

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

In the Matter of the Appeal of:

**QUINTANA CONSTRUCTION INC.
2402 Elmgrove Street
Los Angeles, CA 90031**

Employer

Inspection No.
1198572

**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 Quintana Construction, Inc. (Employer).

JURISDICTION

The California Division of Occupational Safety and Health (Division) issued two citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, title 8.¹ Employer timely appealed.

After Employer appealed, administrative proceedings were held by the Board. On November 28, 2018, an administrative law judge (ALJ) of the Board issued a Settlement Order (Order) pursuant to the agreement of the Division and Employer to resolve and reduce the penalties to be paid by Employer. The parties also agreed that Employer would pay the penalties in installments.

Employer filed request to forebear, vacate and set aside the Order on May 14, 2020. We deem Employer's request to be a petition for reconsideration. (See Lab. Code §6614, subd. (a).)

The Division did not answer the petition.

ISSUE

Does the Board have jurisdiction to grant reconsideration?

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

¹ References are to California Code of Regulations, title 8 unless specified otherwise.

- (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 none of the statutory grounds upon which we may grant reconsideration, which is reason to deny the petition. (*Arodz Motorsports, LLC, dba A1 Tune & Lube*, Cal/OSHA App. #1087194, Denial of Petition for Reconsideration (Nov. 22, 2017).) However, Employer's petition does address circumstances which have arisen since the Order was issued, and which could not have been discovered in the exercise of reasonable diligence, so we will treat the petition as asserting the grounds in Labor Code section 6617, subdivision (d). Specifically, the new evidence is the COVID-19 pandemic and its related consequences in California, including the presently ongoing drastic reduction of Employer's business activity.

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. Based on our independent review of the record, we find that even accepting the petition as stating at least one of the statutory grounds, we lack jurisdiction to grant the petition.

The dispositive issue is whether the petition was timely filed. The Board's record in this matter shows that the Order was served on the other on December 3, 2018. Employer's petition was filed on May 14, 2020.

Labor Code section 6614, subdivision (a) provides that a party may petition the Board for reconsideration within 30 days after service of the decision or order at issue. Employer's filing was therefore, almost seventeen months late.

We lack jurisdiction to grant reconsideration when the petition is filed late. (*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 note from Employer's petition that the penalties assessed in the Order were agreed to, and periodic payments were made, also as agreed, until the COVID-19 crisis arose. Also, and from a worker safety perspective even more important, the violations have been abated. The need for relief from the unpaid portion of the penalty assessment is quite understandable under present conditions. We are sympathetic to Employer's situation, although we lack jurisdiction to grant the relief requested. We note that the Division has the authority to reduce the agreed penalties and/or to extend the time in which Employer must pay them. And, we urge the Division to exercise wise discretion as it considers Employer's situation in light of the hardship inflicted on so many of our fellow citizens by the necessary response to the pandemic.

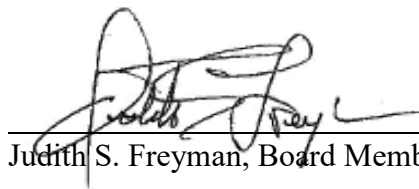
DECISION

For the reasons stated above, the petition for reconsideration is denied. The ALJ's Order and penalties are affirmed.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD



Ed Lowry, Chair



Judith S. Freyman, Board Member



Marvin P. Kropke, Board Member



FILED ON: **06/24/2020**