WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (hereinafter “Board”) on May 10, 2019 in an envelope post-marked May 8, 2019. The Board served the petition on respondent Commissioner of Labor on May 17, 2019. Respondent moved on June 14, 2019 to dismiss the petition as untimely.

It is undisputed that the petition for review was untimely filed. Petitioner argues, in opposition to respondent’s motion, that the petition was actually only “a few days late” because during his first attempt at filing his petition, it was returned to him by the United States Postal Service. He included with his petition, the envelope in which he alleges that he first mailed the petition. The envelope is postmarked April 4, 2019 and the signature line on the petition is dated April 3, 2019.

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 to be reviewed was issued on January 29, 2019. Sixty days from January 29, 2019 is Saturday, March 30, 2019. If the last day of the 60-day period falls on a Saturday, Sunday or legal holiday, the 60-day period shall continue to run until the next business day (Industrial Board of Appeals Rules of Procedure and Practice (hereinafter “Board Rules”) [12 NYCRR] § 65.3 [a]). Here the next business day was Monday, April 1, 2019. Therefore, any petition for review filed with the Board with a post-mark after April 1, 2019 is untimely (Labor Law § 101 (1); Board Rules [12 NYCRR] §§ 65.5 [d]; 65.3 [a]). As the petition in this proceeding was post-marked, in both instances, after April 1, 2019, 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 untimeliness 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 September 11, 2019.
commissioner ... Such petition shall be filed with the board no later than sixty days after the issuance of such ... order.”

The order to be reviewed was issued on January 29, 2019. Sixty days from January 29, 2019 is Saturday, March 30, 2019. If the last day of the 60-day period falls on a Saturday, Sunday or legal holiday, the 60-day period shall continue to run until the next business day (Industrial Board of Appeals Rules of Procedure and Practice (hereinafter “Board Rules”) [12 NYCRR] § 65.3 [a]). Here the next business day was Monday, April 1, 2019. Therefore, any petition for review filed with the Board with a post-mark after April 1, 2019 is untimely (Labor Law § 101 (1); Board Rules [12 NYCRR] §§ 65.5 [d]; 65.3 [a]). As the petition in this proceeding was post-marked, in both instances, after April 1, 2019, 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 untimeliness 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 September 11, 2019.

Molly Doherty, Chairperson
New York, New York

Michael A. Arcuri, Member
Utica, New York

Gloribelle J. Perez, Member
New York, New York

Patricia Kakalec, Member
New York, New York

Najah Farley, Member
New York, New York