

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

In the Matter of the Appeal of:

**INNOVATION CONSTRUCTION INC.
462 Hester Street
San Leandro, CA 94577**

Employer

**Inspection Number
1784640**

**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 Innovation Construction Inc. (Employer).

JURISDICTION

On April 22, 2025, the California Division of Occupational Safety and Health (Division) issued Employer two citations, alleging seven total violations of California Code of Regulations, title 8.¹ Citation 1, Item 1 alleged a General violation of section 1509, subdivision (b) [Injury and Illness Prevention Program (IIPP) – written Code of Safe Practices]; Citation 1, Item 2 alleged a General violation of section 1509, subdivision (c) [IIPP – posting Code of Safe Practices]; Citation 1, Item 3 alleged a General violation of section 1512, subdivision (b) [Emergency Medical Services – Appropriately Trained Person]; Citation 1, Item 4 alleged a General violation of section 3395, subdivision (h)(1) [Heat Illness Prevention Plan (HIPP) – Employee Training]; Citation 1, Item 5 alleged a General violation of section 3395, subdivision (h)(2) [HIPP – Supervisor Training]; Citation 1, Item 6 alleged a General violation of section 3395, subdivision (i) [HIPP – written HIPP]; and, Citation 2 alleged a Serious violation of section 1712, subdivision (c)(1) [Protection from Reinforcing Steel].

On or about April 23, 2025, the Division personally served the citations on Employer. On June 30, 2025, Employer initiated its appeal via telephone with the Board. In response to Employer initiating its appeal by telephone, on June 30, 2025, the Board electronically served Employer a Notice of Incomplete Appeal informing Employer it had 20 calendar days to provide information required for the Board to proceed with its appeal.

On or about September 5, 2025, Employer responded to the Board's June 30, 2025, notice by filing the required information.

On October 10, 2025, the Board served a Notice of Untimely Appeal on Employer. Subsequently, Employer timely filed a declaration purporting to demonstrate good cause for its late appeal.

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

On November 20, 2025, Presiding Administrative Law Judge Kerry Lewis (PALJ) issued an Order Denying Request for Leave to File Late Appeal.

On December 16, 2025, Employer filed its first verified, properly served, and timely Petition for Reconsideration of PALJ Lewis' Order (First Petition). The Division did not answer Employer's First Petition.

On February 11, 2026, the Board denied the First Petition because Employer failed to demonstrate good cause for the filing of a late appeal. (*Innovation Construction Inc.*, Cal/OSHA App. 10871964, Denial of Petition for Reconsideration (Feb. 11, 2026).

On June 23, 2026, Employer filed a new petition for reconsideration purporting to challenge to the Board's February 11, 2026, denial. (Second Petition.)

ISSUE

Has Employer shown good cause for the Board to allow a late appeal?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

The Board has fully reviewed the record in this case, including the arguments presented in Employer's second petition for reconsideration. We have taken no new evidence.

As an initial matter, the Board is not aware of any authority granting a party the ability to file a second petition for reconsideration for the Board to reconsider a matter it has already reconsidered. (See *Ventura Coastal, LLC v. Occupational Safety & Health Appeals Bd.* (2020) 58 Cal.App.5th 1, 17.)² The ordinary recourse for a party affected by a denial of a petition for reconsideration or decision after reconsideration by the Board is to seek judicial review in superior court by a writ petition. (Lab. Code, § 6627.)

Here, Employer filed a second petition for reconsideration on the same matter the Board has already considered. Employer is not newly aggrieved by any new order or decision of the Board. The Board lacks authority to grant additional reconsideration of this matter.

Further, 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.

² A party that has not made its own petition for reconsideration on a matter may seek reconsideration if they assert they are newly aggrieved by a Board decision after reconsideration. (*Ventura Coastal, LLC v. Occupational Safety & Health Appeals Bd.*, *supra* 58 Cal.App.5th at 18.)

- (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 the Board may grant reconsideration, which is reason alone to deny the petition. (*Arodz Motorsports, LLC, dba A1 Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) Even if we assumed Employer's petition alleged one of the statutory grounds we would be required to deny because the Board lacks jurisdiction over the Second Petition.

A petition for reconsideration must be filed within 30 days after service of a final order or decision of the Board. (Lab. Code, § 6614 (a).) The Board lacks jurisdiction to grant reconsideration of a late-filed petition. (*Tad Van Nguyen*, Cal/OSHA App. 1628750, Denial of Petition for Reconsideration (Mar. 13, 2026); *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.)

Here, Employer's Second Petition was filed seeking reconsideration of the Board's February 11, 2026, Denial of Petition for Reconsideration. Assuming Employer could file a second petition for reconsideration, Employer was required to file its petition by Wednesday, March 18, 2026 (30 days after the service of the Board's Denial plus 5 additional days based on service by mail per section 348, subdivision (c)). Employer's failure to timely file its Second Petition prevents the Board from exercising jurisdiction to grant Employer's late Second Petition. Additionally, the Board's prior denial explicitly found no good cause for Employer's late appeal. Longstanding Board precedent establishes that absent good cause the Board does not have jurisdiction to grant an employer's late appeal. (*Pacific Bell Telephone dba AT&T California*, Cal/OSHA App. 1242967, Denial of Petition for Reconsideration (Oct. 15, 2018), see *Nestle Ice Cream Co., LLC v. Worker's Compensation Appeals Bd.* (2007) 146 Cal.App.4th 1104, 1108.)

Finally, while Employer requests a payment plan, the Board has no jurisdiction over this matter, and, therefore, cannot entertain any such requests.

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DECISION

For the reasons stated above, Employer's Second 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 Kropke, Board Member



FILED ON: 08/12/2026