

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 27, 2015

CLAIM NO. 201298825

KERRY TOYOTA

PETITIONER

VS.

APPEAL FROM HON. STEVEN BOLTON,
ADMINISTRATIVE LAW JUDGE

ANTHONY ADAMS
HON. STEVEN BOLTON,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
AND ORDER DISMISSING

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

RECHTER, Member. Kerry Toyota ("Toyota") appeals from the July 17, 2014 Opinion, Award and Order rendered by Hon, Steven G. Bolton, Administrative Law Judge ("ALJ"), awarding Anthony Adams ("Adams") temporary total disability, permanent partial disability and medical

benefits. Toyota also appeals from the ALJ's October 30, 2014 order overruling its motion for ruling on its petition for reconsideration. Toyota argues the ALJ erred in awarding additional temporary total disability benefits and abused his discretion by not ruling on its petition for reconsideration. We dismiss the appeal as it relates to the Opinion, Award and Order as untimely, and affirm the October 30, 2014 order.

Following the issuance of the July 17, 2014 Opinion, Order and Award, Toyota alleges it submitted a petition for reconsideration on July 21, 2014. Adams responded to the petition on August 4, 2014. However, it appears Toyota's petition was never submitted in the record. It is not contained in the record, nor is there any indication the petition was received by the Department of Workers' Claims.

On October 24, 2014, Toyota filed a "Motion for Ruling on Petition for Reconsideration", noting Adams had filed a response on August 4, 2014 and it had not received an order from the ALJ on the matter. By order dated October 30, 2014, the ALJ overruled the motion, stating there was no petition for reconsideration filed in the record of the case. As such, the ALJ stated he was

divested of jurisdiction pursuant to KRS 342.281. Toyota appealed.

Toyota's appeal as it relates to the July 17, 2014 Opinion, Award and Order is procedurally barred because it was not timely filed. Specifically, the petition for reconsideration was not filed within fourteen days after entry of the ALJ's July 17, 2014 opinion. The petition received October 31, 2014, did not extend the deadline for filing a notice of appeal from the opinion. Because Toyota's notice of appeal, filed November 4, 2014, was not filed within thirty days from the date of entry of the ALJ's opinion, it is untimely and this Board does not have jurisdiction to consider Toyota's appeal from the opinion.

Pursuant to KRS 342.285, an award or order of the ALJ as provided in KRS 342.275 shall be conclusive and binding as to all questions of fact if a petition for reconsideration is not filed as provided for in KRS 342.281. KRS 342.281 provides for the filing of a petition for reconsideration "[w]ithin fourteen (14) days from the date of the award, order, or decision" of the ALJ. Because Toyota did not file a petition for reconsideration "as provided for" in KRS 342.281, the ALJ's decision is conclusive and binding as to all questions of fact.

KRS 342.285 further provides that "either party may *in accordance with administrative regulations* promulgated by the commissioner appeal to the Workers' Compensation Board for the review of the order or award." The Kentucky Administrative Regulations, 803 KAR 25:010 § 21 (2)(a), provides any party aggrieved by a decision of an ALJ may file a notice of appeal to the Board within thirty days of the date it is filed. The statute and regulation are mandatory and jurisdictional. Toyota's notice of appeal was not filed within 30 days from the date of entry of ALJ Bolton's opinion and, therefore, this Board does not have jurisdiction to consider his appeal as it relates to the merits of the claim. *Cf. Rice v. McCoy*, 590 S.W.2d 340, 341 (Ky. App. 1979) (KRS 342.285 is jurisdictional; where petition for reconsideration of "old" Board's opinion was untimely, circuit court did not acquire jurisdiction to consider the appeal). Therefore, our review is limited to whether the ALJ properly denied Toyota's Motion for Ruling on Petition for Reconsideration.

Toyota argues the ALJ abused his discretion in failing to rule on the petition for reconsideration. It asserts it submitted the petition on July 21, 2014 and Adams' response on August 4, 2014 confirms the claimant received the petition. Toyota states that, following the

motion for ruling, it was contacted by the ALJ's office and was asked to re-send an original copy of the petition, which it did on October 29, 2014. Toyota argues its petition should have been considered constructively filed because Adams filed a response and would not be prejudiced by having a ruling on the merits.

We find no abuse of discretion on the part of the ALJ regarding his October 30, 2014 order. Indeed, the ALJ's failure to address the merits of the petition cannot be considered an abuse of discretion because he had no discretion in the matter. As a matter of law, he was required to overrule the motion. In his October 30, 2014 order, the ALJ noted his review of the official file of the case revealed no petition for reconsideration was contained in the record. Our review confirms there was no record of the filing of the petition for reconsideration until October 31, 2014, one day after the ALJ issued his ruling. The petition filed on October 31, 2014 was apparently the copy Toyota sent on October 29, 2014 as noted in its brief on appeal. Nothing in the record established the petition had been received by the Department of Workers' Claims prior to the ruling. Thus, the ALJ correctly held there was no basis for a ruling. The ALJ has no authority to rule on a petition for reconsideration filed more than

fourteen days following entry of the opinion. Adams' response to Toyota's motion for ruling filed on August 4, 2014, eighteen days after rendition of the ALJ's opinion, could not operate to allow "constructive filing" or extend Toyota's time to file the petition for reconsideration.

Accordingly, as to Toyota's appeal of the July 17, 2014, Opinion, Award and Order, the above-styled appeal is hereby **DISMISSED**. The October 30, 2014, order overruling Toyota's motion for ruling on the petition for reconsideration rendered by Hon. Steven Bolton, Administrative Law Judge is hereby **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

STIVERS, MEMBER, CONCURS IN RESULT ONLY.

REBEKKAH B. RECHTER, MEMBER
WORKERS' COMPENSATION BOARD

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