

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ANASTASIA Y. KONOVALTSEVA,

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 March 23, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 15-182

RESOLUTION OF DECISION

APPEARANCES

Anastasia Y. Konovaltseva, petitioner pro se.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Steven J. Pepe of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on June 17, 2015 in an envelope post-marked June 16, 2015. The Board served the petition on respondent Commissioner of Labor on September 3, 2015. Respondent moved on September 29, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioner filed a response to the motion on October 27, 2015 and respondent replied on December 2, 2015.

Petitioner does not contest that the petition was filed after the statute of limitations had run, but argues the Board should accept the petition because she had moved and, thus, did not have notice of the orders to comply until after the 60-day period in which to reply had expired. Respondent argues that petitioner contacted it on May 5, 2015—more than two weeks before the statutory period in which to appeal the orders had expired—and further argues that the Board cannot extend the statute of limitations to file a petition because of petitioner's proffered excuse. We agree.

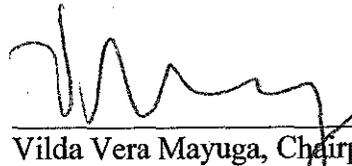
Labor Law § 101 (1) provides that:

“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.”

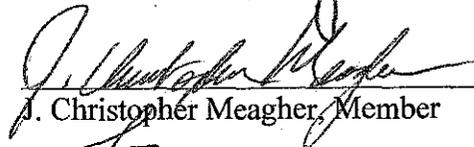
The orders sought to be reviewed were issued on March 23, 2015; therefore, any petition for review filed with the Board with a post-mark after May 22, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]). As the petition in this proceeding was post-marked after May 22, 2015, it was filed late and petitioner’s change of residence does not toll the statute of limitations or otherwise excuse the late filing.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

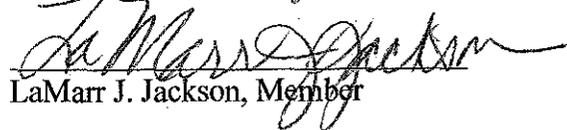
The Commissioner of Labor’s motion to dismiss the petition for review is granted, and the petition for review be, and the same hereby is, dismissed.



Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member



LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Dated and signed by the Members
of the Industrial Board of Appeals
at New York, New York
on May 25, 2016.

"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."

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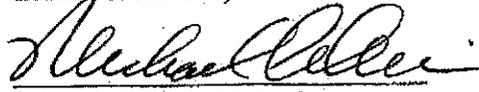
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

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.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMar J. Jackson, Member



Michael A. Arcuri, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Utica, New York on
May 25, 2016.