STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of: ALEJANDRO CELSO SAAVEDRA, Petitioner, To Review Under Section 101 of the Labor Law: An Order to Comply with Article 6 and An Order Under Article 19 of the Labor Law, both dated June 2, 2009, - against - THE COMMISSIONER OF LABOR, Respondent.	DOCKET NO. PR 09-159 RESOLUTION OF DECISION ON APPLICATION FOR RECONSIDERATION

APPEARANCES

Alejandro Celso Saavedra, petitioner pro se.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Larissa C. Bates of counsel), for respondent.

WHEREAS:

The above proceeding was commenced by the filing of a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (Rules) (12 NYCRR Part 66) on June 26, 2009. Upon notice by the Board to the parties, a hearing was scheduled for November 17, 2010 at 10:00 a.m. in White Plains, New York. Petitioners failed to attend or otherwise appear at the hearing. The Board issued a Resolution of Decision on December 15, 2010, dismissing the petition due to petitioner's failure to appear at the hearing.

Pursuant to Rule 65.24, the failure of a party to appear at a hearing shall be deemed a waiver of all rights, except the rights to receive a copy of the decision and request review under Rule 65.41, unless an application for reinstatement is made within five days after the scheduled hearing. If a timely application for reinstatement is made, the Board upon a showing of "good cause" may excuse the failure to appear and reopen the hearing.

On January 21, 2011, the Board received an application for reconsideration from petitioner stating that the address listed in the Order to Comply, 35 Fairmount Avenue, Yonkers, New York 10701, was not his address, and:

> "To the best of my recollection, I have never received a notice to appear at a hearing on November 17, 2010. (But then again, if it was sent to the same address as listed on the Order to Comply, I would not have received it.)...Your letter dated January 10, 2011 states that the [Board] dismissed the proceeding because I failed to appear at the hearing. Regrettably, I was not aware of the hearing."

The letter was signed by the petitioner and listed his address as 171 Oak Street #3, Yonkers, New York 10701. For the reasons stated below, we deny the application for reconsideration.

The petition and a notice of appearance filed by petitioner on his own behalf both list 171 Oak Street #3, Yonkers, New York 10701 as petitioner's address. All of the Board's correspondence with petitioner in this matter was sent to the Oak Street address, and none of it was returned by the post office as undeliverable. On July 8, 2010, the Board sent petitioner notice of a pre-hearing teleconference scheduled for July 26, 2010, addressed to the Oak Street address. Petitioner failed to participate in the pre-hearing teleconference and the following day, the Board sent a letter to petitioner at the Oak Street address, which stated that he had failed to appear at the pre-hearing teleconference, and requested that he contact the Board immediately if he could be reached at another number. This letter also stated that a hearing would be held on November 17, 2010, and he would receive a Notice of Hearing under separate cover with further details.

The Board, on July 27, 2010, issued the parties a formal Notice of Hearing stating that the hearing was scheduled for November 17, 2010. The notice was addressed to the Oak Street address, which the application for reconsideration, as well as the Petition, state is the Petitioner's correct address. The notice advised in bold face, "If you do not attend the hearing, you risk adverse consequences, including the issuance of a decision finding that you have abandoned your claims and/or defaulted." The notice of hearing was not returned by the post office as undeliverable. On December 15, 2010, the Board issued a Resolution of Decision dismissing the Petition because the petitioner failed to appear. The decision was served on petitioner at the Oak Street address on December 20, 2010.

On January 21, 2011, more than two months after the hearing, the Board received Petitioner's application for reconsideration requesting that the Board reinstate the petition because he had not received notice of the hearing. The Commissioner filed a response to the application for reconsideration on April 6, 2011, and the petitioner was given until May 2, 2011 to file a reply. No reply was filed.

We find that Petitioner was given due Notice of Hearing. A letter informing him of the date was sent on July 27, 2010 to the address Petitioner has confirmed is his own and a Notice of Hearing was also sent to that address. We therefore deny Petitioner's Application for Reconsideration.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Petitioners' application for reconsideration be, and the same hereby is, denied.

Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grumet, Member

LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

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

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Petitioners' application for reconsideration be, and the same hereby is, denied.

Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grumet, Member

LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Rochester, New York, on
January 30, 2012.