BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1760736**
RJS ELECTRIC **31627 Ridge Route Road, Suite A** **Castaic, CA 91384**	**DECISION AFTER RECONSIDERATION AND ORDER OF REMAND**
Employer	

The Occupational Safety and Health Appeals Board (Appeals Board or Board), acting pursuant to authority vested in it by the California Labor Code and having taken this matter under reconsideration, renders the following decision after reconsideration.

Jurisdiction

On July 31, 2024, the Division of Occupational Safety and Health (Division) issued one citation to RJS Electric (Employer) alleging three General violations of California Code of Regulations, title 8[1] (hereinafter referred to as the "citations"). The Division provided a proof of service demonstrating the citations were delivered to Employer on August 5, 2024.

Section 359, subdivision (d) and Labor Code section 6600 provide that an appeal is timely if the cited employer initiates its appeal within 15 working days of receipt of the citations. Employer was therefore required to file its appeal no later than August 26, 2024. The Administrative Law Judge (ALJ) found that Employer initiated its appeal on August 27, 2024, one day late. The Board's records indicate that Employer's appeal forms were filed on August 30, 2024.

Section 359 and Labor Code section 6601 authorize the Board to extend the 15 working day deadline for filing an appeal if the employer provides a written statement and declaration demonstrating good cause for the late filing. On September 6, 2024, the Appeals Board issued a Notice of Untimely Appeal (Notice). The Notice provided Employer the opportunity to submit a declaration demonstrating good cause.

In response, Employer submitted the declaration of Tyler Sjoberg (Sjoberg), Director of Operations. Sjoberg declares:

> I reviewed the documents on Monday, August 12 and unfortunately missed the verbiage which specified that we had

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

> about 15 days to attest the citation. However, I made the mistake of seeing the "Must be abated date" which was noted as September 4. I thought I had some time to dig into the citations and set up a call with my OSHA inspector. I wanted to ask a few questions as to why we were getting the citations.
>
> […]
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> I was on a business trip from the 19th to the 23rd. When I returned, I had gotten back into the paperwork and set up a call with the OSHA inspector to ask some questions regarding the citations. The phone call took place on August 26th and then submitted our appeal on August 27th.

On September 27, 2024, the assigned Administrative Law Judge (ALJ) issued an Order Denying Late Appeal (Order). Although the ALJ found the appeal was initiated only one day late, the Order concluded that Employer did not establish good cause for the late appeal. The Order found that Employer's misunderstanding of the appeal process and confusing the abatement deadline with the deadline to file its appeal did not constitute good cause for the late appeal.

The Board took the Order under submission on its own motion. Employer additionally filed a timely Petition for Reconsideration (Petition), which largely repeated the contents of the aforementioned declaration. The Board took that Petition under submission.

Issues

1) Was the Order Denying Late Appeal correctly decided?

Findings of Fact

1) Employer demonstrated good cause for its late appeal.

Analysis

The Appeals Board may extend the 15-day period to file an appeal on a showing of good cause. (Lab. Code, § 6601; § 359, subd. (d).) Section 359, subdivision (d), defines "good cause" for a late appeal as, "sufficient facts to show or establish a reasonable basis for the late filing."

The Board has provided guidance on the meaning of "good cause." The Board has held that in pursuing an appeal, 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." (*Victorio Mufflers, Inc.,* Cal/OSHA App. 1565022, Denial of Petition for Reconsideration (Feb. 3, 2023) (*Victorio Mufflers*), quoting *Timothy J. Kock*, Cal/OSHA App. 01-9135, Denial of Petition for

Reconsideration (Nov. 20, 2001); *Albeco, Inc. dba Mollie Stone's Markets*, Cal/OSHA App. 1538332, Denial of Petition for Reconsideration (Aug. 11, 2023) (*Albeco*).)

The Board has held that the failure to understand the appeal process is not good cause for a late appeal, since the information in the citation packet has been held legally adequate to give employer notice of those rights. (*Victorio Mufflers*, *supra*, Cal/OSHA App. 1565022; *Murray Company v. California Occupational Safety and Health Appeals Bd*. (2009) 180 Cal.App.4th 43 (*Murray Company*); *Albeco*, *supra*, Cal/OSHA App. 1538332.) "It is incumbent upon an appealing party to become familiar with the appeal process and requirements in order to further its interests in an orderly disposition of the appeal by the Board[.]" (*Albeco*, *supra*, Cal/OSHA App. 1538332, quoting *Avexco Inc. dba Phoenix Apparel*, Cal/OSHA App. 01-9210, Denial of Petition for Reconsideration (March 26, 2002).) The Board has additionally held that confusing the abatement requirements for the time to file an appeal amounts to a misunderstanding of the appeal process and is not good cause for filing a late appeal. (*Albeco*, *supra*, Cal/OSHA App. 1538332; *Victorio Mufflers*, *supra*, Cal/OSHA App. 1565022.)

These maxims and others have guided the Board's determinations regarding whether good cause exists. However, it is critical to note that these maxims are not applied mechanically. We must scrutinize the particular facts and context of each case. Otherwise, virtually no employer would be able to establish good cause.

In other words, 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. 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. (*Webcor Builders*, *Inc.,* Cal/OSHA App. 1416143, Decision After Reconsideration (May 23, 2022).)

Ultimately, when this issue arises, the most important question is whether the record reveals "sufficient facts to show or establish a reasonable basis for the late filing." (§ 359, subd. (d).) When answering this question, the trier of fact must exercise reasoned and considered discretion based on the specific facts of the case.

Here, when the totality of facts is considered, including Employer's good faith efforts to contact the Division and the short delay in initiating the appeal, we find that Employer demonstrated good cause for the late appeal.

Decision

For the reasons stated herein, the Board vacates the ALJ's Order and remands this matter back to hearing operations for further proceedings.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

FILED ON: 04/23/2025