

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:	:
	:
ROB JOSCLYN AND WASOFF PLUMBING &	:
UTILITY CO., INC.	:
	:
Petitioners,	:
	:
To Review Under Section 101 of the Labor Law:	:
An Order to Comply with Article 6 and an Order	:
Under Article 19 of the Labor Law, both dated	:
March 2, 2015,	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
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DOCKET NO. PR 15-134

RESOLUTION OF DECISION

APPEARANCES

Marvin Wasoff, petitioner pro se, for Rob Josclyn and Wasoff Plumbing & Utility Co., Inc.

Pico Ben-Amotz, Esq., General Counsel, NYS Department of Labor (Fredy H. Kaplan of counsel), for respondent.

WHEREAS:

1. The above proceeding was commenced by the filing of a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (Rules) (12 NYCRR Part 66) on April 29, 2015; and
2. Respondent Commissioner of Labor filed an answer to the petition on July 10, 2015; and
3. Upon notice to the parties, dated July 29, 2015, a prehearing conference was scheduled for September 21, 2015, and a hearing was scheduled for November 3, 2015; and
4. Petitioners failed to participate in the prehearing conference on September 21, 2015; and
5. Because petitioners failed to participate in the prehearing conference, we sent a letter to petitioners, dated September 22, 2015, with a copy of the notice of hearing attached, reminding them of the scheduled hearing; and
6. Petitioners failed to attend or otherwise appear at the hearing; and

7. Pursuant to Labor Law § 103 and Board Rule 65.30, the burden of proof is on the petitioners to prove that the orders under review are not valid or reasonable; and
8. Pursuant to Board Rule 65.24, "the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the Board and to request Board review pursuant to Rule 65.41," unless application for reinstatement is made within five days after the scheduled hearing; and
9. By letter dated November 5, 2015, petitioners requested reinstatement on the ground that due to miscommunication they had the wrong date for the hearing on their calendar; and
10. By letter dated November 13, 2015, we denied petitioners' request for reinstatement because petitioners had not established good cause for failing to appear at the hearing; and
11. The petitioners, having failed to establish good cause to appear at a scheduled hearing, have failed to meet their burden of proof in this proceeding and waived all rights except to be served with a copy of this decision.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:


The petition for review be, and the same hereby is, dismissed in accordance with the Board's Rules.



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.

7. Pursuant to Labor Law § 103 and Board Rule 65.30, the burden of proof is on the petitioners to prove that the orders under review are not valid or reasonable; and
8. Pursuant to Board Rule 65.24, "the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the Board and to request Board review pursuant to Rule 65.41," unless application for reinstatement is made within five days after the scheduled hearing; and
9. By letter dated November 5, 2015, petitioners requested reinstatement on the ground that due to miscommunication they had the wrong date for the hearing on their calendar; and
10. By letter dated November 13, 2015, we denied petitioners' request for reinstatement because petitioners had not established good cause for failing to appear at the hearing; and
11. The petitioners, having failed to establish good cause to appear at a scheduled hearing, have failed to meet their burden of proof in this proceeding and waived all rights except to be served with a copy of this decision.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition for review be, and the same hereby is, dismissed in accordance with the Board's Rules.

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.