

New York State
Industrial Board of Appeals

Anne P. Stevason
Chairman

Susan Sullivan-Bisceglia
J. Christopher Meagher
Mark G. Pearce
Jean Grumet
Members



Sandra M. Nahan
Deputy Counsel

Devin A. Rice
Associate Counsel

Empire State Plaza
Agency Building 2, 20th floor
Albany, New York 12223
Phone: (518) 474-4785 Fax: (518) 473-7533

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

BUSINESS CREDIT CORP.,

Petitioner,

To Review Under Section 101 of the Labor Law:
Orders to Comply Under Article 6 and 19 of the Labor
Law, dated March 7, 2008,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 08-061

RESOLUTION OF DECISION

RESPONDENT'S MOTION TO DISMISS GRANTED

WHEREAS:

Business Credit Corp. (Petitioner) filed a Petition with the Industrial Board of Appeals (Board) on May 8, 2008, seeking review of two Orders issued by the Respondent Commissioner of Labor (Commissioner) on March 7, 2008. The Commissioner made a motion to dismiss, dated July 17, 2008, alleging that the Petition is untimely and therefore must be dismissed. We agree.

Labor Law § 101 (1) states 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.”

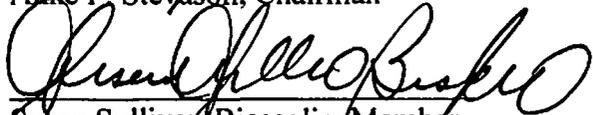
The Orders sought to be reviewed were issued on March 7, 2008. In order for the Petition to be timely, it was required to be postmarked no later than May 6, 2008 (*see* Board Rules 65.5 [d] [12 NYCRR 65.5 (d)])¹. The Petition in this proceeding was postmarked May 8, 2008, and was therefore untimely.

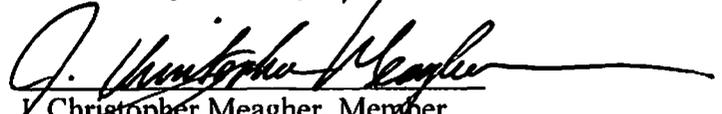
The Petitioner, in its opposition to the Commissioner's motion to dismiss, argues that five days must be added to the time allowed for filing by mail. While it is correct that under certain circumstances the Civil Practice Law and Rules (CPLR) allows for an additional five days when service of a paper is done by mail (*see e.g.* CPLR 2103), such provisions are not applicable here where the issue is filing and not service, and the Board's Rules of Procedure and Practice are explicit that "[w]here a period of time prescribed by these rules (except in the case of Petitions required to commence a proceeding) is measured from the service of a paper, and service is by mail, five (5) days shall be added to the prescribed period" (Board Rules 65.3 [c] [emphasis added]).

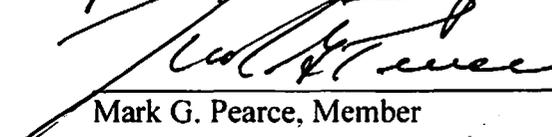
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT

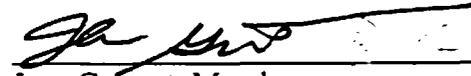
1. The Petition for Review be, and the same hereby is, dismissed.


Anne P. Stevason, Chairman


Susan Sullivan-Bisceglia, Member


J. Christopher Meagher, Member


Mark G. Pearce, Member


Jean Grumet, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
December 17, 2008.

¹ Board Rules 65.5 (d) (12 NYCRR 65.5 [d]) reads that "Any pleading post-marked within the time provided for by these rules shall be deemed timely filed."

THE STATE OF NEW YORK
IN SENATE
January 12, 1922

REPORT
OF THE
COMMISSIONERS OF THE
LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 11, 1921



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