

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Tito Masonry and Construction LLC and
Moravia Drice,**
Petitioners,

Docket No.: LB-25-0403

v.

**Office of the Attorney General, Fair Labor
Division,**
Respondent.

ORDER OF DISMISSAL

This is an appeal from two citations issued to the petitioners by the Office of the Attorney General, Fair Labor Division (division). The citations state violations of the prevailing wage act, G.L. c. 149, §§ 27, 27B. In total, they require the petitioners to pay approximately \$112,000 in restitution and \$12,000 in penalties. The division has filed a motion to dismiss, which the petitioners have opposed.

Appeals under the pertinent statutes are required to be taken “within ten days of the receipt of the citation.” G.L. c. 149, § 27C(b)(4). The citations to the petitioners were issued on June 10, 2025, and sent to the petitioners by U.S. mail. Absent unusual circumstances, the citations may be presumed to have been received by the petitioners within three days, namely by June 13, 2025. *See* 801 C.M.R. § 1.01(4)(c). The petitioners filed their appeals by mail in envelopes postmarked June 27, 2025. *See id.* § 1.01(4)(a). The appeals were thus four days late. The petitioners do not dispute these points.

The petitioners explain that dismissal of their appeal would be a harsh outcome. They say that they never intended to break the law or to underpay their employees. They add that

their business could not feasibly pay the sums demanded of them. It is also fair to recognize that the appeal is late by only a few days.

The problem is that “[a] statutory appeal period constitutes a jurisdictional prerequisite to a [tribunal’s] authority to consider any matter on appeal.” *Commonwealth v. Claudio*, 96 Mass. App. Ct. 787, 791-92 (2020). This rule applies to the appeal period prescribed by G.L. c. 149, § 27C(b)(4). *See Andino v. Attorney Gen.*, No. LB-21-572, 2022 WL 9619031 (Div. Admin. Law App. Jan. 21, 2022) (collecting cases). *See also Idea Painting, Inc. v. Attorney Gen.*, No. 2384CV02952, 2024 WL 4217947 (Super. Ct. Sep. 03, 2024). When an appealing party has missed a jurisdictional deadline, “the reviewing [tribunal] has . . . no authority to enlarge the appeal period.” *Claudio*, 96 Mass. App. Ct. at 792.

Perhaps the division may permissibly give further consideration to the aspects of the petitioners’ case stressed in their papers. But this tribunal cannot. No matter how strong the petitioners’ appeal may be, or how much sympathy their circumstances may warrant, or how narrowly they missed their deadline, this tribunal lacks authority do anything but “dismiss[] the cause.” *Phone Recovery Servs., LLC v. Verizon of New England, Inc.*, 480 Mass. 224, 230 (2018).

It is therefore ORDERED that the motion to dismiss is ALLOWED and the appeal is DISMISSED.

Dated: September 18, 2025

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
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