

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

RANDALL J. FRIEDMAN, :

Petitioner, :

To Review Under Section 101 of the Labor Law: :
An Order to Comply with Article 6 of the Labor Law :
and an Order under Article 19 of the Labor Law, both :
dated April 1, 2010, :

DOCKET NO. PR 10-175

RESOLUTION OF DECISION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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APPEARANCES

Andrew H. Beatty, Esq., for petitioner.

Maria L. Colavito, Counsel, NYS Department of Labor, Larissa C. Wasyl of Counsel, for Respondent.

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on June 7, 2010, in an envelope post-marked June 4, seeking review of orders that the respondent Commissioner of Labor (respondent or Commissioner) issued on April 1, 2010.

The Board served the petition and a subsequently filed amended petition on the respondent on July 23, 2010. The respondent moved on August 20, 2010 to dismiss the petition on the grounds that the petitioner failed to comply with Labor Law § 101 (1) by filing the petition with the Board more than sixty days after the orders were issued, and that the petition failed to state a cause of action upon which relief may be granted. In response, the petitioner argues that the late filing should be excused because there is no evidence that the order was issued on the same day it is dated, and that the respondent's allegation that no cause of action has been alleged is meritless. The respondent replied with an affidavit of service showing that the order was served on April 1, 2010, which is the date it was issued.

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.”

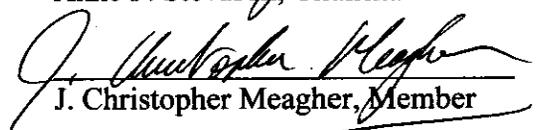
In the instant proceeding, the orders sought to be reviewed were issued on April 1, 2010, and therefore, a petition for review would be timely if filed with the Board no later than June 1, 2010 because May 31, 2010 was a legal holiday (*See* Board Rules 65.3 [a]). The Board received the petition on June 7, 2010 enclosed in an envelope post-marked June 2, 2010.

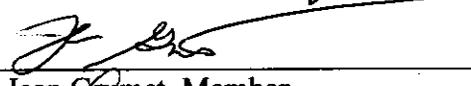
The petitioner argues that the petition was not filed late, because there is no proof that the orders were issued the same day they are dated. “Issue” is generally understood to mean “send out” (*See e.g.* Barron’s Law Dictionary). In this case, the affidavit of service proves that the orders were served on the petitioner on April 1, 2010, the same day the orders were dated. Therefore, the petition was untimely and must be dismissed, and we do not reach the issue of whether the petition set out a cause of action.

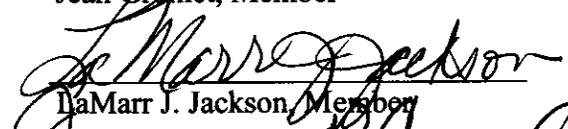
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

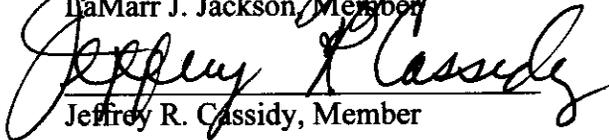
The Commissioner of Labor’s motion to dismiss the petition for review is granted, and the petition for review be, and the same hereby is, dismissed.


Anne P. Stevason, Chairman


J. Christopher Meagher, Member


Jean Grumet, Member


DaMarr 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
April 27, 2011.