

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

-----X
In the Matter of the Petition of:

TARA JOY OOLIE AND JUST CALM DOWN,
LLC, AND JUST CALM DOWN II, LLC (T/A JUST
CALM DOWN SPA),

Petitioners,

To Review Under Section 101 of the Labor Law:
An Order to Comply With Article 6 of the Labor
Law, an Order to Comply with Article 19 of the
Labor Law, and an Order Under Article 19 of the
Labor Law, each dated June 30, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
-----X

DOCKET NO. PR 15-289

RESOLUTION OF DECISION

APPEARANCES

Tara Oolie, petitioner pro se, and for Just Calm Down, LLC and Just Calm Down II, LLC (T/A Just Calm Down Spa).

Pico Ben-Amotz, General Counsel, NYS Department of Labor (*Kathleen Dix* of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on September 17, 2015 in an envelope post-marked September 16, 2015. On November 18, 2015, the Board served an amended petition on the Commissioner. Respondent moved on December 17, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. The petitioners did not reply to the motion.

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.”

The orders sought to be reviewed were issued on June 30, 2015, and therefore, any petition for review filed with the Board with a post-mark after August 31, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]; Board Rules of Procedure and Practice 65.3 [a] [12 NYCRR 65.5 [d] [if the last day of the period falls on a Saturday, Sunday, or legal holiday, then the time period runs until the next day which is not a Saturday, Sunday, or legal holiday]]). As the petition in this proceeding was post-marked after August 31, 2015, it was filed late 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.



Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member



LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Dated and signed by the Members
of the Industrial Board of Appeals
at New York, New York
on March 2, 2016.

commissioner Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order."

The orders sought to be reviewed were issued on June 30, 2015, and therefore, any petition for review filed with the Board with a post-mark after August 31, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]; Board Rules of Procedure and Practice 65.3 [a] [12 NYCRR 65.5 [d] [if the last day of the period falls on a Saturday, Sunday, or legal holiday, then the time period runs until the next day which is not a Saturday, Sunday, or legal holiday]]). As the petition in this proceeding was post-marked after August 31, 2015, it was filed late 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.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member



Michael A. Arcuri, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
March 2, 2016.