

The orders sought to be reviewed were issued on January 6, 2011, and therefore, any petition for review filed with the Board after March 7, 2011 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]).

The Petitioner argues that the petition was mailed on March 7, 2011, and was therefore timely under the Board Rules 65.5 (d) (12 NYCRR 65.5 [d]) (emphasis added) which states that “[a]ny pleading post-marked within the time provided for by these rules shall be deemed timely filed.” We disagree.

The Petitioner’s attorney submitted an affidavit from his legal assistant which states:

“On March 7, 2011 . . . I placed three copies [of the petition] in an envelope with postage affixed, in a United States Postal Service Mailbox located in the lobby of our office building.”

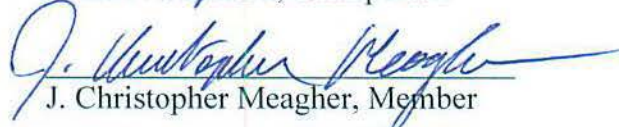
However, the petition was received by the Board in an envelope that was post-marked on March 8, 2011. Inspection of the post-mark indicates that it is not a United States Postal Service post-mark, but rather a Pitney Bowes postal machine post-mark. Therefore, the petition was either not mailed on March 7, 2011, as the Petitioner avers, or it was mailed on March 7, 2011, with an incorrect post-mark. In any event, the Board Rules are clear that the Board looks at the date of the post-mark, not the date of alleged mailing, when determining whether a petition has been timely filed. The petition was received by the Board in an envelope post-marked one day after the final day of the statute of limitations. Therefore, the petition is untimely and 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 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
October 11, 2011.