

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

In the Matter of the Appeal of:

**M&J DESIGN, INC.
1303 S. Claudia Street
Anaheim, CA 92805**

Employer

**Inspection No.
1745466**

**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 M&J Design, Inc. (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 April 29, 2024. On October 17, 2024, 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 August 18, 2025, and failed to make a showing that the failure to appear was for good cause. Accordingly, on August 26, 2025, the ALJ issued an Order Dismissing Appeal for Failure to Appeal (Order). 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 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).)

We further note that Employer did not verify the Petition nor provide proof that it has been served on the Division. Both verification and service are statutorily required. (Lab. Code §§ 6616, 6619, respectively.) Failure to verify and serve are additional grounds to deny the Petition. (*Descor, Inc., dba Descor Builders*, Cal/OSHA App. 09-0930, Denial of Petition for Reconsideration (June 16, 2010).)

The record shows that the status conference was properly noticed, and that Employer did not appear. Further, Employer admits in the Petition that it did not appear at the status conference. The Petition states:

At the time of the scheduled proceeding, M&J Design Inc. was experiencing a severe decline in business operations. Based on the circumstances, I believed the company would be required to close permanently, and operations were in fact suspended for several months. Acting under this belief, I did not appear at the status conference. Since then we have [sic; end of paragraph]

I sincerely regret this failure to appear and respectfully request that the Board accept this explanation as good cause. As of September 1, 2025, M&J Design Inc. has resumed operations. It is my firm intention to proceed in good faith, cooperate fully with the Board, and satisfy the outstanding balance.

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 Café*, Cal/OSHA App. 1763124, Denial of Petition for Reconsideration (May 6, 2025) (citation omitted).)

The Petition asserts that for some months Employer ceased operations and then restarted on September 1 of this year. The Petition does not state when the cessation occurred or whether it was before or after the accident which gave rise to the citations. The citation states that the accident occurred on or about April 25, 2024, so it is probable that the decision to cease operations was made after the accident.

Suspending business operations while contemplating going out of business does not justify or excuse the failure to appear, since the citation was issued in October 2024 and the appeal was timely filed and perfected in December 2024. The status conference was set while Employer’s appeal was still pending, and Employer was obligated to treat it as one of its most important legal affairs. (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) Ignoring the status conference because Employer believed it was not going to resume operations is not good cause as the Board has defined and used that term.

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: 10/31/2025