

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
 :
 DANIEL MCCARTNEY AND HEALTHCARE :
 SERVICES GROUP, INC., :
 :
 Petitioners, :
 :
 To Review Under Section 101 of the Labor Law: :
 Two Orders to Comply with Labor Law Article 6 and :
 an Order under Articles 6 and 19 of the Labor Law, :
 both dated May 19, 2010, :
 :
 - against - :
 :
 THE COMMISSIONER OF LABOR, :
 :
 Respondent. :
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DOCKET NO. PR 10-290

RESOLUTION OF DECISION

APPEARANCES

Timothy J. McCartney, In-house Counsel, for Petitioners.

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

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on September 14, 2010, in an envelope postmarked September 10, 2010. The petition was subsequently amended. The petition and amended petition were served on the respondent Commissioner of Labor (Commissioner) on November 9, 2010. The Commissioner moved on December 15, 2010 to dismiss the petition as untimely because it was filed more than 60 days after the order was issued. The petitioners did not respond to the motion although we advised them in a letter dated December 17, 2010 that their response to the motion was to be filed on or before January 18, 2011.

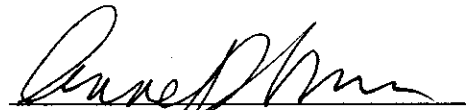
Labor Law § 101 (1) states that:

“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 order sought to be reviewed was issued on May 19, 2010, and therefore, any petition for review filed with the Board after July 18, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until September 14, 2010, it was untimely. Having failed to respond to the Commissioner’s motion to dismiss, the petitioner has offered no 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. Steyason, Chairperson



J. Christopher Meagher, Member



Jean Grumet, 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
September 9, 2011.

"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."

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Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grimes, Member


LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Rochester, New York, on
September 9, 2011.

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Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grumet, Member

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
September 9, 2011.