BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of: **LYONS MAGNUS, LLC** **3158 E. Hamilton Ave.** **Fresno, CA 93702** **Employer**	**Inspection No.** **1854500** **DENIAL OF PETITION FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to the authority vested in it by the California Labor Code, hereby denies the petition for reconsideration (Petition) filed in the above-entitled matter by the Lyons Magnus, LLC, (Employer).

JURISDICTION

From August 1 to November 26, 2025, the Division of Occupational Safety and Health (Division) conducted an inspection of Employer's food manufacturing facility located at 3158 E. Hamilton Ave, Fresno, CA 93702. On or about November 26, 2025, the Division issued a citation alleging five violations of California Code of Regulations, Title 8.[1] Citation 1, Item 1 alleged a General violation of section 3314, subdivision (j) [control of hazardous energy - failure to conduct periodic inspections], Citation 2, Item 1 alleged a Serious violation of section 3999, subdivision (b) [failure to guard parts of a conveyor], Citation 3, Item 1 alleged a Serious, Accident-Related violation of section 4002, subdivision (a) [failure to guard moving parts of equipment], Citation 4, Item 1 alleged a Serious violation of section 4050, subdivision (a) [failure to guard line shafts and collars], and Citation 5, Item 1 alleged a Serious violation of section 4051, subdivision (a) [failed to ensure projecting shaft ends are either smoothed or guarded].

On December 1, 2025, an agent for Employer signed the U.S. Postal Service receipt for service of the Citation. Employer had 15 working days, until December 22, 2025, to file an appeal. Employer's Petition indicates that while the Citation was delivered to Employer, it was not received by its Director of Safety and Security, Cris Mendoza (Mendoza), until January 29, 2026. On February 12, 2026, attorney Ian B. Wieland of Sagaser, Watkins, & Wieland PC, filed an appeal on Employer's behalf of citations 2-5. On February 17, 2026, the Board electronically served a Notice of Incomplete Appeal (Notice) on Employer's counsel, Employer, and the Division. On March 13, 2026, Employer's counsel filed a copy of the Citation package on OASIS.

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

On March 20, 2026, the Board issued and electronically served Employer and Employer's counsel with a Notice of Untimely Appeal (Notice). The Notice warns Employer that its appeal cannot be processed unless Employer shows good cause for why its appeal was late by submitting a declaration explaining the facts Employer relies upon to show good cause. The Notice clarifies that such a declaration must be served on the Division, and it provides a sample of a declaration and a proof of service, and states:

> Your Declaration and Proof of Service must be postmarked within 20 days of the date of service of this Notice of Untimely Appeal located on the attached Declaration of Service by Mail or Email and delivered to 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833 by USPS mail, delivery service or in person.

On or about April 27, 2026, 38 days after the Board served the Notice, Mendoza's declaration was faxed to the Board to support Employer's request for leave to file a late appeal of the Citation. Mendoza's declaration was not accompanied by a proof of service. The Mendoza declaration does not dispute the Citation was received on the date it was signed for but asserts that "the citation was delivered but was not received by me or brought to my attention for handling until later."

On May 15, 2026, Presiding Administrative Law Judge (PALJ) Kerry Lewis issued an Order Denying Request to File Late Appeal (Order) that stated at the end: "NOTE: If you disagree with this order, you may petition the Appeals Board for reconsideration within 30 days."

On or about August 25, 2026, 102 days after the issuance of the Order, Employer submitted its untimely Petition, which was not accompanied by a verification or a proof of service. On August 25, 2026, Board staff served Employer with a notice of deficiency, and on September 2, 2026, the Board received a proof of service and verification of its Petition from Employer. On September 2, 2026, Employer counsel submitted supplemental information regarding the Petition, and a verification and proof of service. The Division has not filed an Answer.

ISSUES

1) Can the Board consider Employer's Petition?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6614 allows for a petition for reconsideration of any final order or decision of the Board within 30 calendar days of the date the order or decision is served. A petition filed under this section permits review of anything determined or covered by the final order.

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 fails to clearly articulate any grounds upon which reconsideration can be granted under Labor Code section 6617, and the Board has previously denied petitions for reconsideration based solely on that. (*Arodz Motorsports, LLC, dba A1 Tune & Lube,* Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).)

Labor Code section 6600 and section 359, subdivision (d), provide that an appeal is timely if a cited employer mails its appeal of the citations within 15 working days of receipt of the citations. In relevant part, Labor Code section 6601 provides that "[t]he 15-day period may be extended by the appeals board for good cause."

The Appeals Board has defined "good cause" as used in Labor Code section 6601 as "a substantial reason; one that affords a legal excuse." (*See's Candies, Inc.,* Cal/OSHA App. 1652414, Decision After Reconsideration (Oct. 6, 2023).) Section 359 and Labor Code section 6601 authorize the Appeals Board to extend the appeal filing period if an employer provides a written declaration demonstrating good cause for not filing its appeal in a timely manner. The authority to determine the existence of good cause lies solely with the Appeals Board. (See *James M. Houillion,* Cal/OSHA App. 96- 9080, Decision after Reconsideration (Oct. 8, 1996).) It is an employer's burden to establish good cause. (*Ameripride Uniform,* Cal/OSHA App. 04-106, Decision after Reconsideration (Apr. 3, 2008).)

Employer's Petition states "Lyons received no indication that the citation had been received until the January 29, 2026 date. Lyons maintains clear protocols for the Human Resources department to screen and forward mail to the applicable departments. There is no indication that the citation was actually received by Lyons or that failure to respond was due to any internal misplacement of documents." Employer's Petition goes on to quote Mendoza's declaration that the citation was "delivered but was not received by him or brought to his attention for handling until later." However, Employer does not address the credibility of the U.S. Postal Service Certified Mail Receipt which was signed by an agent of Employer on December 1, 2025.

The unequivocal evidence of the certified mail receipt strongly suggests that Employer's appeal was not handled "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).) The Board has 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].)

Employer's counsel filed Employer's late appeal on February 12, 2026. The Board served the Notice that states Employer could possibly remedy its late appeal by filing, within 20 days, a declaration establishing good cause and a proof of service for that declaration. 38 days later, Mendoza's declaration was faxed to the Board by Employer's counsel and appeared to have not been served on the Division. According to the Mendoza declaration, while the initial delay in filing its appeal was internal to Employer, the delay in responding to the Notice is attributable to Employer's counsel. However, while the failure to timely respond to the Notice 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).)

The Board has consistently held that an attorney's mishandling of an appeal before the Appeals Board is both attributable to the client and 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].)

The evidence provided to the Board establishes the citations were either misplaced by the recipient or delivered to the wrong person within the company. The delay resulted from internal operating procedures, so on May 15, 2026, PALJ Lewis issued and served an Order Denying Request To File Late Appeal (Order). The Order expressly stated Employer had 30 days to petition the Appeals Board for reconsideration. Employer's Petition was filed, unverified and with no proof of service, 102 days after service of the Order.

A petition for reconsideration must be filed within 30 days of service of the final order or decision it seeks to challenge. (Lab. Code, § 6614.) The instant Order became final on June 15, 2026. The Board lacks jurisdiction to grant reconsideration when a petition is filed late. (*Quintana Construction, Inc.,* Cal/OSHA App. 1198572, Denial of Petition for Reconsideration (June 24, 2020); *Victor C. Garcia, dba Flores Auto Service,* Cal/OSHA App. 1359495, Denial of Petition for Reconsideration (Sep. 16, 2021). See also *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)].) Even if Employer's Petition had been timely filed, good cause was not timely and appropriately established for the late appeal and on those grounds the Board would deny Employer's Petition.

Responding to an August 25, 2026, deficiency letter regarding its Petition, on August 28, 2026, Employer mailed to the Board another copy of the Mendoza declaration and an August 28, 2026, verification by Ian B. Wieland (Employer's counsel) and a proof of service of the same date. The mailed materials included two complete copies of Employer's Petition with Exhibits A and B, and a June 9, 2026, email from Employer's attorney to the Division indicating a letter to Madison Kneedler and JCastro at the Division was attached to the email and listed as an attachment "Request for Reconsideration of Order Denying Appeal." This June 9, 2026, cover email lacks the alleged attachment. The mailing does not provide additional support to Employer's untimely Petition.

Employer here failed to file a timely appeal, failed to timely file and serve the documents required to establish good cause, and failed to timely file its petition for reconsideration.

DECISION

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Marvin P. Kropke, Board Member

ABSENT
Judith S. Freyman, Board Member

FILED ON: 10/09/2026