

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

PRAKASH M. SWAMY,

Petitioner,

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 March 25, 2010,

DOCKET NO. PR 10-177

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Prakash Swamy, *pro se*, for petitioner.

Maria L. Colavito, Counsel, NYS Department of Labor, Larissa C. Wasyl of Counsel, for Respondent.

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on June 7, 2010, in an envelope post-marked June 2, seeking review of orders that the respondent Commissioner of Labor (respondent or Commissioner) issued March 25, 2010.

The Board served the petition and a subsequently filed amended petition on the respondent on July 23, 2010. The respondent moved on August 12, 2010 to dismiss the petition on the ground that the petitioner failed to comply with Labor Law § 101 (1) by filing the petition with the Board more than sixty days after the orders were issued. In response, the petitioner argues that the late filing should be excused because he was confused concerning the appeals process and was never informed by the respondent of the consequences of failing to file a timely petition.

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.”

In the instant proceeding, the orders sought to be reviewed were issued on March 25, 2010, and therefore, a petition for review would be timely if filed with the Board no later than May 24, 2010. The Board received the petition enclosed in an envelope post-marked June 2, 2010, and the petitioner does not contest that he filed his petition late.

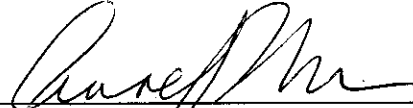
Although the petitioner claims that the process to appeal the order was confusing, we note that the orders served on him contained within them a notice of the method of appeal to the Board. Clearly stated at the bottom of the order to comply is the following: “[i]f you are aggrieved by this Order, you may appeal within 60 days from the date issued to the Industrial Board of Appeals as provided by § 101 of the Labor Law. Your appeal should be addressed to the Industrial Board of Appeals” Additionally, when the petitioner incorrectly sent a letter of appeal directly to the respondent, he was sent a letter giving the same instructions as the notice contained in the orders. Therefore, the petitioner was instructed in writing on two occasions prior to the end of the 60 day statutory period how he could appeal the orders. With respect to the petitioner’s contention that his due process rights were denied because the respondent did not advise him of the consequences of failing to file a timely petition, ignorance of the law is no excuse for failing to meet a statutorily required statute of limitations. Indeed, in *Matter of Leo O’Brien et al.*, PR 09-388 (May 26, 2010), we held that the petitioners’ lack of familiarity with the law did not justify the untimely filing of their petition, and we dismissed the proceeding (*see also Matter of Salazar*, PR 09-382 [October 20, 2010] [appeal pending] [finding that the failure to file a timely petition inherently implies an adverse consequence]).

The petitioner’s other arguments, that he should have 60 days from the date he received the orders to appeal, that the appeals process is misleading because it appears to apply only to employers, although he is allegedly an employee, and that he had never received notice of the claim prior to receipt of the orders, are all equally without merit. Labor Law § 101 states that the time to file an appeal begins to run from “issuance” of the orders, not from receipt of the orders as urged by the petition; nowhere in the notice of the right to appeal contained in the orders themselves or in the subsequent letter sent to the petitioner by the respondent, is the right to appeal limited only to employers; and, finally, we have repeatedly held that a petitioner’s due process rights are satisfied by the opportunity to contest an order before the Board (*see e.g. Matter of Michael E. Fischer (D/B/A MEFCO Builders)*, PR 06-099 [April 23, 2008]).

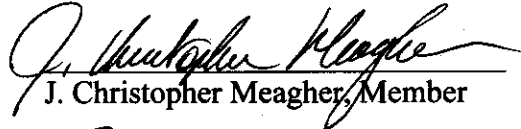
For the reasons set forth above, the petition must be dismissed as untimely.

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.



Anne P. Stevason, Chairman



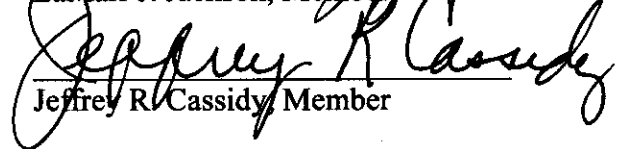
J. Christopher Meagher, Member



Jean Grunet, Member



LaMarr J. Jackson, Member



Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
April 27, 2011.