# Commonwealth of Kentucky
# Workers' Compensation Board

**OPINION ENTERED: February 2, 2016**

CLAIM NO. 201593624

NESCO RESOURCE LLC PETITIONER

VS. **APPEAL FROM HON. UDELL B. LEVY, ADMINISTRATIVE LAW JUDGE**

EARL PAY and
HON. UDELL B. LEVY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION & ORDER**
**DISMISSING**
* * * * * *

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

**ALVEY, Chairman.** Nesco Resource LLC ("Nesco") seeks review of a decision rendered November 30, 2015 by Hon. Udell B. Levy, Administrative Law Judge ("ALJ"). No petition for reconsideration was filed.

On January 12, 2016, Nesco filed a Motion for Relief from Final Order, and a Notice of Appeal. In the

motion, and supporting affidavit, counsel for Nesco admitted the appeal was not timely filed.

As acknowledged by Nesco, clearly, the ALJ's decision rendered November 30, 2015 was the final order as contemplated by KRS 342.275(2) and 803 KAR 25:010 Sec. 21 (2)(a) which triggers the running of the thirty day period. Nesco did not file its notice of appeal, nor did it file the motion until forty-three (43) days after the ALJ's decision was rendered. Considering the three day rule for service of the order, the time for filing the appeal expired on January 3, 2016. Since this was on Sunday, the date for timely filing an appeal was extended to January 4, 2016. The appeal was not filed until eight days after the latest date it could have been considered timely filed.

We note in Kendrick v. Fields, 384 S.W.2d 64 (Ky. 1964), the Court held the time within which to file a petition for review, or appeal, is mandatory, and if not complied with, fails to transfer jurisdiction. We further note in Rice v. McCoy, 590 S.W.2d 340 (Ky. App. 1979) in dealing with an untimely petition for reconsideration, the Court held the time for filing was mandatory, "and thus a showing of good cause offered no relief from its provision." The requirement regarding a notice of appeal to this Board is no different. 803 KAR 25:010 § 21(2)(a)

clearly sets forth an appeal must be filed within thirty days (subject to the three day addition currently allowed for service). This provision is mandatory. In Workers' Compensation Board v. Lloyd Siler, 840 S.W.2d 812, 813 (Ky. 1992), the Court stated, "filing of the Notice of Appeal within the prescribed time frame is still considered mandatory, and failure to do so is fatal to the action." (citations omitted). In this instance, because the Notice of Appeal was not timely filed, the appeal must be dismissed, and the motion for relief must likewise be denied.

Accordingly, **IT IS HEREBY ORDERED AND ADJUDGED** the appeal seeking review of the opinion rendered November 30, 2015 by Hon. Udell B. Levy, Administrative Law Judge, is **DISMISSED**. **IT IS FURTHER ORDERED AND ADJUDGED** the motion for relief pursuant to CR 60.02 is **DENIED.**

ALL CONCUR.

MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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**ADMINISTRATIVE LAW JUDGE:**

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