

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

In the Matter of the Appeal of:

**La Quinta Inn & Suites by Wyndham Redding
2180 Hilltop Drive
Redding, CA 96002**

Employer

Inspection No.
1749164

**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 (Petition) filed in the above-entitled matter by La Quinta Inn & Suites by Wyndham Redding (Employer).

JURISDICTION

On July 24, 2024, the Division of Occupational Safety and Health (Division) issued a Citation to Employer alleging violations of safety orders contained in title 8 of the California Code of Regulations.¹ Citation 1, Item 1, alleged a General violation of Section 3203, subdivision (a), [failure to establish, implement and maintain an effective Injury and Illness Prevention Program]. Citation 1, Item 2, alleged a General violation of Section 5193, subdivision (c), [failure to have an effective Exposure Control Plan for housekeepers exposed to bloodborne pathogens]. Citation 1, Item 3, alleged a General violation of Section 5194, subdivision (f), paragraph 2 [failure to make Hepatitis B Vaccination available to employees with exposure to bloodborne pathogens]. The Citation indicates that Item 1 was “corrected during inspection,” that Item 2 must be abated by August 28, 2024, and that Item 3 must be abated by August 19, 2024. The Citation assessed proposed penalties totaling \$1,950.00.

Employer initiated an appeal of the Citation in a timely manner. On August 14, 2024, Employer e-filed on OASIS a 24-page Cal/OSHA form entitled “Model Injury and Illness Prevention Program for High Hazard Employers” (IIPP form) which has typed information regarding Employer’s workers entered into the Hazard Assessment table (p. 3), and the Worker Training and Instruction Record (p. 24). Board staff accepted Employer’s filing of the IIPP form as an attempt to initiate an appeal and on August 16, 2024, Board staff served Employer with a Notice of Incomplete Appeal to the address Employer provided in its filing on OASIS, 15244 Middletown Park Drive, Redding, CA. The Notice of Incomplete Appeal provided Employer “20 calendar days from the date of service of this notice to provide the required information” and

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

instructed Employer to provide “[a] completed appeal form for each **citation and item number** that you are appealing.”²

Employer did not respond in any manner, nor did it provide any additional documents.

On October 7, 2024, an Administrative Order Dismissing Appeal (Order) based on Employer’s appeal being untimely or incomplete was issued and served by mail on Employer at 15244 Middletown Park Drive, Redding, CA. The Order indicated Employer had 30 days to petition the Board for reconsideration,³ and was accompanied by the Board’s one-page “Instructions for Preparing and Filing a Petition for Reconsideration” form, a verification form, and a proof of service form.

On October 31, 2024, the Board received documents that staff construed as a timely petition for reconsideration. Employer sent the Order and its proof of service, the Board’s one-page “Instructions for Preparing and Filing a Petition for Reconsideration” form, and a completed verification and a completed proof of service form, both dated October 24, 2024. Unfortunately, the proof of service indicated that service had been made only on the Board. The same day the Board received those documents, Employer had a telephone conversation with Board staff, who explained that the proof of service was not correct, as the documents needed to be served not only on the Board but also on the Division and the District Office. Board staff followed up this conversation by serving Employer by mail with a cover letter re-sending the Board’s one-page “Instructions for Preparing and Filing a Petition for Reconsideration,” another blank verification form, and another blank proof of service by mail form.

On November 7, 2024, the Board received back from Employer the staff letter and proof of service sent to Employer on October 31, 2024, along with another verification and another proof of service (indicating service correctly made on the Board, the Division, and the District Office) both dated November 5, 2024. Accompanying those documents was a one-page handwritten document which said:

We will be Appealing (Citation 1 T8CCR 3202) as we do offer this!
Citation 2 We filed and got the box for it
(Citation 3 CCR 19) Summary 1749164 is what the Hotel is
Appealing!

There are no declarations, letters, or other documents from Employer on this matter.

² We observe that the Employer need not actually use the appeal form. The use of the appeal form is optional. However, for an Employer’s appeal to be complete and docketed, the Board must receive by “mail, hand delivery, or online” certain information, including: contact information, the inspection number, the identity of the citations being appealed, the bases for the appeal, and any affirmative defenses. (§§ 359.1, 361.)

use of the appeal form was not actually required by law, using the sample appeal form provided on the website is not actually required by law, providing the information requested in the website’s sample appeal form is required.

³ With the additional five days for mail service, the deadline was November 12, 2024.

The Division has not answered any of the documents sent to the Board which, taken together, are being considered as Employer's Petition for Reconsideration (Petition).

ISSUE

Has Employer stated any basis to overturn the Order dismissing its appeal?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

It is axiomatic that a petition for reconsideration must state the grounds upon which reconsideration is sought. Labor Code section 6616, states, "The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order or decision made and filed by the appeals board or a hearing officer to be unjust or unlawful, and every issue to be considered by the appeals board.[. . .]" Next, 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.

Here, however, Employer provides no detail as to the grounds upon which the Petition is based. Employer's Petition also does not assert any of the specific grounds for reconsideration set forth in Labor Code section 6617. The failure to specify any grounds for the petition alone constitutes sufficient grounds to deny the Petition. (Lab. Code, §§ 6616-6617; *Arodz Motorsports, LLC, dba Al Tune & Lube*, Cal/OSHA App. 1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).)

Section 359, subdivision (d), provides that an appeal is timely if a cited employer initiates an appeal of the citations within 15 working days of receipt of the citations. Board staff interpreted Employer's e-filing on OASIS of a partially filled out Cal/OSHA "Model Injury and Illness Prevention Program for High Hazard Employers" form as an attempt to initiate an appeal. On August 16, 2024, staff served Employer with a Notice of Incomplete Appeal. Employer did not file any additional documents until after the issuance of the Order on October 7, 2024. The issue before the Board is whether Employer demonstrated good cause for delay in providing documents and information (a delay which continues to the present, as Employer has failed to supply the necessary documents to docket its appeal).

For the Board to reinstate Employer's appeal, it must show good cause. "Good cause" as used in Labor Code section 6601 is defined by the Appeals Board as meaning "a substantial reason; one that affords a legal excuse." (*See's Candies, Inc.*, Cal/OSHA App. 1652414, Decision After Reconsideration (Oct. 6, 2023).) 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 here has provided no explanation as to why it could not to provide the required information and papers during the month and a half after Employer was served the Notice of Incomplete Appeal.

Appeals should be pursued 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).) A reasonable person, having been served with the Board's August 16, 2024, Notice of Incomplete Appeal and other associated documents would have become concerned and contacted the Board to follow up. Employer did not take any action until almost two months after being served with the Notice of Incomplete Appeal, and in its Petition, failed to supply any explanation for not responding until served with the Order (and still not providing the Board with the required documents or information needed to docket an appeal).

DECISION

For the reasons stated above, Employer's Petition 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: 12/05/2024

