

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
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DOMINICK HUDYBERDI, :
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APPEARANCES

Dominick Hudyberdi, petitioner pro se.

Jill Archambault, General Counsel, NYS Department of Labor, Albany (*Steven J. Pepe* of counsel) for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (hereinafter “Board”) on June 3, 2022. On September 23, 2022, the Board served the petition on respondent Commissioner of Labor. Respondent moved on November 21, 2022, to dismiss the petition for being untimely. Petitioner submitted opposition to the motion on November 22, 2022 and February 9, 2023, and respondent filed a reply on February 28, 2023. Petitioner filed another response on March 6, 2023.

The petition seeks the Board’s review of a determination dated March 29, 2022, which found that petitioner’s employer abated specific violations detailed in that determination. Petitioner objects to the determination because he does not believe the violations were all abated.

Respondent moved to dismiss the petition because it was filed more than 60 days after the determination being appealed was issued. 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.”




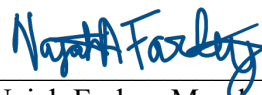

Respondent asserts that the determination to be reviewed was issued on March 29, 2022, and therefore any petition for review filed with the Board after May 28, 2022 is untimely. Petitioner opposes respondent’s motion asserting that he did not receive the determination until May 27, 2022. Respondent filed a reply asserting that respondent was not required to serve the determination on petitioner because he was not the complainant, the employer, or the employees’ union’s authorized employee representative.

The order to be reviewed was issued on March 29, 2022, and therefore, any petition for review filed with the Board after May 31, 2022,¹ is untimely (Board Rules [12 NYCRR] § 65.19). Petitioner asserted that he received the determination on May 27, 2022. As the final date to file was on May 31, 2022, petitioner has no excuse for his late filing, nor is the Board permitted to extend the statute of limitations for filing a petition (Board Rules [12 NYCRR] § 65.19 [b]). Petitioner has also failed to prove that he was entitled to service of the determination. As the petition in this proceeding was filed on June 3, 2022, clearly after the statutory deadline to file it, and petitioner has not offered a legally sufficient reason to excuse the late filing, we find that the petition was 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, and the petition for review be, and the same hereby is, dismissed.

Dated and signed by the Members
of the Industrial Board of Appeals
on March 8, 2023.

 <hr/> Michael A. Arcuri, Member	 <hr/> Molly Doherty, Chairperson
 <hr/> Patricia Kakalec, Member	 <hr/> Najah Farley, Member
	 <hr/> Sandra Abeles, Member

¹ Sixty days after March 29, 2022 is May 28, 2022, which is a Saturday, and May 30, 2022 was a legal holiday, thus the petition would be considered timely if it were filed by Tuesday, May 31, 2022 (12 NYCRR § 65.10 [a]).