

**JASON STEVEN WIDMER AND ITW INDUSTRIES, INC.
(T/A GETTY OF RIDGE)**

Docket No. PR 09-164

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

JASON STEVEN WIDMER AND ITW
INDUSTRIES, INC. (T/A GETTY OF RIDGE),

Petitioners,

DOCKET NO. PR 09-164

To Review Under Section 101 of the Labor Law:
Orders under Articles 4, 6 and 19 of the Labor Law,
dated April 8, 2009,

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Jason Steven Widmer, *pro se* Petitioner.
Jason Steven Widmer, Representative for ITW Industries, Inc.

Maria L. Colavito, Counsel, NYS Department of Labor, Benjamin A. Shaw of Counsel, for
Respondent, Commissioner of Labor.

WHEREAS:

This proceeding was commenced when the Petitioner filed a petition with the
Industrial Board of Appeals (Board) on June 27, 2009, seeking review of an order that
Respondent Commissioner of Labor (Commissioner) issued on April 8, 2009.

Labor Law § 101 (1) states 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 April 8, 2009, and therefore, a petition for review would be timely if filed with the Board no later than June 7, 2009 (Board Rules 65.5 [d] [12 NYCRR 65.5 (d)]). The petition in this proceeding was post-marked June 27, 2009. The petition was therefore untimely.

By letter dated August 12, 2009 the Board requested a written explanation for the untimely petition, advising that such explanation be supported by proof, including an affidavit by Petitioner or someone else with personal knowledge of the relevant facts. On September 2, 2009, the Board received a sworn letter from Petitioner that was dated August 25, 2009.

Petitioner's letter did not provide an explanation for the untimely filing other than to imply that he was confused by an unspecified letter. Petitioner's letter did not explain why the petition filed on June 27, 2009 is not untimely. The fact that the Petitioner was confused does not justify Petitioner's failure to meet the filing deadline imposed by Labor Law § 101.

An amended petition was served on Respondent on October 2, 2009. The Commissioner moved on November 09, 2009 to dismiss the petition as untimely, or in the alternative to strike portions of the petition. The Petitioner responded to the motion on December 30, 2009, however it did not provide any explanation for the untimely filing.


The petition in this proceeding was post-marked June 27, 2009. The petition was therefore untimely, and the Petitioner, having failed to respond to the Commissioner's motion to dismiss, has offered no sufficient grounds for excusing such untimely filing. Accordingly, the petition must be dismissed.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner of Labor's motion to dismiss the petition for review is granted in its entirety, and the petition for review be, and the same hereby is, dismissed.

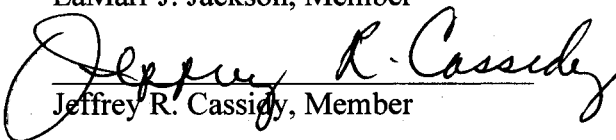

Anne P. Stevason, Chairman


J. Christopher Meagher, Member


Jean Grumet, Member

Absent

LaMarr J. Jackson, Member


Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
May 26, 2010.