

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

PARVIZ SHAKIBAN,

Petitioner,

To Review Under Section 101 of the Labor Law:
An Order To Comply With Article 19 of the Labor
Law, and an Order Under Article 19 of the Labor
Law, both dated August 25, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 15-357

RESOLUTION OF DECISION

APPEARANCES

Parviz Shakiban, 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 November 2, 2015 in an envelope post-marked October 29, 2015. The Board served the petition on respondent on November 23, 2015. Respondent moved on December 22, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioner did not respond to the motion.

Labor Law § 101 (1) provides that:

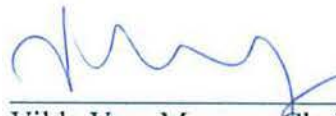
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner Such petition shall be filed with the board no later than sixty days after the issuance of such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

The orders sought to be reviewed were issued on August 25, 2015, and therefore, any petition for review filed with the Board with a post-mark after October 26, 2015 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 65.5 [d] [if the last day of the period falls on a Saturday, Sunday, or legal holiday, then the time period runs until the next day which is not a Saturday, Sunday, or legal holiday]]. As the petition in this proceeding was post-marked after October 26, 2015, 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 March 2, 2016.

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 65.5 [d] [if the last day of the period falls on a Saturday, Sunday, or legal holiday, then the time period runs until the next day which is not a Saturday, Sunday, or legal holiday]]. As the petition in this proceeding was post-marked after October 26, 2015, it was filed late and must be dismissed.

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Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member



Michael A. Arcuri, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
March 2, 2016.