

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :  
 :  
 DAVID ISHAY, :  
 :  
 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 July 15, 2010, :  
 :  
 - against - :  
 :  
 THE COMMISSIONER OF LABOR, :  
 :  
 Respondent. :  
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DOCKET NO. PR 10-371  
RESOLUTION OF DECISION

**APPEARANCES**

David Ishay, petitioner pro se.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Benjamin T. Garry of counsel, for respondent).

**WHEREAS:**

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on November 26, 2010. The petition was served on the respondent Commissioner of Labor (Commissioner) on December 29, 2010. The Commissioner moved on February 17, 2011 to dismiss the petition as untimely because it was filed more than 60 days after the order was issued. The petitioner failed to respond to the motion although he was advised by letter dated August 3, 2011, that his response must be filed on or before September 14, 2011.

Labor Law § 101 (1) states that:

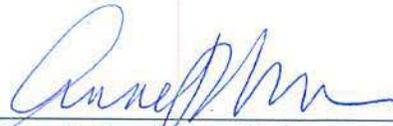
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the

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.”

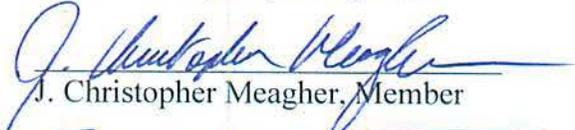
The orders sought to be reviewed were issued on July 15, 2010, and therefore, any petition for review filed with the Board after September 13, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until November 26, 2010, it was untimely. Accordingly, the petition must be dismissed.

**NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:**

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



Anne P. Stevason, Chairperson



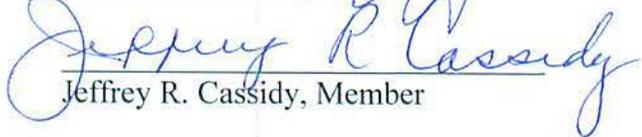
J. Christopher Meagher, Member



Jean Grumet, Member



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  
October 11, 2011.