

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 6, 2021

CLAIM NO. 201754747

TARA LAVEL HOPEWELL

PETITIONER

VS.

APPEAL FROM HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE

ADVANCED GREEN COMPONENTS, LLC and
HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
DISMISSING

* * * * *

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

ALVEY, Chairman. Tara Lavel Hopewell (“Hopewell”) seeks review of the Opinion, Award, and Order issued July 21, 2021 by Hon. Peter J. Naake, Administrative Law Judge (“ALJ”). Hopewell also appeals from the August 23, 2021 Order denying her Petition for Reconsideration. The ALJ found Hopewell’s claims for left carpal tunnel syndrome and left de Quervain’s tenosynovitis are work-related and compensable. However, he dismissed Hopewell’s claims for left trigger

thumb, left long finger triggering, left small finger triggering, and right de Quervain's tenosynovitis because he determined those conditions are not work-related, and are therefore not compensable.

Hopewell filed a Notice of Appeal on September 23, 2021, which is 31 days after August 23, 2021, the date the Order denying her Petition for Reconsideration was entered. The Notice of Appeal bears the date of September 23, 2021, and the Kentucky Litigation Management System ("LMS") reflects it was electronically filed on that same date.

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 carriers 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).

Hopewell did not file a Notice of Appeal within 30 days as required. The Notice of Appeal clearly reflects the date of September 23, 2021, which is 31 days after the Order denying the Petition for Reconsideration was entered. We also note the Notice of Appeal incorrectly lists August 26, 2021 as the date the Order denying the Petition for Reconsideration was entered. The Notice of Appeal was not electronically entered into LMS until September 23, 2021, clearly outside the 30-day filing window, which began following entry of the August 23, 2021 Order on reconsideration. Because Hopewell did not timely file a Notice of Appeal within 30 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 Hopewell's claim on July 21, 2021, and entered the Order regarding the Petition for Reconsideration on August 23, 2021. The Notice of Appeal was not filed until September 23, 2021, 31 days after the Order of the Petition for Reconsideration was entered. 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).

Accordingly, the appeal filed by Petitioner, Tara Lavel Hopewell, on September 23, 2021, is hereby **DISMISSED**.

ALL CONCUR.

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

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