

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 19, 2018

CLAIM NO. 201700484

LOUISVILLE & JEFFERSON COUNTY  
METROPOLITAN SEWER DISTRICT

PETITIONER

VS.

**APPEAL FROM HON. RICHARD E. NEAL,  
ADMINISTRATIVE LAW JUDGE**

GARY TROWEL, and  
HON. RICHARD E. NEAL,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
DISMISSING**

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

**ALVEY, Chairman.** Louisville and Jefferson County Metropolitan Sewer District ("MSD") seeks review of the Opinion, Award and Order rendered "November 27 2017 [sic]" by Hon. Richard E. Neal, Administrative Law Judge ("ALJ"). The ALJ found Gary Trowel ("Trowel") sustained a compensable work-related injury to his right knee which ultimately led to

a right knee replacement. No petition for reconsideration was filed.

On January 3, 2018, thirty-seven days after the ALJ entered his decision, MSD filed a Notice of Appeal. 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 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).

MSD did not file a Notice of Appeal within thirty days as required. Therefore, this Board does not have jurisdiction to consider his appeal. We note the three day "mail box" rule previously contained in 803 KAR 25:010 was

abolished in the latest version of that administrative regulation which became effective in October 2016. Because MSD 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 the merits of Trowel's claim on November 27, 2017. MSD had thirty days to file an appeal to this Board from and after

the ALJ's November 27, 2017 decision, and failed to do so. We additionally note Trowel subsequently filed a motion to dismiss the appeal as untimely to which MSD has failed to respond. Therefore, the issues raised by MSD are not properly before this Board. 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 additionally note that if the appeal had been allowed to proceed it is unlikely MSD would have been successful on the merits because the ALJ's decision appears to be supported by substantial evidence with no contrary result compelled. With the Board being otherwise sufficiently advised;

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

Accordingly, the appeal filed by Petitioner, MSD on January 3, 2018, is hereby **DISMISSED**.

STIVERS, MEMBER, CONCURS.

RECHTER, MEMBER, CONCURS IN RESULT ONLY.

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MICHAEL W. ALVEY, CHAIRMAN  
WORKERS' COMPENSATION BOARD

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