

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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 In the Matter of the Petition of: :
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 RAMDAT K. HARIHAR AND R & C APPAREL :
 CORP., :
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 Petitioners, :
 :
 :
 To Review Under Section 101 of the Labor Law: An :
 Order Under Article 19 of the Labor Law dated :
 December 17, 2010, :
 :
 :
 - against - :
 :
 :
 THE COMMISSIONER OF LABOR, :
 :
 :
 Respondent. :
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DOCKET NO. PR 11-069
RESOLUTION OF DECISION

APPEARANCES

Ramdat K. Harihar, petitioner pro se, and for R & C Apparel Corp.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Benjamin T. Garry of counsel), for respondent.

WHEREAS:

This proceeding was commenced when the petitioners filed a petition with the Industrial Board of Appeals (Board) on March 3, 2011. The petition was served on the respondent Commissioner of Labor (Commissioner) on March 16, 2011. The Commissioner moved on April 18, 2011 to dismiss the petition as untimely because it was filed more than 60 days after the order was issued.

Labor Law § 101 (1) states that:

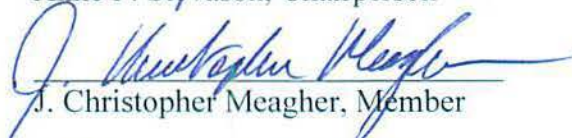
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner. . . . Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order.”

The order sought to be reviewed was issued on December 17, 2010, and therefore, any petition for review filed with the Board after February 15, 2011 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 March 3, 2011, it was untimely. The petitioners have not provided any sufficient explanation in their response to the motion to excuse the late 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, Chairperson


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 Albany, New York, on
October 11, 2011.