

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

-----X	
In the Matter of the Petition of:	:
	:
KIMBERLY KNITS,	:
	:
Petitioner,	:
	:
To Review Under Section 101 of the Labor Law:	:
Orders to Comply under Article 19 the Labor Law,	:
dated April 11, 2008	:
	:
- against -	:
	:
THE COMMISSIONER OF LABOR,	:
	:
Respondent.	:
-----X	

DOCKET NO. PR 08-085
RESOLUTION OF DECISION

APPEARANCES

Jose E. Rodriguez, for Petitioner.

Maria L. Colavito, Counsel to the Department of Labor, Benjamin T. Garry of Counsel, for Respondent, Commissioner of Labor.

WHEREAS:

1. Pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (Rules) (12 NYCRR Part 66), the above proceeding was commenced on June 20, 2008 when the Board received a letter from the Petitioner, dated June 13, 2008, requesting an extension of time to file a petition, which the Board treated as a petition for review.
2. By letter dated July 11, 2008 the Board requested that Petitioner file an original and three copies of an amended petition, which complied with the Board's Rules, on or before July 28, 2008.
3. On July 28, 2008, the Board received a letter from the Petitioner requesting a further 30 day extension of time, which was granted by the Board.
4. On August 27, 2008, the Board received an amended petition from the Petitioner. The petition was served on the Respondent on September 10, 2008.

5. On October 14, 2008 Respondent filed a motion to dismiss alleging that the petition should be dismissed as untimely since the Order to Comply was issued on April 11, 2008, more than sixty days prior to the filing of the petition.
6. On November 10, 2008, the Board notified Petitioner that its response to the motion to dismiss, if any, must be received by the Board no later than November 21, 2008. To date, Petitioner has not filed a response.
7. Labor Law Section 101 provides that a petition for review must be filed with the Board no later than sixty days after the issuance of the Orders to be reviewed. The Orders to be reviewed in this case were issued by the Respondent on April 11, 2008; therefore, the time to appeal expired on June 10, 2008 and the petition is untimely.

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


Susan Sullivan-Bisceglia, Member


J. Christopher Meagher, Member


Mark G. Pearce, Member


Jean Grumet, Member

Dated and Signed in the Office of
the Industrial Board of Appeals,
at New York, New York, on
March 25, 2009.