

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
 :
PAUL M. COLLINS JR. AND AQUA-MARINA, :
LTD., :
 :
Petitioners, :
 :
To Review Under Section 101 of the Labor Law: :
An Order to Comply with Article 19, and an Order : DOCKET NO. PR 16-116
Under Article 5 and 19 of the Labor Law, both dated : RESOLUTION OF DECISION
July 20, 2016, :
 :
- against - :
 :
THE COMMISSIONER OF LABOR, :
 :
Respondent. :
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APPEARANCES

Henry Law Group PLLC, Lindenhurst (William L. McCormick of counsel), for petitioners.

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

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on September 27, 2016, in an envelope post-marked September 24, 2016, and amended on November 14, 2016. The Board served the petition on respondent Commissioner of Labor on November 22, 2016. By letter dated December 15, 2016, respondent sought, and the Board granted, a 60-day extension of time to file a responsive pleading. Respondent moved on February 17, 2017, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners responded on March 20, 2017. Respondent replied on April 3, 2017.

Labor Law § 101 (1) provides that:

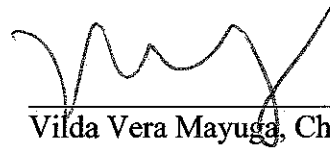
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner Such petition shall be filed with the board no later than sixty days after the issuance of such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

The orders sought to be reviewed were issued on July 20, 2016, and therefore, any petition for review filed with the Board with a post-mark after September 19, 2016, is untimely (*id.*; Board Rules of Procedure and Practice [12 NYCRR] § 65.5 [d]; *see also id.* § 65.3 [a] [providing that if the last day of the period is a weekend or holiday, the period runs until the end of the next day which is not a weekend or holiday]). As the petition in this proceeding was post-marked after September 19, 2016, and in their March 20, 2017, response, petitioners do not allege that service of the underlying orders was improper, the petition was untimely filed and must be dismissed.

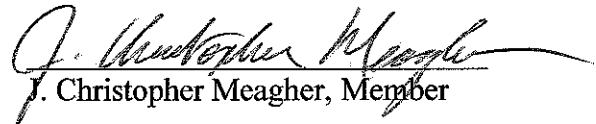
We reject petitioners' argument that five days must be added to the time allowed for filing by mail. The Board's Rules of Procedure and Practice are explicit that "[w]here a period of time prescribed by these rules (*except in the case of Petitions required to commence a proceeding*) is measured from the service of a paper, and service is by mail, five (5) days shall be added to the prescribed period" (Board Rules [12 NYCRR] § 65.3 [c] [emphasis added]; *see also Matter of Business Credit Corp.*, PR 08-061 [Dec. 17, 2008]).

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 is dismissed.



Vilda Vera Mayuga, Chairperson

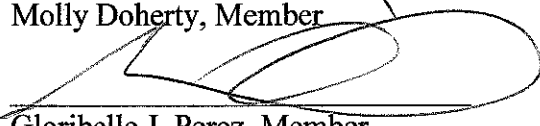


J. Christopher Meagher, Member

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
June 14, 2017.

The orders sought to be reviewed were issued on July 26, 2016, and therefore, any petition for review filed with the Board with a post-mark after September 19, 2016, is untimely *id.*; Board Rules of Procedure and Practice [12 NYCRR] § 65.3 (d), see also *id.* § 65.3 (a) [providing that if the last day of the period is a weekend or holiday, the period runs until the end of the next day which is not a weekend or holiday]. As the petition in this proceeding was post-marked after September 19, 2016, and in their March 20, 2017, response, petitioners do not allege that service of the underlying orders was improper, the petition was untimely filed and must be dismissed.

We reject petitioners' argument that five days must be added to the time allowed for filing by mail. The Board's Rules of Procedure and Practice are explicit that "[w]here a period of time prescribed by these rules (except in the case of Petitions required to commence a proceeding) is measured from the service of a paper, and service is by mail, five (5) days shall be added to the prescribed period" (Board Rules [12 NYCRR] § 65.3 (c) [emphasis added]; see also *Matter of Business Credit Corp.*, PR 08-06) [Dec. 17, 2008].

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

The Commissioner of Labor's motion to dismiss the petition for review is granted, and the petition for review is dismissed.

Nilda Vera Mayuga, Chairperson

J. Christopher Mcagher, Member



Michael A. Aicuti, Member

Molly Doherty, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Utica, New York, on
June 14, 2017.

Glorabelle J. Peroz, Member