

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: May 13, 2022

CLAIM NO. 201900614

TIMOTHY CHAPPELL

PETITIONER

VS. APPEAL FROM HON. JOHN H. MCCRACKEN,  
ADMINISTRATIVE LAW JUDGE

CLARK'S GROCERY,  
UNINSURED EMPLOYERS' FUND, and  
HON. JOHN H. MCCRACKEN,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
DISMISSING

\* \* \* \* \*

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

**ALVEY, Chairman.** Timothy Chappell ("Chappell") seeks review of the Order issued October 28, 2021 by Hon. John H. McCracken, Administrative Law Judge ("ALJ") denying the Uninsured Employers Fund's ("UEF") Petition for Reconsideration of the October 8, 2021 Order denying its Motion to amend the name of Clark's Grocery to Mary Clark d/b/a Clark's Grocery. We note no appeal

was taken from the April 18, 2021 Opinion, Award, and Order nor from the May 25, 2021 Order denying Chappell's Petition for Reconsideration. The ALJ's decision was final as of June 24, 2021, and he did not have jurisdiction to entertain the UEF's July 20, 2021 Motion to amend. Therefore, the Orders issued October 8, 2021 and October 28, 2021 are held for naught, and this appeal is dismissed.

Chappell filed a Form 101 on May 24, 2019, alleging he injured his neck on January 3, 2019 while working for Clark's Grocery in Rockholds, Kentucky. A hearing was held on November 18, 2019. At that time, Mary Sue Clark testified she owns and operates Clark's Grocery, and her son, C.J. Clark, operates the farm where Chappell was employed. The ALJ rendered an Interlocutory Opinion, Award and Order on Bifurcated Issues on December 20, 2019, finding Chappell was employed by Clark's Grocery. He also determined the agricultural exemption provided in KRS 342.650 does not apply, and he found Chappell sustained work-related injuries on January 3, 2019.

Chappell subsequently moved to amend the Form 101 to add thoracic and lumbar injuries to his claim. No mention was made of amending the name of the employer to Mary Clark d/b/a Clark's Grocery. The ALJ entered an Order on March 30, 2020 permitting the amendment of the claim. On April 18, 2021, the ALJ rendered the Opinion, Award, and Order. He dismissed the claims for thoracic and lumbar injuries. The ALJ found Chappell was entitled to an award of temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits for 425 weeks after January 3, 2019 (interrupted by any period of TTD benefits), and medical benefits for the cervical injury he sustained while working for Clark's

Grocery. The ALJ declined to enhance the award of PPD benefits by the three-multiplier contained in KRS 342.730(1)(c)1 based upon Dr. David Muffly's determination there was no objective basis to assign any restrictions.

Chappell filed a Petition for Reconsideration on May 3, 2021, arguing the ALJ erred in failing to enhance his award of PPD benefits by the three-multiplier contained in KRS 342.730(1)(c)1, and in dismissing his cervical and thoracic claims. The ALJ denied the Petition for Reconsideration in the Order issued May 25, 2021. No appeal was taken from either the ALJ's decision or the Order denying the Petition for Reconsideration. Since there was no appeal, the ALJ's decision became final on June 24, 2021.

On July 20, 2021, the UEF filed the motion to amend the name of the employer. On October 8, 2021, the ALJ entered an Order denying the UEF's motion. He found it improper to add a party as a defendant who did not have the opportunity to defend herself during the proceedings. On October 28, 2021, the ALJ entered an Order denying the UEF's Petition for Reconsideration from the October 8, 2021 Order. The ALJ acknowledged he lost jurisdiction in this claim 30 days after the Order he entered on May 25, 2021.

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).

Neither Chappell nor the UEF filed a Notice of Appeal within 30 days after the ALJ issued the May 25, 2021 Order denying the Petition for Reconsideration. We agree with the ALJ that he had no jurisdiction to entertain the July 20, 2021 motion or to issue Orders on October 8, 2021 or on October 25, 2021. Therefore, any determinations contained in those Orders are invalid and held for naught. Because Neither Chappell nor the UEF timely filed a Notice of Appeal within 30 days from the May 25, 2021 Order denying the Petition for Reconsideration, this Board does not have jurisdiction to consider this appeal. 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 Chappell's claim on April 18, 2021 and entered the Order regarding the Petition for Reconsideration on May 25, 2021. The ALJ lost jurisdiction of this claim on June 24, 2021, 30 days after the May 25, 2021 Order denying Chappell's Petition for Reconsideration. The subsequent motions, petitions for reconsideration, and orders do not serve to extend the time for appeal nor do they serve to reinstate his jurisdiction. 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, Timothy Chappell, on November 29, 2021 is hereby **DISMISSED**.

ALL CONCUR.

**DISTRIBUTION:**

**COUNSEL FOR PETITIONER:**

**LMS**

HON GERALD VANOVER  
921 SOUTH MAIN STREET  
LONDON, KY 40741

**COUNSEL FOR RESPONDENT:**

**LMS**

HON DARRELL SAUNDERS  
700 MASTER STREET  
P.O. BOX 1324  
CORBIN, KY 40702

**UNINSURED EMPLOYERS' FUND:**

**E-MAIL**

HON JAMES R CARPENTER  
1024 CAPITAL CENTER DR, SUITE 200  
FRANKFORT, KY 40601  
James.Carpenter2@ky.gov

**ADMINISTRATIVE LAW JUDGE:**

**LMS**

HON JOHN H MCCRACKEN  
MAYO-UNDERWOOD BLDG  
500 MERO STREET, 3<sup>rd</sup> FLOOR  
FRANKFORT, KY 40601