

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

In the Matter of the Appeal of:

**J.G. BOSWELL COMPANY dba J.G. BOSWELL
710 Bainum Avenue
Corcoran, CA 93212**

Employer

**Inspection No.
1789153**

**DENIAL OF PETITION
FOR RECONSIDERATION**

The California 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 the Division of Occupational Safety and Health (the Division).

JURISDICTION

On or about November 20, 2024, the Division opened an inspection of J.G. Boswell Company, dba J.G. Boswell's (Employer's) worksite located in Corcoran, California. On April 24, 2025, the Division issued two citations to Employer. Employer received the citations via certified mail on April 28, 2025.

Employer filed an appeal on May 20, 2025. Pursuant to California Code of Regulations, title 8,¹ section 359, and Labor Code sections 6600 and 6602, Employer was required to file an appeal or notify the Board of its intent to file an appeal within 15 working days of receipt of the citations. Based on Employer's receipt of the citations on April 28, 2025, Employer was required to file its appeal no later than May 19, 2025. Employer's appeal was deemed untimely because it was one day past the filing deadline.

In response to the Board's Notice of Untimely Appeal (Notice), issued on July 2, 2025, Employer filed a Motion to Allow Late Filing (Motion), on July 25, 2025. In its Motion, Employer explained that its safety manager, Jose Cantu, mistakenly filed the appeal late due to a serious medical condition. The Motion included a sworn Declaration from Cantu describing the circumstances of the late appeal. Employer asserts that Cantu's significant mental and physical impairment, resulting from his recent diagnosis of Stage 3 cancer and subsequent surgery, treatment, and further diagnostic procedures, caused him to mis-calendar the correct filing deadline.

On August 1, 2025, the Division filed its Opposition to Employer's Motion. On August 6, 2025, Kerry Lewis, the Presiding Administrative Law Judge (ALJ) issued an Order Granting Late Appeal (Order). The Division now seeks reconsideration of the ALJ's August 6, 2025, Order. Employer filed a timely Answer.

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

The Board has fully reviewed the record in this case. Based on our independent review of the record, we find that the Order was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

ISSUES

- 1) Did Employer demonstrate good cause for filing a late appeal?

REASONS 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.

The Division seeks reconsideration on the grounds that the ALJ's decision was made in excess of the Appeals Board's powers; the evidence does not justify the findings of fact; and that the findings of fact do not support the decision. (Lab. Code, § 6617(a), (c) and (e).)

I. Relevant Facts.

On or about November 20, 2024, the Division opened an inspection of Employer's worksite located in Corcoran, California. During the same month, Cantu was diagnosed with Stage 3 colon cancer and immediately began a series of treatments, including surgery, chemotherapy, and IV infusions, while continuing his role as safety manager for Employer. (Cantu Decl., ¶ 5.) On April 17, 2025 -- eleven days before the citations were served on April 28, 2025 -- Cantu underwent a bronchoscopy to determine if the cancer had spread to his lungs. (*Id.* at ¶ 6.) Cantu did not receive the results of this biopsy until May 8, 2025, causing him "additional stress, brain fog, and further distraction" during that time. (*Id.*)

Upon receipt of the citations, Cantu calendared the 15 working day appeal deadline, but due to his "diminished cognition during that time," resulting from the diagnosis and treatment of his cancer, he mistakenly calculated the deadline as May 20, 2025, instead of May 19, 2025. (Cantu Decl., ¶¶ 6-8.) Employer filed the appeal on May 20, 2025, unaware of Cantu's mistake, and believing that its appeal was timely.

II. Analysis.

Labor Code section 6601 provides, in relevant part:

If within 15 working days from receipt of the citation or notice of civil penalty issued by the division, the employer fails to notify the appeals board that he intends to contest the citation or notice of proposed penalty, [...] the citation or notice of proposed penalty shall be deemed a final order of the appeals board and not subject to review by any court or agency. The 15-day period may be extended by the appeals board for good cause.

Section 359, subdivision (d), sets forth the basis for granting a late appeal: “The time for filing any appeal may be extended or a late filing permitted upon a written showing of good cause that contains sufficient facts to show or establish a reasonable basis for the late filing.” The Board has defined “good cause” in this context as “a substantial reason; one that affords a legal excuse.” (*See’s Candies, Inc.*, Cal/OSHA App. 1652414, Decision After Reconsideration (Oct. 6, 2023).) The Board has, over the years, applied this definition as a means of explaining what does and does not constitute good cause under various circumstances. (*Total Terminals International, LLC*, Cal/OSHA App. 1572962, Denial of Petition for Reconsideration (Feb. 22, 2023) (*Total Terminals*).)

Generally, an employer must “act with the degree of care a reasonably prudent person would undertake in dealing with his or her most important legal affairs.” (*Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for Reconsideration (Nov. 20, 2001).) The Board has consistently held that an employer’s failure to timely file an appeal due to issues such as mishandling or misdirection of citations is “an internal operating problem” and does not constitute good cause for a late appeal. (See, e.g., *Total Terminals, supra*, Cal/OSHA App. 1572962; *Dynaelectric Company dba Wasatch Electric*, Cal/OSHA App. 1083985, Denial of Petition for Reconsideration (Jan. 27, 2017) (*Dynaelectric Company*); *Southern California Edison*, Cal/OSHA App 08-9062, Denial of Petition for Reconsideration (Jan. 30, 2009).)

However, “while these maxims offer guidance, they must be considered in the context of the relevant facts, including, without limitation: the reasons for the delay, the length of the delay, whether the delay arose in part to external influences, employer’s good faith efforts, and the credibility of the declarant.” (*RJS Electric*, Cal/OSHA App. 1760736, Decision After Reconsideration (Apr. 23, 2025).) “Further, the respective weight assigned to each fact, or combination thereof, will properly depend on the circumstances of each case, although the trier of fact must always be mindful of the strong public policy favoring disposition of matters on their merits.” (*Id.*) Situations in which the Board has found good cause for a late appeal have often involved external and unforeseeable circumstances, such as disruption due to the Northridge earthquake, death, or serious illness. (*Dynaelectric Company, supra*, Cal/OSHA App. 1083985.)

We agree with the ALJ that the Division’s reliance on *Total Terminals, supra*, Cal/OSHA App. 1572962, to argue that the Board should not allow Employer file a late appeal is misplaced. While the two cases are similar in that the appeals were both only one day late, that is where the similarities end. In *Total Terminals*, a citation package was misrouted and not opened for over two

weeks due to the employer’s internal system for handling incoming mail. The Board found, “It was Employer’s responsibility to ensure that incoming mail was appropriately routed and received,” and that the failure to do so “falls well within the scope of the type of ‘internal operating problem’ that the Board has consistently declined to treat as good cause for a late appeal.” (*Id.*)

The employer in *Total Terminals* argued that the Board should grant its request for a late appeal because it was “only one day late,” without regard for the reason it was late. (*Total Terminals, supra, Cal/OSHA App. 1572962.*) The Board stated that it had “never held that an employer’s burden to demonstrate good cause for a late appeal is lowered or eliminated because its appeal is only one day late.” (*Id.*) However, the Board also set forth in detail why the employer in *Total Terminals* had not established good cause for its delay, regardless of the number of days by which its appeal was late. The denial was based on that employer’s failure to act with the requisite degree of care.

Here, the facts do not demonstrate that Employer disregarded its obligations or failed to act with the requisite degree of care in handling this important legal matter. Rather, as the ALJ pointed out, the facts show that Employer was proactive in calendaring the appeal deadline and adhering to that deadline. (Order, p. 3.) Moreover, the delay was caused not by “an internal operating problem,” but by external physical factors, namely Cantu’s serious illness, which led to his unfortunate error of calendaring the appeal deadline one day late. Based on the Board’s recent holding in *RJS Electric, supra, Cal/OSHA App. 1760736*, a finding of good cause is warranted.

DECISION

For the reasons stated above, the Division’s Petition for Reconsideration is denied. The ALJ’s Order Granting Late Appeal 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: 11/04/2025

