

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

In the Matter of the Appeal of:

**MICHAEL MUHAREB dba OLD MILL CAFÉ
600 9th Street
Modesto, CA 95353**

Employer

**Inspection No.
1763124**

**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 Michael Muhareb doing business as (dba) Old Mill Cafe (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) issued one citation to Employer alleging one violation of occupational safety and health standards codified in California Code of Regulations, title 8.¹ The citations were issued on January 10, 2025.

On January 27, 2025, Employer contacted the Board by telephone to initiate its appeal. The same day the Board sent Employer a Notice of Incomplete Appeal (Notice) stating that the Board had received Employer's communication indicating an intent to appeal the citation. The Notice further informed Employer that the appeal was incomplete and subject to dismissal unless Employer completed its appeal within 20 days from the date of service of the Notice. Employer did not respond to the Notice.

On March 3, 2025, the Board issued an Administrative Order Dismissing Appeal (Order) because Employer's appeal remained incomplete. The Order further provided that Employer could file a petition for reconsideration within 30 days of the Order.

Employer timely filed a petition for reconsideration (Petition).

The Division did not answer the Petition.

ISSUE

Has Employer established good cause to reinstate its appeal?

¹ 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 Petition states, as pertinent, "At the time of inspection, I was not present so I mailed [sic] all the document [sic] to Mr. Hernandez [the Division's inspector] that he requested. I missed the (IIPP) so, when he called me I emailed it to him on January 22, 2025."

Employer's Petition does not satisfy the Labor Code requirement that a petition "shall set forth specifically and in full detail the grounds" for the petition, which is reason to deny it. (Lab. Code § 6616; *Fleet Logix, Inc.*, Cal/OSHA App 14-1252, Denial of Petition for Reconsideration (Apr. 23, 2015).) The Petition merely states some of the communications Employer had with the Division, apparently after the citation was issued.

The Petition also fails to establish good cause for the incomplete or late appeal, which is also grounds for denying the Petition. (*Bullet Construction*, Cal/OSHA App. 1173664, Denial of Petition for Reconsideration (Apr. 13, 2017).) We have held "good cause" to mean "a substantial reason; one that affords a legal excuse." (*SA Recycling, LLC*, Cal/OSHA App. 11-9059, Denial of Petition for Reconsideration (June 3, 2011), fn. 3 [citation omitted].) But corresponding with the Division in order to provide requested information or documents does not explain why Employer contacted the Board to initiate the appeal and then did not respond to the Notice.

Lastly, Employer seems to have misunderstood the appeals process, another reason to deny the Petition, as we have held that misunderstanding the appeal process is not good cause for a late appeal. (*Edventure More*, Cal/OSHA App. 1604280, Denial of Petition for Reconsideration (Mar. 17, 2023).)

DECISION

For the reasons stated above, Employer's Petition 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: 05/06/2025

