

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

JOHN M. MARRA AND LONG ISLAND
EMERGENCY SERVICES, :

Petitioners, :

DOCKET NO. PR 11-043

To Review Under Section 101 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, :
both dated December 17, 2010, :

RESOLUTION OF DECISION
ON APPLICATION FOR
RECONSIDERATION

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :
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APPEARANCES

William G. Goode, Esq. for petitioners.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Benjamin A. Shaw of Counsel), for respondent.

WHEREAS:

The petitioners moved by letter dated September 12, 2011, for reconsideration of a Resolution of Decision issued by the Industrial Board of Appeals on July 26, 2011 dismissing the petitioners' petition as untimely.

The petition was filed with the Board on February 18, 2011 seeking review of orders issued by the respondent Commissioner of Labor (Commissioner or respondent) on December 17, 2010. The Commissioner moved to dismiss the petition as untimely because it was filed more than 60 days after the orders were issued. The petitioners opposed the motion on the ground that they did not receive the orders until "later" in December and believed they had 60 days from the date they received the orders to file their appeal. We dismissed the petition because the time for measuring the limitations period for filing a petition is from the date that the orders are issued (*see Matter of Randall Friedman*, PR 10-175 [April 27, 2011]), and because ignorance of the law does not excuse the untimely filing

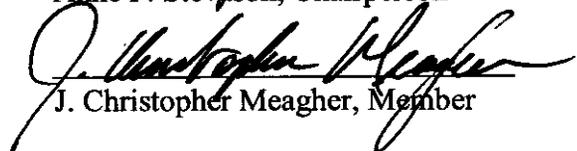
of a petition. We found that under Labor Law § 101 (1), the petition was untimely because it was filed after February 15, 2011 (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]).

On their motion for reconsideration, the petitioners argue that the 60 day statute of limitations for appealing orders issued by the Commissioner does not begin to run until receipt. In support of this argument, the petitioners cite to *Guirdanella v Division of Housing and Community Renewal*, 165 AD2d 667 (1st Dept 1990) (Article 78 proceeding deemed timely commenced where respondent gave no indication of when notice of its determination was given to petitioner), which is inapplicable to proceedings before the Board, because it concerns an Article 78 proceeding which is governed by the Civil Practice Law and Rules (CPLR). We have repeatedly held that the CPLR is not applicable to proceedings before the Board (*see e.g. Matter of 238 Food Corp.*, PR 05-068 [April 25, 2008]; *Matter of Harmanein*, PR 09-256 [June 23, 2010]; *Matter of Wolk*, PR 10-104 [December 15, 2010]). We have also repeatedly found that the period for commencing a proceeding before the Board runs from the date the Commissioner issues an order, and that such time period may not be extended unless service was defective (*see e.g. Matter of Gambino*, PR 10-150 [interim decision, November 18, 2010]), or a valid excuse for the late filing could be established (*see e.g. Matter of Outstanding Transport*, PR 09-316 [May 26, 2010] [petition deemed timely where Department of Labor provided petitioner incorrect information concerning statute of limitations to file an appeal]). In this case, no defect in serving the orders has been alleged, nor is misunderstanding that 60 days does not mean two months a valid excuse for filing a late petition. Accordingly, the motion for reconsideration is denied.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petitioners' motion for reconsideration of the Board's Resolution of Decision of July 26, 2011, is denied.

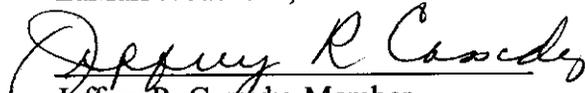

Anne P. Stevenson, Chairperson


J. Christopher Meagher, Member

Jean Grumet, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
January 30, 2012.

LaMarr J. Jackson, Member


Jeffrey R. Cassidy, Member

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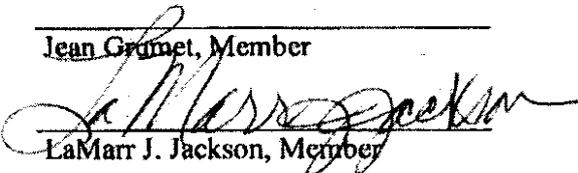
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petitioners' motion for reconsideration of the Board's Resolution of Decision of July 26, 2011, is denied.

Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grumet, Member



LaMarr J. Jackson, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Rochester, New York, on
January 20, 2012.

Jeffrey R. Cassidy, Member