

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 6, 2019

CLAIM NO. 201800357

GLENDRICK GARDNER

PETITIONER

VS. **APPEAL FROM HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE**

LFUCG and
HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
DISMISSING**

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

ALVEY, Chairman. This appeal comes for review after consideration of Glendrick Gardner's ("Gardner") response to the show cause order issued by this Board on January 16, 2019. Gardner responded to that order on January 28, 2019. Gardner seeks review of the Opinion & Order rendered October 5, 2018 by Hon. Christina D. Hajjar, Administrative Law Judge ("ALJ"). The ALJ dismissed Gardner's claim against the Lexington Fayette Urban County Government ("LFUCG") finding he

did not prove a work-related injury, and additionally finding he had waived his claim for a May 23, 2016 unrelated work event. Gardner filed a petition for reconsideration, *pro se*, on December 10, 2018. The ALJ denied the petition on December 19, 2018 as untimely filed.

We initially note that pursuant to KRS 342.281 and 803 KAR 25:010 Section 21(1), petitions for reconsideration must be filed within fourteen (14) days of an ALJ's decision. We also 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 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).

Gardner did not file a petition for reconsideration within fourteen (14) days of the issuance of the ALJ's decision. Likewise, he did not file an appeal within thirty (30) days of the ALJ's decision. In fact, Gardner did not file a petition for reconsideration until sixty-six (66) days after the ALJ's decision was rendered. The Appeal, although filed within fourteen (14) days after the ALJ's order denying the

petition for reconsideration, was not filed until seventy-nine (79) days after the ALJ's decision was rendered. Therefore, this Board does not have jurisdiction to consider his appeal.

Because Gardner did not timely file a Notice of Appeal within thirty days from the date of the ALJ's opinion, 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]

In this instance, the ALJ rendered the decision on Gardner's claim on October 5, 2018. Gardner had fourteen (14) days to file a petition for reconsideration of that decision, or thirty (30) days to file an appeal to this Board from and after the ALJ's October 5, 2018 decision, and he failed to do either. 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).

With the Board being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** the appeal filed by Petitioner, Glendrick Gardner on January 2, 2019, is hereby **DISMISSED**.

ALL CONCUR.

MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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PETITIONER, *PRO SE*: **USPS**

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