

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Application of: :
 :
MASTER CALL COMMUNICATIONS, INC., :
 : DOCKET NO. PR 10-033
 :
Petitioner, :
 : RESOLUTION OF DECISION
 :
For Reconsideration of a Resolution of Decision :
issued by the Board on May 26, 2010. :
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APPEARANCES

Rouslan Tsoutiev, *pro se* Petitioner.

WHEREAS:

On February 2, 2010, the Industrial Board of Appeals (Board) received an unsigned petition in this matter from Master Call Communications appearing to appeal orders to comply issued by the New York State Department of Labor (DOL) on January 12, 2010 against Helen Lukovych and Ross Tsoutiev and Master Call Communications, Inc. Because the petition was unsigned and did not specify which of the parties named in the orders were appealing, the Board by letter dated February 18, 2010 addressed to Master Call Communications, Inc. Attn: President, at the address listed in the petition, requested the petitioner or petitioners to file an amended petition by March 18, 2010 identifying, *inter alia*, each of the petitioners. The Board's letter stated that failure to file an amended petition by March 18, 2010 could result in dismissal of the proceeding without further notice.

Rosulan Tsoutiev wrote to the Board on March 23, 2010, after the time allowed by the Board for filing the amended petition had already expired, requesting an extension of time. The Board, by letter dated April 13, 2010, granted Mr. Tsoutiev leave until May 11, 2010, to file an amended petition.

On May 26, 2010, the Board, having never received an amended petition, dismissed the proceeding. On June 15, 2010, the Board received an undated letter from Rouslan Tsoutiev, President of Master Call Communications, Inc., requesting reconsideration of the Board's decision to dismiss the proceeding on the ground that he allegedly never received the Board's April 13, 2010 letter granting leave for an extension of time to file an amended petition. Mr. Tsoutiev's request for reconsideration was opposed by DOL. For the reasons set forth below, we deny the petitioner's request for reconsideration.

The Board has typically granted reconsideration where a petitioner who filed an otherwise timely petition failed to comply with the Board's directives to file an amended

petition when it is clear that either the petitioner attempted in good faith to comply with the Board's directives or there is credible evidence that correspondence from the Board was sent to an incorrect address or otherwise not received by a petitioner. In *Matter of Mohamed Oummih*, Docket No. PR 09-034 (July 28, 2010), the Board granted reconsideration where there was evidence that the Board had sent correspondence to an incorrect address. Likewise, in *Matter of Zych Enterprises*, Docket No. PR 09-189 (March 24, 2010), reconsideration was granted where the petitioner demonstrated that he mistakenly believed he had sent an amended petition to the Board.

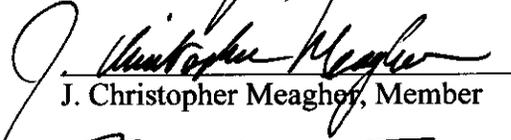
Here, we have no evidence that the petitioner did not receive the Board's letter approving Mr. Tsoutiev's request for an extension of time to file an amended petition, because an unsworn statement of non-receipt of a letter is insufficient to overcome the presumption of proper mail service and due receipt (*Matter of Jeffrey H. Astor*, Docket No. PR 08-056 [March 24, 2010]). Additionally, we agree with DOL, that even if the petitioner did not receive the Board's correspondence, the request for an extension of time was made after the original deadline set by the Board for filing an amended petition had expired. We find it incredible that the petitioner would request an extension of time to file an amended petition, after the time to do so had already expired, and then fail to follow up with the Board to see if such request had been approved after allegedly never receiving a written response between March 23, 2010 and the Board's decision of May 26, 2010.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

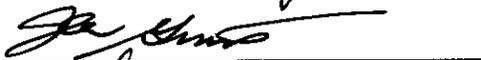
The petitioner's motion for reconsideration is denied.



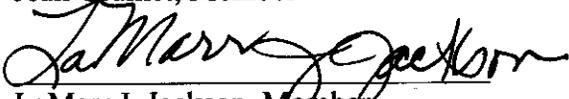
Anne P. Stevason, Chairman



J. Christopher Meagher, Member



Jean Guimet, Member



LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
September 22, 2010.

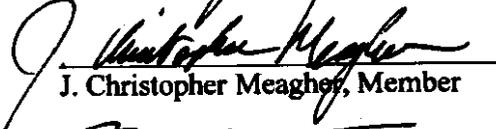
petition when it is clear that either the petitioner attempted in good faith to comply with the Board's directives or there is credible evidence that correspondence from the Board was sent to an incorrect address or otherwise not received by a petitioner. In *Matter of Mohamed Oummi*, Docket No. PR 09-034 (July 28, 2010), the Board granted reconsideration where there was evidence that the Board had sent correspondence to an incorrect address. Likewise, in *Matter of Zych Enterprises*, Docket No. PR 09-189 (March 24, 2010), reconsideration was granted where the petitioner demonstrated that he mistakenly believed he had sent an amended petition to the Board.

Here, we have no evidence that the petitioner did not receive the Board's letter approving Mr. Tsoutiev's request for an extension of time to file an amended petition, because an unsworn statement of non-receipt of a letter is insufficient to overcome the presumption of proper mail service and due receipt (*Matter of Jeffrey H. Astor*, Docket No. PR 08-056 [March 24, 2010]). Additionally, we agree with DOL, that even if the petitioner did not receive the Board's correspondence, the request for an extension of time was made after the original deadline set by the Board for filing an amended petition had expired. We find it incredible that the petitioner would request an extension of time to file an amended petition, after the time to do so had already expired, and then fail to follow up with the Board to see if such request had been approved after allegedly never receiving a written response between March 23, 2010 and the Board's decision of May 26, 2010.

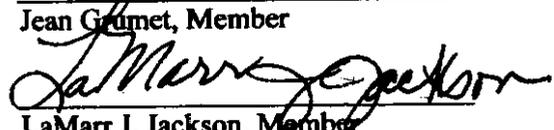
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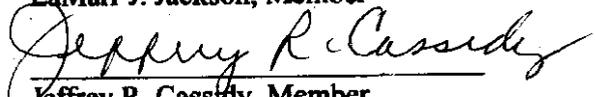
The petitioner's motion for reconsideration is denied.


Anne P. Stevason, Chairman


J. Christopher Meagher, Member


Jean Grumet, Member


LaMarr J. Jackson, Member


Jeffrey R. Cassidy, Member

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