

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), :
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Petitioner, : DOCKET NO. PR 16-060
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To Review Under Section 101 of the Labor Law: : INTERIM
An Order To Comply With Article 6, An Order To : RESOLUTION OF DECISION
Comply with 19, and an Order Under Articles 6, 7, and : GRANTING RECONSIDERATION
19 of the Labor Law, all dated February 24, 2016, :
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- against - :
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THE COMMISSIONER OF LABOR, :
 :
 :
Respondent. :
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APPEARANCES

Sanders & Sanders (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. The Board served the petition on respondent Commissioner of Labor on June 2, 2016. Respondent moved to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. We granted respondent's motion by resolution of decision, dated September 14, 2016, and dismissed the petition as untimely since it was filed more than 60 days after the orders were issued (Labor Law § 101).

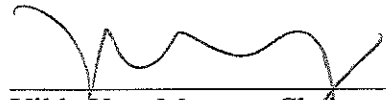
On October 31, 2016, petitioner filed an application for reconsideration of our resolution of decision dismissing the petition. Petitioner's application for reconsideration was not opposed by respondent. We find petitioner established that he made a good faith effort to file a timely petition with the Board and grant the application. The orders were issued against petitioner and his wife, Kim Nguyen, who at the time the orders were issued were separated and in the process of a divorce. Because petitioner and his wife were separated, he was aware of the orders but did not have them in his possession. Petitioner retained counsel, who contacted respondent by letter dated March 23, 2016, notifying respondent he represented petitioner and requesting a copy of the orders. Respondent, instead of sending the orders to petitioner's counsel, faxed counsel for petitioner on March 29, 2016, requesting that he complete a "letter of representation" form and return it to

respondent. The letter of representation was completed and received by respondent on April 12, 2016. On April 14, 2016, before the statute of limitations had run, petitioner’s counsel again contacted respondent requesting a copy of the orders. Respondent advised that the orders would be emailed to counsel for petitioner that same day. Counsel for petitioner, having not received the orders, contacted respondent again on May 16, 2016, to request copies of the orders, which respondent emailed to petitioner’s counsel that same day after his phone call. Upon receipt of the orders, counsel for petitioner saw for the first time the date they had been issued and realized that the 60 day statute of limitations had run; nevertheless, he filed a petition on May 23, 2016 appealing the orders and explaining the reason the petition was late. Notes in respondent’s investigative file indicate the orders were originally sent to the wrong email address.

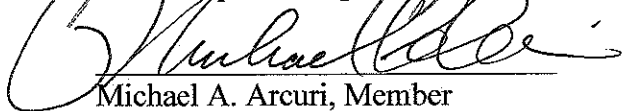
Based on the above, we find petitioner made a good faith attempt to file a timely appeal. Petitioner, upon becoming aware that orders had been issued against him, obtained counsel. Petitioner’s counsel contacted respondent more than once before the statute of limitations had run requesting copies of the orders. Respondent, however, failed to send the orders to petitioner’s counsel until after the 60 day statute of limitations for appealing the orders had run. On the record before us, petitioner established that he would have filed a timely appeal but for respondent’s delay in sending copies of the orders to petitioner’s attorney. We, therefore, deem the petition timely, reinstate it, and revoke our resolution of decision of September 14, 2016.

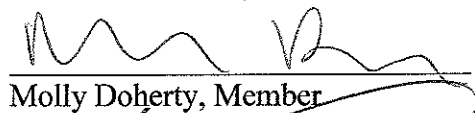
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

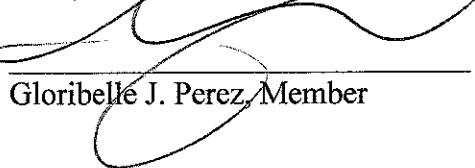
1. Petitioner’s application for reconsideration is granted; and
2. The resolution of decision issued by the Board in this matter on September 14, 2016 is revoked; and
3. The petition is reinstated; and
4. Respondent shall have 30 days from the date of service of this decision to file and serve a response to the petition.


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 December 14, 2016.