BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	**Inspection Number 1801688**
JOSE FIRMAN **394 CORALWOOD DRIVE** **SAN DIEGO, CA 92114** **Employer**	**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 Jose Firman (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) issued Employer approximately six citations[1] on May 6, 2025, alleging various violations of occupational health and safety standards codified in the California Code of Regulations, title 8.[2]

Employer initiated its appeal by phone approximately seven months late on December 18, 2025. The Board mailed and electronically served Employer with three notices (Notice or Notices) of incomplete appeal because Employer failed to provide the required documentation to complete its appeal. The Notices warned Employer that its appeal would be dismissed if it did not complete and return the necessary documentation. Employer did not return the required documentation to complete its appeal. An Administrative Order (Order) Dismissing Appeal was issued and served on April 14, 2026. The dismissal of Employer's appeal became a final order.[3]

Employer subsequently contacted the Board on June 18, 2026, and inquired about the status of its appeal. As Employer's appeal rights previously expired pursuant to section 359.1, subdivision (b), the Board treated Employer's inquiry as a preliminary attempt to petition for reconsideration (Petition) and sent Employer a letter dated June 18, 2026, which included information, and instructions on how to file its Petition.

Employer submitted documents dated July 10, 2026, as its Petition, which included, among other things, Employer's signed verification and signed proof of service, which only indicated mail service on the Board. However, as explained herein, the jurisdictional requirement

[1] The exact number, and details, of the citations are unknown as the Board was not provided with copies of the citations.
[2] Unless otherwise specified, citations are to title 8 of the California Code of Regulations.
[3] Employer's citations became a final order when Employer failed to contest the violations within 15 working days from receipt of the citations. (Labor Code § 6600; California Code of Regulations, title 8, section 359.)

is not met, and the Board cannot take up the substantive issue Employer included in its Petition.

The Board served a Notice of Deficiency dated July 16, 2026, on Employer because its Petition was not served on all parties as required by section 391.1, subdivision (b). The Notice of Deficiency explained that service on all parties was required. However, Employer failed to provide proof that it served its Petition documents as required. The Division did not file an Answer.

ISSUE

Does the Board have jurisdiction to grant Employer's Petition?

REASONS FOR DENIAL OF PETITION FOR RECONSIDERATION

Both Employer's appeal and Petition suffer from multiple procedural defects, each of which constitute grounds to deny the Petition.

First, 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.

However, Employer's Petition does not assert any of the specific grounds for reconsideration, which is by itself sufficient grounds to deny the Petition. (*Adecco Inc. Branch 5100*, Cal/OSHA App. 08-4312, Denial of Petition for Reconsideration (Aug. 25, 2010).)

Second, Employer initiated its appeal approximately seven months late and, despite repeated warnings, failed to provide the documents necessary to docket its appeal, which resulted in the Order dismissing Employer's appeal. Even assuming, *arguendo*, the Board had jurisdiction over Employer's Petition (a point discussed below), the Board would still be required to deny reconsideration. Employer's appeal was late and it never provided the documents necessary to docket the appeal, much less establish good cause for the late appeal, despite multiple opportunities to do so.

Third, Employer's Petition was filed nearly three months late and it was not properly served on all parties. The Order dismissing appeal was served on Employer on April 14, 2026. Employer was required to file its Petition by May 19, 2026, (within 30 days after service of the Order and allowing five days for service by mail) pursuant to Labor Code section 6614 and sections 348, subdivisions (a) and (c), and 390, subdivision (a). However, Employer did not file

its Petition until July 10, 2026, approximately three months after the Order dismissing its appeal became final. Employer also failed to serve all parties as required by Labor Code section 6619 and Employer did not establish the grounds for its Petition. These each constitute additional grounds to deny Employer's Petition. (*Victor C. Garcia, dba Flores Auto Service*, Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021) [The Board lacks jurisdiction to grant reconsideration of a late-filed petition]; (*Acapulco Polishing Corporation*, Cal/OSHA App. 1285466, Denial of Petition for Reconsideration (Oct. 31, 2018). [The failure to serve the petition also constitutes grounds to deny the petition.].)

Employer requests for the citations to be vacated and the new owner to be held responsible for the violations because Employer was being evicted and in the process of moving out when the Division commenced its investigation and subsequently issued the citations. However, while we are sympathetic to the circumstances affecting Employer, the Board lacks jurisdiction to grant reconsideration of Employer's late 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.

DECISION

For the reasons stated above, Employer's Petition is denied.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Ed Lowry, Chair - ABSENT
/s/ Judith S. Freyman, Board Member
/s/ Marvin Kropke, Board Member

FILED ON: 08/28/2026