

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 22, 2020

CLAIM NO. 201695061

NICHOLAS BASS

PETITIONER

VS.

APPEAL FROM HON. BRENT E. DYE,
ADMINISTRATIVE LAW JUDGE

ZENITH LOGISTICS AND
HON. BRENT E. DYE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION & ORDER
DISMISSING

* * * * *

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

ALVEY, Chairman. This appeal comes for review of the appeal filed on behalf of Nicholas Bass, *pro se* ("Bass"). Bass filed an appeal on April 21, 2020. Bass seeks review of the Opinion, Award & Order rendered February 26, 2020 by Hon. Brent E. Dye, Administrative Law Judge ("ALJ"), and from the March 25, 2020 Order denying his petition for reconsideration. The ALJ determined Bass' proposed lumbar treatment for injuries he sustained while working for Zenith Logistics

("Zenith") is compensable. In an Order issued March 20, 2020, the ALJ noted Bass had served him via e-mail, and did not file his petition via the Kentucky Department of Workers' Claim Litigation Management System ("LMS"). The ALJ acknowledged Bass had served him with a petition for reconsideration on March 13, 2020. The ALJ denied the petition as untimely in an Order issued March 25, 2010.

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).

Bass 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. Bass did not send the petition for reconsideration via e-mail to the ALJ until March 13, 2020, and did not file a copy of

the petition in LMS. The ALJ deemed that service to him via e-mail was sufficient, and determined it was filed on March 13, 2020. The appeal, although filed within fourteen (14) days after the ALJ's order denying the petition for reconsideration, was not filed until fifty-four (54) days after the ALJ's decision was rendered. Therefore, this Board does not have jurisdiction to consider his appeal.

Because Bass 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 Bass' claim on February 26, 2020. Bass 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 February 26, 2020 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, Nicholas Bass, *pro se*, on April 21, 2020, is **DISMISSED**. Petitioner's motion to respond to the Board's Show Cause Order filed June 26, 2020 is hereby **DENIED**. Respondent's motion to dismiss this appeal filed May 26, 2020 is hereby **GRANTED**.

ALL CONCUR.

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

DISTRIBUTION:

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