STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:

RUSSELL NOWAKOWSKI,

Petitioner,

To Review Under Section 101 of the Labor Law:
An Order to Comply with Article 6 of the Labor Law, dated April 6, 2016,

- against -

THE COMMISSIONER OF LABOR,

Respondent.

DOCKET NO. PR 17-159

RESOLUTION OF DECISION

APPEARANCES

Russell Nowakowski, petitioner pro se.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (Benjamin T. Garry of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals on November 10, 2017, in an envelope post-marked November 8, 2017, which was subsequently amended on December 8, 2017, at the Board’s request, because petitioner had failed to include copies of the orders to be reviewed with his original petition as required by the Board’s Rules. The Board served the petition on respondent Commissioner of Labor on January 2, 2018. Respondent moved February 1, 2018, to dismiss the petition as untimely. Petitioner did not respond 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 order sought to be reviewed was issued on April 6, 2016, and therefore, any petition for review filed with the Board with a post-mark after June 6, 2016, is untimely (id.; Board Rules
of Procedure and Practice [12 NYCRR] §§ 65.5 [d]; 65.3 [a]). As the petition in this proceeding was post-marked after June 6, 2016, 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 is dismissed.

Vilda Vera Mayuga, Chairperson

Christopher Meagher, Member

Michael A. Arcuri, Member

Molly Doherty, Member

Absent

Gloribelle J. Perez, Member

Dated and signed by the Members of the Industrial Board of Appeals in New York, New York, on June 6, 2018.
of Procedure and Practice [12 NYCRR §§ 65.5 [d]; 65.3 [a]]. As the petition in this proceeding was post-marked after June 6, 2016, 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 is dismissed.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

Michael A. Arcuri, Member

Molly Doherty, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Utica, New York, on
June 6, 2018.

Gloribelle J. Perez, Member