STATE OF NEW YORK INDUSTRIAL BOARD OF APPEALS	
In the Matter of the Petition of:	-·x :
DANA POLAND (T/A DANA'S RUSTY	
ANCHOR),	:
m and	:
Petitioner,	: DOCKET NO. PR 16-009
To Review Under Section 101 of the Labor Law: An Order To Comply With Article 6 of the Labor Law, an Order to Comply with Article 19 of the Labor Law, and an Order Under Articles 6 and 19, all dated September 30, 2009; and an Order to Comply with Article 6 of the Labor Law, dated September 28,	:
2009,	:
- against -	: :
THE COMMISSIONER OF LABOR,	:
Respondent.	: :
	··X

APPEARANCES

Dana L. Poland, petitioner pro se.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Kathleen Dix of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on January 11, 2016 in an envelope post-marked January 8, 2016. On February 9, 2016, petitioner filed an amended petition and the Board served the amended petition on respondent Commissioner of Labor on February 10, 2016. Respondent moved on March 10, 2016, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioner did not reply to the motion.

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 September 28 and September 30, 2009, and therefore, any petition for review filed with the Board with a post-mark after November 28 and November 30, 2009, respectively, is untimely (*id*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]; Board Rules of Procedure and Practice 65.3 [a] [12 NYCRR 65.3 (a)] [providing that when the last day of the period includes a Saturday, Sunday, or legal holiday, the period will run until the end of the next business day]). As the petition in this proceeding was post-marked after November 28 or November 30, 2009, it was filed late and must be dismissed.

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.

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Vilda Vera Mayuga, Chairperson

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Michael A. Arcuri, Member

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