

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 MARILYN SHEHEBAR :
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 Petitioner, :
 :
 :
 To Review Under Section 101 of the Labor Law: :
 An Order To Comply With Article 6 of the Labor :
 Law, an Order to Comply With Article 19 of the :
 Labor Law, and an Order Under Article 19 of the :
 Labor Law, all dated September 16, 2014, :
 :
 :
 - against - :
 :
 :
 THE COMMISSIONER OF LABOR, :
 :
 :
 Respondent. :
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DOCKET NO. PR 14-307
RESOLUTION OF DECISION

APPEARANCES

Isaac Klein, designated representative, for petitioner.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Benjamin T. Garry of counsel),
for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on December 1, 2014 in an envelope postmarked November 26, 2014. The petition was served on the respondent on January 7, 2015. The Commissioner moved on February 5, 2015 to dismiss the petition as untimely because it was filed more than 60 days after the orders were issued. The petitioners filed an opposition to the motion on March 18, 2015, which respondent replied to on March 31, 2015.

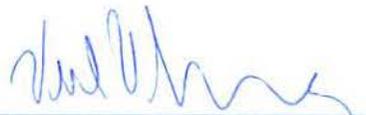
Labor Law § 101 (1) provides that:

“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order.”

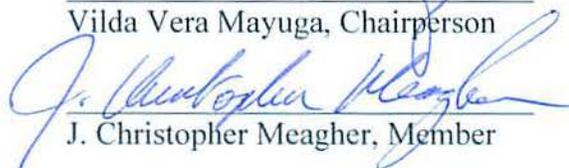
The orders sought to be reviewed were issued on September 16, 2014, and therefore, any petition for review filed with the Board after November 17, 2014, the first business day after the expiration of the 60 day statute of limitations, would be untimely (*id.*; Board Rules of Procedure and Practice 65.5 [c] [12 NYCRR 65.5 (c)]; Board Rule 65.3 [a] [12 NYCRR 65.3 (a)]). A petition received after November 17, 2014, but post-marked on or before that date, would be considered filed on time (Board Rule 65.5 [c] [12 NYCRR 65.5 (c)]). As the petition in this proceeding was filed and post-marked after November 17, 2014, it was untimely. Because petitioner, in her opposition to the motion, raises no valid objection to service of the orders, the petition must be dismissed as untimely.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner of Labor's motion to dismiss the petition for review is granted, and the petition for review be, and the same hereby is, dismissed.



Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member

LaMarr J. Jackson, Member



Michael A. Arcuri, Member



Frances P. Abriola, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
April 29, 2015.

The orders sought to be reviewed were issued on September 16, 2014, and therefore, any petition for review filed with the Board after November 17, 2014, the first business day after the expiration of the 60 day statute of limitations, would be untimely (*id.*; Board Rules of Procedure and Practice 65.5 [c] [12 NYCRR 65.5 (c)]; Board Rule 65.3 [a] [12 NYCRR 65.3 (a)]). A petition received after November 17, 2014, but post-marked on or before that date, would be considered filed on time (Board Rule 65.5 [c] [12 NYCRR 65.5 (c)]). As the petition in this proceeding was filed and post-marked after November 17, 2014, it was untimely. Because petitioner, in her opposition to the motion, raises no valid objection to service of the orders, the petition must be dismissed as untimely.

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Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member



LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Frances P. Abriola, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Buffalo, New York, on
April 29, 2015.