

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

In the Matter of the Appeal of:

**LA CANASTA PRODUCE  
2097 MISSION STREET  
SAN FRANCISCO, CA 94110**

**Employer**

Inspection No.

**1717277**

**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 La Canasta Produce (Employer).

**JURISDICTION**

The California Division of Occupational Safety and Health (Division) issued two citations to Employer alleging three violations of occupational safety and health standards codified in California Code of Regulations, title 8.<sup>1</sup> The citations were issued on June 18, 2024, received on June 20, 2024, and Employer appealed the citations on September 6, 2024, commencing administrative proceedings before the Board.

On September 17, 2024, the Board informed Employer that its appeal was untimely and further that Employer had the opportunity to show there was good cause for the late appeal. Employer timely submitted documents in support of a showing of good cause, which were considered by an administrative law judge (ALJ) of the Board. The ALJ issued an Order requesting additional information on October 21, 2024, to which Employer replied on November 27, 2024.

After reviewing Employer's attempt to establish good cause, the ALJ issued an Order Denying Late Appeal (Order) on December 13, 2024. The ALJ determined that the reasons for Employer's late appeal did not constitute good cause under applicable Board precedent.

Employer filed a Petition for Reconsideration (Petition) on January 23, 2025.

The Division did not answer the Petition.

**ISSUE**

Does the Board have jurisdiction to grant reconsideration?

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<sup>1</sup> References are to California Code of Regulations, title 8 unless specified otherwise.

**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 asserts none of the statutory grounds upon which we may grant reconsideration, which is reason to deny the petition. (*Arodz Motorsports, LLC, dba A1 Tune & Lube*, Cal/OSHA App. #1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).)

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.

As noted, the Order was issued on December 13, 2024, and noted that Employer had 30 days to petition for reconsideration. Including a five-day period for transmission of the Order to Employer, the time to petition expired on January 17, 2025.

Labor Code section 6614, subdivision (a), establishes a 30-day period in which a party may petition for reconsideration. 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).) We must, accordingly, deny Employer's petition.

We further note that, were we able to reach the merits of the Petition, we would deny it. The Petition does not seek to show good cause for the late appeal, but rather appears to be seeking an informal resolution to the citations. Since there is no showing of good cause in the record, there would be no basis on which to grant a late appeal.

## DECISION

For the reasons stated above, Employer's Petition is denied. The ALJ's Order and penalties are 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: 03/06/2025

