

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000577-WC

PATRICIA ROBERTSON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-001127

SUMITOMO ELECTRIC WIRING SYSTEMS, INC.;
HON. J. LANDON OVERFIELD, Administrative Law Judge;
and WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, EMBERTON, and GUIDUGLI, Judges.

COMBS, JUDGE: The appellant, Patricia Robertson (Robertson), appeals from the opinion of the Workers' Compensation Board (the Board) which affirmed the order of the Administrative Law Judge (ALJ) dismissing her appeal from the Arbitrator's determination. Finding no error, we affirm the opinion of the Board.

On May 6, 1997, Robertson filed a claim for workers' compensation benefits based upon an alleged work-related injury. Her claim was assigned to an arbitrator for adjudication. On August 14, 1997, the arbitrator entered her Benefit Determination in which she dismissed Robertson's claim for failure to prove

that her injury was work-related and for failure to give notice as soon as practicable after the alleged injury. The Benefit Determination was deemed to be filed with the Department of Workers' Compensation on August 17, 1997, in accordance with KAR 803 25:010§1(6).¹ On September 18, 1997, Robertson appealed the arbitrator's determination by filing a request for a hearing before an administrative law judge. However, on October 17, 1997, the ALJ dismissed her appeal on the ground that she had failed to file her request within the thirty-day time period mandated by KRS 342.275(1). Robertson appealed the ALJ's order to the Board, and, on February 17, 1998, it affirmed the ALJ's dismissal of her appeal. This appeal followed.

Robertson contends on appeal that the statutory time period for filing an appeal from an arbitrator's determination is unduly burdensome, arbitrary, and capricious. She argues that requiring appeals to be filed within 30-days from the filing of the arbitrator's determination prevents her claim from be decided on its merits. Robertson urges this court to either abolish the statutory time limitation or to apply the doctrine of substantial compliance.

KRS 342.275(1) provides:

Within thirty (30) days after the filing of the benefit review determination with the commissioner, any party may appeal that determination by filing a request for hearing before an administrative law judge.
Proceedings before the administrative law

¹KAR 803 25:010§1(6) states that the final orders of arbitrators, administrative law judges, and the workers' compensation board are deemed "filed" three days after the date set forth on the final order or opinion.

judge shall be de novo but subject to penalties for unreasonable proceedings under KRS 342.310.

The language of KRS 342.275 is mandatory and does not provide for any exceptions to the thirty-day filing requirement. Moreover, "[u]nless timely appeal is filed as set forth in KRS 342.275, the written determination of the arbitrator shall be a final order" KRS 342.270(5). Strict compliance with the thirty-day filing period is not only mandatory but necessary to achieve efficient and expeditious disposition of claims. We cannot conclude that the thirty-day time period is burdensome, arbitrary, or capricious. Indeed, this is the same time period that parties to civil or criminal litigation have in which to file an appeal from the judgments of the courts in Kentucky. The fact that this is a "new step" in Workers' Compensation practice does not serve as a justification or excuse for noncompliance.

In this case, Robertson's request for a hearing before an administrative law judge was filed with the Department of Workers' Compensation on September 18, 1997 – filed outside the thirty-day time period. As her appeal was not timely, the arbitrator's determination became final, and the ALJ properly dismissed her request. The fact that her request was dated September 9, 1997, does not render it timely. KRS 342.275(1) specifically states that the request must be filed within thirty days of the arbitrator's determination.

For the foregoing reasons, we affirm the opinion of the Board upholding the ALJ's dismissal of Robertson's appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Bowling Green, KY

BRIEF FOR APPELLEE:

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