

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 CHERYL W. JOYLES (T/A MADISON DAY :
 CARE), :
 :
 Petitioner, :
 :
 To Review Under Section 101 of the Labor Law: An :
 Order to Comply With Article 19 of the Labor Law :
 and an Order Under Article 19 of the Labor Law, :
 both dated May 5, 2011, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 11-246

RESOLUTION OF DECISION

APPEARANCES

Cheryl W. Joyles, *pro se* petitioner.

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

WHEREAS:

This proceeding was commenced when the petitioners filed a petition with the Industrial Board of Appeals (Board) on July 29, 2011. The petition was served on the respondent Commissioner of Labor (Commissioner) on October 18, 2011. The Commissioner moved on November 25, 2011 to dismiss the petition as untimely because it was filed more than 60 days after the order was issued.

Labor Law § 101 (1) states that:

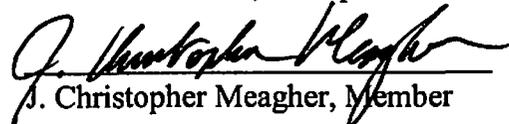
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner. . . . Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order.”

The orders sought to be reviewed were issued on May 5, 2011, and therefore, any petition for review filed with the Board after July 5, 2011 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 July 29, 2011, it was untimely. On December 7, 2011 the Board sent the parties a letter setting a briefing schedule for response to the motion. The petitioners failed to respond to the motion. Accordingly, the petition must be dismissed as untimely.

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

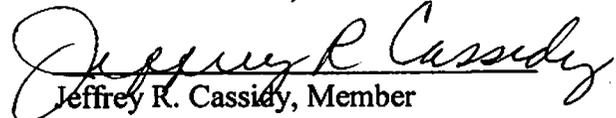


J. Christopher Meagher, Member



Jean Grumet, Member

LaMarr J. Jackson, Member



Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
March 29, 2012.