

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

DENNIS DUMBLETON AND DUMBLETON USED :
AUTO PARTS, INC. :
(T/A DUMBLETON USED AUTO PARTS) :

Petitioners, :

DOCKET NO. PR 08-154

To Review Under Section 101 of the Labor Law: :
An Order to Comply with Article 6 of the Labor Law :
dated July 21, 2008, :

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :

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APPEARANCES

Sharon M. West, *pro se* Petitioner.

WHEREAS:

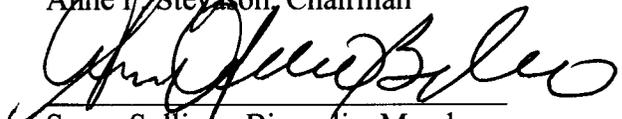
1. On October 22, 2008, the Board received a Petition in the above-captioned matter enclosed in an envelope marked "UPS GROUND" and "October 22, 2008." The Petition seeks review of an Order that the Commissioner of Labor issued on July 21, 2008.
2. Labor Law § 101 provides that a petition for review must be filed with the Board no later than sixty days after the issuance of the order to be reviewed. The Board's Rules of Procedure and Practice (Rules) 66.2 also prescribe a sixty-day limitations period for commencing appeal from an order. The sixtieth day after the Order here issued was September 19, 2008. Therefore, the Petition filed on October 22, 2008, was untimely.
3. By letter dated October 29, 2008, the Board requested that the Petitioners file by December 5, 2008, a written explanation in the form of an affidavit as to why the Petitioners contend that the Petition is not untimely and include the date that Petitioners asserted that they mailed their appeal to the Department of Labor [DOL]; and

4. On December 4, 2008, the Board received an unsworn written explanation with respect to the date that the Petition was filed; and
5. On December 16, 2008, the Board wrote Petitioners requesting an affidavit in support of their contention that their Petition was not untimely and “information on when and how the petition . . . was initially sent to [DOL].” The Board’s letter continued: “You should also enclose any documentary evidence that you may have that shows when the petition was sent to DOL.”
6. By affidavit dated January 7, 2009, received by the Board on January 9, 2009, Petitioners assert that the Petition was initially sent to DOL by UPS on October 7, 2009, and that before initially filing the Petition they telephoned the Board’s offices to obtain a copy of the Rules and “waited and waited and waited and did not receive” the Rules. The affidavit continues that when they called again and finally received the Rules, there was insufficient time to file the Petition within the sixty-day limitations period. The affidavit does not state the dates upon which the telephone calls were made to the Board in order to obtain a copy of the Rules.
7. We find that the Petition was not timely filed with the Board, that Petitioners’ initial filing with DOL was untimely, and that Petitioners’ complaint that the Rules were received without sufficient time to file a timely petition does not excuse the failure to file a petition within the sixty days that Labor Law § 101 and Rules 66.2 prescribe.

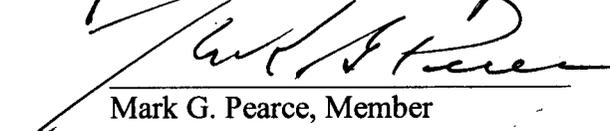
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

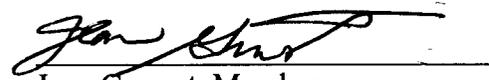
This proceeding be, and the same hereby is, dismissed in accordance with the Rules.


Anne P. Stevenson, 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
March 25, 2009.