

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-003144-WC

BOBBY MILLS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. 93-00856

LOURDES HOSPITAL; HON. ROBERT L. WHITTAKER,  
DIRECTOR OF SPECIAL FUND; HON THOMAS A. NANNEY,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: EMBERTON, KNOPF, AND KNOX, JUDGES.

KNOPF, JUDGE: This is an appeal from an opinion and order by the Workers' Compensation Board (Board), affirming an order by the Administrative Law Judge (ALJ) dismissing a claim due to the claimant's failure to file proof. Finding no error, we affirm.

The underlying facts of this appeal are not in dispute. The appellant, Bobbie Mills, alleged that she suffered an injury to her low back while employed by the appellee, Lourdes Hospital, on December 7, 1992. Lourdes paid Mills temporary total disability (TTD) benefits intermittently through July 2, 1995. On March 10, 1997, Mills filed an application for adjustment of

claim (Form 101). With her application, Mills included a completed work history (Form 104), a medical history (Form 105), and a medical release (Form 106). Mills also attached to her Form 101 a copy of medical records by one (1) of her treating physicians.

On March 21, 1997, the Department of Workers Claims issued an order assigning the matter to an ALJ. The scheduling order gave Mills sixty (60) days to complete her proof. On June 10, 1997, Lourdes moved to dismiss the claim based upon Mills failure to file proof within the time allowed. Mills then filed a motion for extension of time or motion to file evidence outside the time allowed for proof. The ALJ denied the motion, and dismissed Mills's claim for failure to file proof.

The Board affirmed the dismissal on appeal. The Board found that a medical report attached to a Form 101 shall only be considered evidence in proceedings before an Arbitrator. 803 Ky. Admin. Regs. (KAR) 25:010 § 5(a)(d). The regulation has no application to proceedings before an ALJ. The Board also concluded that the ALJ did not abuse his discretion in denying Mills's motion for an extension of time to file proof. Mills now appeals to this Court.

The sole issue presented in this case is whether the ALJ erred by ruling that the medical and employment records attached to Mills's Form 101 were not part of the evidence before the ALJ. The ALJ's denial of the motion to extend the time for proof, and the ALJ's dismissal of the claim both hinge upon this determination. Mills states she complied with 803 KAR 25:010 § 3 and 5(1), in that she filed the proper documentation with her

Form 101. Mills points out that the medical report she submitted with her application would be considered evidence before the Arbitrator. 803 KAR 25:010 § 5(1)(d). Thus, Mills argues that the medical report should have been considered to be evidence before the ALJ.

We find that the Board properly resolved this issue, and adopt the following portion of the Board's analysis:

Whether Mills properly filed her proof is a procedural matter. It was the intent of the Legislature in enacting the reforms which were effective December 12, 1996 to create a less formal hearing before Arbitrators. As correctly argued by Lourdes, 803 KAR 25:010 § 5(1)(d) only provides that the medical report filed with the application shall be considered as evidence before the Arbitrator. When Mills claim was assigned to an ALJ, Mills' report was not automatically considered as evidence and Mills was required to bring it into evidence through 803 KAR 25:010 § 10. Mills' medical report was clearly not in evidence prior to the expiration of proof time.

Consequently, we agree with the Board that the ALJ was justified in dismissing Mills's claim due to her failure to file proof. Furthermore, we also agree that the ALJ did not abuse his discretion by denying Mills's motion for an extension of time to file proof. 803 KAR 25:010 §15(1) requires a motion for an extension of time to be filed no later than five (5) days before the deadline sought to be extended. Therefore, Mills's motion for an extension was not timely, and the ALJ did not abuse his discretion in denying the motion. Cornett v. Corbin Materials, Inc., Ky., 807 S.W.2d 56 (1991).

Accordingly, the opinion and order by the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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