

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 5, 2020

CLAIM NO. 201800734

CHRISTINA ROSE

PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

ADVANTAGE SALES & MARKETING AND
HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
DISMISSING
AND REMANDING

* * * * *

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

ALVEY, Chairman. Christina Rose (“Rose”), *pro se*, seeks review of the Order on Petition for Reconsideration issued April 7, 2020 by Hon. Grant S. Roark, Administrative Law Judge (“ALJ”). The petition was filed regarding the Opinion, Order, and Award issued by the ALJ on March 17, 2020. In that decision, the ALJ dismissed Rose’s claim against Advantage Sales & Marketing (“Advantage”) for her

alleged May 6, 2016 injury. The ALJ awarded temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits, and medical benefits for the September 24, 2016 injuries Rose sustained while working for Advantage. Advantage filed a petition for reconsideration regarding the duration of the TTD benefits awarded through September 20, 2017, noting Rose returned to work on August 20, 2017. Rose filed a Form 120EX regarding the payment of certain medical bills. In the April 7, 2020 order on reconsideration, the ALJ amended the period of TTD benefits as terminating on August 20, 2017 since Rose had returned to work. In the same order, the ALJ denied the Form 120EX. Rose did not appeal from the Opinion, Order, and Award issued by the ALJ on March 17, 2020.

The Kentucky Department of Workers’ Claims received a Notice of Appeal from Rose on May 19, 2020, and a second copy of the notice on May 20, 2020. Both notices were filed more than thirty (30) days after entry of the order on the Petition for Reconsideration. It is noted the Notices of Appeal both bear the date of May 6, 2020, apparently transmitted by regular mail, and neither filing contains a certificate of service. We acknowledge Rose’s response to the motion to dismiss filed June 4, 2020 which confirms that the Notices of Appeal were sent by regular mail.

We initially note KRS 342.285(1) states as follows:

An award or order of the administrative law judge as provided in KRS 342.275, if petition for reconsideration is not filed as provided for in KRS 342.281, shall be conclusive and binding as to all questions of fact, but either party may in accordance with administrative regulations promulgated by the commissioner appeal to the Workers’ Compensation Board for review of the order or award.

803 KAR 25:010 section 1 (7)(b)2 provides:

(7) “Date of filing” means the date that:

(b) A pleading, motion, order, opinion or other document is received by the commissioner at the Department of Workers’ Claims in Frankfort, Kentucky, except:

2. Documents transmitted by United States registered (not certified) or express mail, or by other recognized mail carries shall be deemed filed on the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

803 KAR 25:010 section 22 (2) provides:

(2) Time and format of notice of appeal.

(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order, or decision may file a notice of appeal to the Workers’ Compensation Board.

(b) As used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

Rose did not file a Notice of Appeal within thirty days as required.

The notices were not received by the Department of Workers’ Claims until May 19, 2020, and May 20, 2020, clearly outside the thirty-day filing window, which began following entry of the April 7, 2020 order on reconsideration. Because Rose did not timely file a Notice of Appeal within thirty days from the date of the order denying her petition for reconsideration, this Board does not have jurisdiction to consider the

appeal as it relates to the merits of the claim. In Rice v. McCoy, 590 S.W.2d 340, 341, 342 (Ky. App. 1979), the Court of Appeals held as follows:

KRS 342.281 is mandatory; a showing of good cause offers no relief from its provisions. In Johnson v. Eastern Coal corporation, Ky., 401 S.W.2d 230, 231 (1966), the court held that “strict compliance with this section is mandatory to obtain a full Board review.”

Appellee’s petition for reconsideration was untimely filed and the Board properly overruled it. We note that a dismissal would have been the more appropriate ruling by the Board; however, overruling the petition accomplished the same result.

Since the petition for reconsideration was untimely taken, any right of appeal to the circuit court was lost. KRS 342.285 is jurisdiction. “The language of the statute is plain as to the time within which to appeal. The time within which a petition for review must be filed is mandatory, and if it is not complied with the circuit court acquires no jurisdiction.” [citation omitted]

The ALJ rendered the decision on the merits of Rose’s claim on March 17, 2020, and entered the order regarding the petition for reconsideration on April 7, 2020. Since this Board does not have jurisdiction to consider this appeal, it must be dismissed. *See also* Stewart v. Kentucky Lottery Corp., 986 S.W.2d 918 (Ky. App. 1998).

We also note Advantage filed a motion to dismiss this appeal on May 20, 2020, to which Rose did not respond.

IT IS HEREBY ORDERED AND ADJUDGED Respondent’s motion to dismiss this appeal is **GRANTED**.

Accordingly, the appeal filed by Petitioner, Christina Rose on May 19, 2020, and again on May 20, 2020 is hereby **DISMISSED**.

ALL CONCUR.

/s/ Michael W. Alvey
MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

DISTRIBUTION:

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