the Board have jurisdiction to grant reconsideration?

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 assert any of the specific grounds for reconsideration set forth in Labor Code section 6617, which is by itself sufficient grounds to deny the Petition. (Lab. Code, §§ 6616-6617; *Arodz Motorsports, LLC, dba AI Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) Employer's Petition also does not address or attempt to explain Employer's failure to appear at the noticed status conference. Instead, Employer's Petition only disputes the merits of the underlying citations.

The Board has fully reviewed the record in this case, including the arguments presented in the Petition. We have taken no new evidence. We conclude the Petition must be denied.

Labor Code section 6614, subdivision (a), provides that a petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. We lack jurisdiction to grant reconsideration when a petition is filed late. (*Quintana Construction, Inc.*, Cal/OSHA App. 1198572, Denial of Petition for Reconsideration (June 24, 2020); *Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021).)

Employer’s Petition is untimely. The Order states that, unless Employer filed an objection within 15 days of being served on September 14, 2024, the Order would become “final.” The record contains no indication that Employer filed an objection; therefore, the Order became final on October 4, 2024.

Employer had 30 days to petition the Board for reconsideration, or until November 5, 2024. (Lab. Code § 6614, subd. (a); Code Civ. Proc., §1013, subd. (a).) However, Employer did not file its Petition until December 26, 2024, nearly two months after the deadline to do so.

Accordingly, as the Petition was untimely, the Board lacks jurisdiction to grant reconsideration in this matter.

DECISION

For the reasons stated above, the petition for reconsideration is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 02/06/2025

