

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
	:
JIMMY LA (T/A NAILS 4 U),	:
	:
Petitioner,	:
	:
To Review Under Section 101 of the Labor Law:	:
An Order To Comply With Article 6, An Order To :	DOCKET NO. PR 16-060
Comply with 19, and an Order Under Articles 6, 7, and :	<u>RESOLUTION OF DECISION</u>
19 of the Labor Law, all dated February 24, 2016,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
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APPEARANCES

Sanders & Sanders, Cheektowaga (Harvey P. Sanders of counsel), for petitioner.

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 May 26, 2016 in an envelope post-marked May 23, 2016. The Board served the petition on respondent Commissioner of Labor on June 2, 2016. Respondent moved on June 29, 2016 to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioner opposed the motion on July 15, 2016. Respondent replied on August 11, 2016, and petitioner further replied on August 19, 2016. Petitioner does not dispute that the petition was filed after the statutorily required 60 days, but alleges that petitioner's counsel had contacted respondent prior to the statutory time period expiring asking for a copy of the orders because petitioner was unclear as to which orders had been issued against him. Respondent emailed the orders to petitioner's counsel on April 14, 2016, using an incorrect email address. Not having received the orders, petitioner's counsel contacted respondent on May 16, 2016, when respondent resent the orders to the correct email address. Petitioner argues that respondent's delay in properly sending counsel the orders prevented petitioner from timely filing the petition. The Board cannot extend the statute of limitations to file a petition because of petitioner's proffered excuse.

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.”

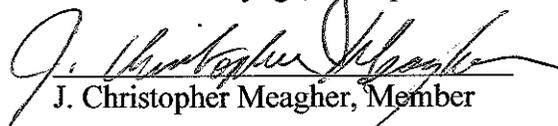
The orders sought to be reviewed were issued on February 24, 2016, and therefore, any petition for review filed with the Board with a post-mark after April 25, 2016 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]; Board Rules of Procedure and Practice 65.3 [a] [12 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]). Petitioner contacted respondent on April 14, 2016, but did not follow up until May 16, 2016, after the statute of limitations had passed. As the petition in this proceeding was post-marked after April 25, 2016, 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

Michael A. Arcuri, Member



Molly Doherty, Member



Gloribelle J. Perez, Member

Dated and signed by the Members of the Industrial Board of Appeals in New York, New York, on September 14, 2016.

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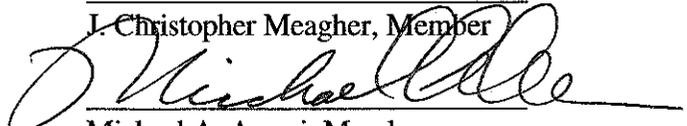
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Dated and signed by a Member
of the Industrial Board of Appeals
in Syracuse, New York, on
September 14, 2016.