

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

SYNDIE MOLINA A/K/A DR. SYNDIE G.E.
MOLINA AND FAMILY FITNESS UNLIMITED
LLC,

Petitioners,

To Review Under Section 101 of the Labor Law:
An Order to Comply with Article 6 of the Labor Law,
and an Order Under Article 19 of the Labor Law, both
dated January 16, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 15-079

RESOLUTION OF DECISION
GRANTING RESPONDENT'S
MOTION TO RESCIND THE
APRIL 13, 2016 INTERIM
RESOLUTION OF DECISION
AND REINSTATE THE
SEPTEMBER 16, 2015
RESOLUTION OF DECISION

APPEARANCES

Syndie Molina, petitioner pro se, and for Family Fitness Unlimited LLC.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (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 March 16, 2015, challenging two orders issued against them by respondent Commissioner of Labor on January 16, 2015. Respondent filed her answer on April 27, 2015.

On September 16, 2015, we issued a resolution of decision dismissing this matter due to petitioners' failure to appear at the hearing scheduled for July 29, 2015. By letter dated October 30, 2015, petitioners requested reconsideration of the Board's decision of September 16, 2015, on the ground that petitioner Molina was out of the country on the day of the hearing due to a family emergency, and upon her return to New York, was involved in a motor vehicle accident resulting in a head and spinal injury. In support of their motion for reconsideration, petitioners submitted a copy of Molina's passport as proof that she was out of the country from June 12 until August 9, 2015, and documentation about a car accident she was involved in while working on August 21, 2015. The passport contained two stamps, one illegible and one dated August 8, 2015. Respondent did not file a response to petitioners' motion for reconsideration.

On April 13, 2016, the Board issued an interim resolution of decision granting petitioners' motion for reconsideration, and a hearing was scheduled for August 26, 2016. On August 15 2016, respondent filed a motion to rescind the Board's decision of April 13, 2016 and reaffirm the September 16, 2015 decision dismissing the petition pursuant to Board Rule 65.24. Respondent alleged that petitioner Molina was present in New York City on July 29, 2015, was physically available to participate in the Board hearing in this matter, and was not out of the country due to a family emergency as she claimed in her motion for reconsideration. Attached to respondent's motion was a letter from petitioner Molina's employer, the City of New York Fire Department, responding to a Department of Labor request for Molina's time sheet for the period of July 26 through August 1, 2015, and a copy of Molina's "Timesheet Summary" for the same period. The "Timesheet Summary" indicates that with the exception of July 28, 2015, petitioner Molina reported working each day and worked a total of 62.15 hours during this workweek. The document reflects petitioner Molina reported to work at 9:49 p.m. on July 29, 2015, the date of the hearing. Respondent's motion contends that petitioner Molina was present and available to work in New York City on the date of the hearing and that her claim that she was out of the country on a family emergency was untrue.

Pending resolution of respondent's motion, the August 26, 2016 hearing was adjourned. On September 13, 2016, petitioners responded to respondent's motion, but did not provide any information to refute respondent's allegation and supporting documentation that petitioners were in fact available to attend the hearing of July 29, 2015.

We find that petitioner Molina was in New York City and not abroad as she claimed in her motion for reconsideration to the Board, and that respondent provided sufficient documentation to support her motion to reinstate the Board's September 16, 2015 resolution of decision dismissing the petition for petitioners' failure to appear at the July 29, 2015. We rescind our April 13, 2016 interim resolution of decision granting reconsideration and reinstate our September 16, 2015 resolution of decision dismissing the petition.

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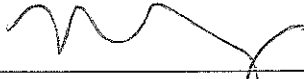
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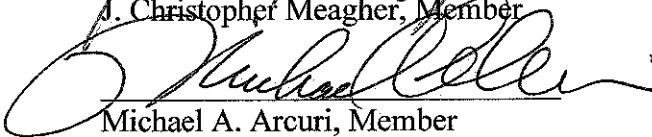
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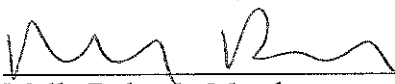
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Respondent's motion to rescind the Board's interim decision of April 13, 2016 and to reaffirm the Board's decision of September 16, 2015 is granted; and
2. The Board's April 13, 2016 interim resolution of decision granting reconsideration is rescinded; and
3. The Board's September 16, 2015 resolution of decision is reinstated; and
4. 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

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.