

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

In the Matter of the Appeal of:

**HORMEL FOOD OPERATIONS, LLC
4343 E. Florence Avenue
Fresno, CA 93725**

Employer

**Inspection No.
1819474**

**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 Hormel Food Operations, LLC (Employer).

JURISDICTION

After a finger amputation injury on April 1, from April 21, 2025, to September 23, 2025, the Division of Occupational Safety and Health (Division) investigated Employer's Fresno manufacturing operations. On September 25, 2025, the Division issued three citations alleging violations of title 8 of the California Code of Regulations,¹ including: a violation of section 3314, subdivision (c) [failure to lockout for cleaning, servicing and adjusting operations], a violation of section 4051, subdivision (a) [failure to ensure protection from projecting shaft ends], and a violation of section 4002, subdivision (a) [failure to guard moving parts of machinery that created a pinch point]. The citations assessed penalties of \$54,000.

On September 29, 2025, Employer was served with the citations so that October 20, 2025, became Employer's deadline to file its appeal. On December 1, 2025, Employer, represented by attorney Kevin B. Piercy (Piercy) of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (the law firm), filed its appeal. The Board served Employer with a Notice of Untimely Appeal. In response, Employer filed a motion for late appeal. In support of Employer's motion to file a late appeal, Piercy filed his own declaration, the declaration of Christopher M. Quinn (Quinn), and a two-page printout of an email chain regarding the appeal. On February 9, 2026, Presiding Administrative Law Judge (PALJ) Kerry Lewis issued an Order denying Employer's request to file a late appeal.

On March 9, 2026, Employer filed a Petition for Reconsideration (Petition). In support of its Petition, Employer provided a 14-page brief. Employer also resubmitted the Piercy declaration with an authenticated email and attached an unauthenticated email chain, and the Quinn declaration, documents that had been submitted to the Board previously with Employer's motion/request to file a late appeal. The Division did not file a response to Employer's Petition.

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

We have fully reviewed the record in this case, including the arguments and documents presented in the petition for reconsideration. We have taken no new evidence.

ISSUE

Do we have jurisdiction to consider Employer's Petition?

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.

Employer's petition asserts that the evidence presented to the PALJ does not justify the findings of fact and that the findings of fact do not support the order.

I. Employer Does Not Establish Good Cause to File a Late Appeal

Labor Code section 6601 allows us to extend the 15-day period in which to file an appeal "for good cause." Section 359, subdivision (d) of the Board's regulations states: "[t]he 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." (Section 359(d).) Board precedent defines "good cause" as used in Labor Code section 6601 to be "a substantial reason; one that affords a legal excuse." (*See's Candies, Inc.*, Cal/OSHA App. 1652414, Decision After Reconsideration (Oct. 6, 2023).)

Employer's brief asserts, and the declarations submitted confirm that Employer Hormel Food Operations, LLC, is not at fault for Employer's appeal not being timely filed. Rather, Employer's counsel places the blame on Quinn, the law firm's "newly appointed Cal-OSHA case manager." The evidence submitted indicates Piercy instructed Quinn via email on Friday, October 3, 2025, to submit the appeal, and that Quinn inadvertently or negligently failed to do so. The deadline for filing the appeal was Monday, October 20, 2025, two weeks and a day after the documents provided establish Quinn was instructed to file Hormel's appeal.

The Quinn declaration states "[i]t is my responsibility to appeal the citations. I thought I had done so." Quinn goes on to explain that "[t]he week the Hormel appeal was due, in October 2025, was a busy week for our office as we were not only handling our normal case load but were also conducting our annual Workplace Safety conference at two separate California locations. [. . .]

.] due to the extraordinary circumstances of the week I attempted to file the appeal, I failed to complete the final act of confirming that the transmission was successful.” Quinn was instructed to file the appeal on October 3, 2025. Even presuming the law firm’s annual Workplace Safety conferences occurred during the next week,² that was not the week of the appeal filing deadline. There were two weeks and a day between Quinn receiving his assignment to file the appeal and the deadline of Monday, October 20, 2025. Quinn’s vague and generalized statements regarding his actions after being instructed to file the appeal did not provide “sufficient facts to establish a reasonable basis for the late filing” (§ 359, subdiv. (b)) and do not constitute good cause.

The Piercy declaration did not provide us with the date on which he received “the Division’s notice of payment.” Without that date, we are unable to determine if the December 1, 2026, filing was undertaken within 15 days of Piercy receiving knowledge that the appeal had not been filed as intended. (*Club Fresh, LLC*, Cal OSHA App. 06-9241, Decision After Reconsideration (Sep. 14, 2007), *Waterproofing and Roofing Solutions, Inc.*, *supra*, Cal/OSHA App. 1690885.) Piercy’s declaration fails to explain why he failed to discover or cure the error during the month and eleven days that elapsed between the filing deadline and the late filing of the appeal.

While the law firm’s failure to timely file the appeal may have indeed been inadvertent, no meaningful evidence was provided establishing that the late filing was excusable. The Piercy declaration does not mention procedures that he or the firm utilize to confirm that appeals or other documents are timely filed on OASIS.³ This absence of confirmation procedures is problematic given that within the last two years, we have ruled on a matter where the appeal deadline was missed under almost identical circumstances. (*Waterproofing and Roofing Solutions, Inc.*, Cal/OSHA App. 1690885, Denial of Petition for Reconsideration (Oct. 11, 2024), Judgment entered denying Employer’s Writ Petition on August 14, 2025, appeal filed with the 2nd District Appellate Court of Appeal on Nov. 13, 2025).)

Taken together, the Quinn and Piercy declarations strongly suggest that Employer’s appeal was not handled by the law firm “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. 01-9136, Denial of Petition for Reconsideration (Nov. 20, 2001).) We have historically denied reconsideration for late-filed appeals that resulted from “internal operating problems” or “mishandling of appeal documents.” (*Southern California Edison*, Cal/OSHA App. 08-9062, Denial of Petition for Reconsideration (Jan. 30, 2009) [denying reconsideration when untimely filing caused by failure of employee to file the appeal when instructed]; *Total Terminals International, LLC*, Cal/OSHA App. 1572962, Denial of Petition for Reconsideration (Feb. 22, 2023) [denying reconsideration when a filing was untimely by *one day* due to employee improperly routing Citations served by mail].)

² Hypothetically, on Tuesday, October 7, 2025, and Thursday, October 9, 2025.

³ Possible procedures could be requiring the individual who files the appeal or other document to email the supervising attorney a PDF of the receipt OASIS provides upon filing of a document, or requiring supervising attorneys to either check on OASIS on the deadline day, or instruct their staff to do so, to confirm that an appeal or other document was timely filed.

Quinn states in his declaration that it was his responsibility to file the appeal, however, it was attorney Piercy's responsibility to supervise Quinn's work. (*Hu v. Fang* (2002) 104 Cal.App.4th 61, 64 ["The attorney is the professional responsible for supervising the work of his or her legal assistants."].) No evidence was submitted regarding what steps Piercy or the law firm took to train or supervise the "newly appointed" Quinn, or what steps the law firm routinely takes to confirm that appeals have been timely filed on OASIS. Essentially, while the mishandling of the appeal was conducted by Employer's representatives and not Employer, that is a distinction without a difference, because such conduct is attributable to Employer. (*Edco Waste and Recycling Services, Inc.*, Cal/OSHA App. 12-0163, Denial of Petition for Reconsideration (Mar. 7, 2013).)

We have consistently held that an attorney's mishandling of an appeal before the Appeals Board is attributable to the client and is not good cause for a late appeal. (See *Chore Auto Wrecking*, Cal/OSHA App. 09-0605, Denial of Petition for Reconsideration (Jan. 14, 2010) [employer's former counsel's failure to properly file motion for continuance of hearing is not good cause for employer's failure to appear at hearing]; *Wesley Burnett dba Environ*, Cal/OSHA App. 01-491, Denial of Petition for Reconsideration (Sep. 23, 2002) [miscommunication between two of the Division's attorneys not good cause for its failure to appear at hearing]; *Kitagawa & Sons, Inc., dba Golden Acre Farms*, Cal/OSHA App. 03-9446, Decision After Reconsideration (Aug. 27, 2004) [paralegal working for employer's counsel mishandling appeal documents not good cause for late appeal].)

II. CCP Section 473 Does Not Apply Under Labor Code Section 6617

Employer argues in its Petition that it is entitled to relief from the law firm's inadvertence or excusable neglect under Code of Civil Procedure (CCP) Section 473(b). (Employer's Brief at 10:2-22.) Labor Code Section 6617 sets forth the grounds upon which a petition for reconsideration can be granted and it does not include the excusable neglect language found in CCP section 473. (See *Murray Co. v. Occupational Safety & Health Appeals Bd.* (2009) 180 Cal.App.4th 43, 52-53. ["Appellant next contends that the Board was obliged to apply the doctrine of excusable neglect, as stated in Code of Civil Procedure section 473, subdivision (b). . . We conclude that appellant is mistaken."].) Employer fails to provide any legal authority to support its contention that CCP Section 473 applies, and we find none.

III. Employer's Arguments Regarding Prejudice and Policy Considerations Ignores Established Precedent

Employer correctly argues that if we grant Employer leave to file a late appeal, the Division will suffer minimal prejudice. However, Employer incorrectly argues that Employer will suffer serious prejudice and "suffer irreparable harm" due to not being able to contest the citations and having to pay \$54,000 in penalties. Employer may be able to obtain a payment plan or find another avenue of recompense regarding the cost of the assessed penalties. Also, we must point out that not every appeal results in a reduction of the penalties assessed.

In Employer's discussion of policy considerations, it is asserted that Employer's late appeal was not a result of someone who "negligently failed to comply with filing requirements." The evidence provided with Employer's Petition establishes that is exactly what happened; Quinn failed to successfully submit Employer's appeal in OASIS and thereafter, for more than a month,

neither Quinn nor Piercy took any steps to confirm that the appeal had been successfully filed. We cannot upend decades of Board precedent and find good cause based on the evidence submitted.

Employer argues in its brief that denying Employer leave to file a late appeal does not “serve any legitimate policy objective” and that “[i]t would not promote administrative efficiency, because the case will proceed to hearing regardless—the only question is whether Employer will be permitted to defend itself.” That statement is simply incorrect. Once the time to file an appeal is expired, “the order shall be the final order of the appeals board and not subject to review by any court or agency.” (Labor Code § 6602.) No hearing will be held on the citations due to Employer’s failure to file a timely appeal.

Ultimately, the Board has held that “[t]o establish good cause, a party must provide a justification beyond mere forgetfulness or inadvertence.” (*Dynaelectric Company dba Wasatch Electric*, Cal/OSHA App. 1083985, Denial of Petition for Reconsideration (Jan. 27, 2018).) The declarations accompanying the Petition fail to provide us with specific dates and sufficient information to support finding good cause for the failure to timely file Employer’s appeal.

DECISION

For the reasons stated above, the petition for reconsideration 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: 04/23/2026