

**STEVEN R. KATZ**

**Docket No. PR 09-190**

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

STEVEN R. KATZ,

Petitioner,

DOCKET NO. PR 09-190

To Review Under Section 101 of the Labor Law: A :  
Letter of Determination, dated April 6, 2009,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.  
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APPEARANCES

Michael I. Josephs, Esq., for the Petitioner.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin A. Shaw of counsel, for Respondent, Commissioner of Labor.

WHEREAS:

This proceeding was commenced when the Petitioner filed a petition with the Industrial Board of Appeals (Board) on July 13, 2009, seeking review of a letter determination that Respondent Commissioner of Labor (Commissioner) issued on April 6, 2009. On August 31, 2009, the petition was served on the Commissioner, who moved to dismiss the petition as untimely.

Labor Law § 101 (1) states:

“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 rule, regulation or order made by the commissioner . . . . Such petition shall be filed with the board no later than sixty days after the issuance of such rule, regulation or order.”

Applying the 60-day limitations period prescribed in Labor Law § 101 and the Board’s Rules of Procedure and Practice 65.5 (d) (12 NYCRR 65.5[d]), to the April 6, 2009 date of

issuance of the Commissioner's determination, Petitioner's time to appeal expired on June 5, 2009. As the petition was filed on July 13, 2009, it was untimely.


By letter dated July 27, 2009 the Board requested a written explanation for the untimely petition, advising that such explanation must be supported by proof, including an affidavit by Petitioner or someone else with personal knowledge of the relevant facts.

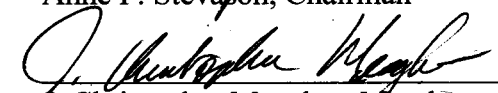
In response, the Petitioner wrote a letter that did not provide an explanation for the untimely filing other than to assert that he was an "observant Jew," that the Commissioner's letter was issued to him "two days before the Passover holiday," that he "put the letter aside for later review," and that the time period to appeal had expired "[b]y the time the matter was again addressed." The fact that the Petitioner was observant of religious practices during the period allocated to him to file a petition does not justify the Petitioner's failure to meet the filing deadline imposed by Labor Law § 101, and in any event, religious holidays did not fill the entire 60-day statute of limitations period. The Petitioner has not offered any ground for excusing his untimely filing, and accordingly, the petition must be dismissed.

Even if Petitioner had filed within the limitations period imposed by Labor Law § 101, the petition must be dismissed because the Board lacks jurisdiction over it. The Commissioner's letter determination of April 6, 2009 is not a "rule, regulation or order of the Commissioner" that may be appealed to the Board (Labor Law § 101; *Matter of Toohey v Commissioner of Labor*, PR 09-223 [January 27, 2010]).

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

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

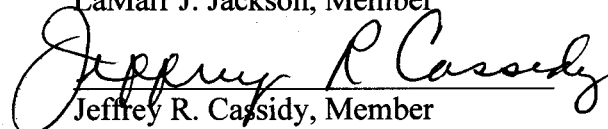
  
 Anne P. Stevason, Chairman

  
 J. Christopher Meagher, Member

  
 Jean Grumet, Member

Absent

LaMarr J. Jackson, Member

  
 Jeffrey R. Cassidy, Member

Dated and signed in the Office  
 of the Industrial Board of Appeals  
 at Albany, New York, on  
 May 26, 2010.