

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001754-WC

R. ANTHONY MARRESE, M.D. APPELLANT

V. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-80-45633

BILLY NOEL; WHITMERE SIGNS COMPANY;
SPECIAL FUND; SHEILA C. LOWTHER,
Administrative Law Judge; and WORKERS'
COMPENSATION BOARD APPELLEES

AND NO. 1997-CA-001770-WC

BILLY WAYNE NOEL APPELLANT

V. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-80-45633

WHITMERE SIGN COMPANY; SPECIAL FUND;
SHEILA LOWTHER, Administrative Law
Judge; and WORKERS COMPENSATION BOARD APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: GUDGEL, Chief Judge; ABRAMSON and JOHNSON, Judges.

GUDGEL, CHIEF JUDGE: These matters are before us on pro se
petitions for review of an order of the Workers' Compensation
Board (board), which dismissed as untimely two appeals from an

opinion and order entered by an Administrative Law Judge (ALJ). For the reasons stated hereafter, we affirm.

Billy Wayne Noel was found to be totally and permanently disabled as a result of a work-related injury which he sustained in October 1977 while employed by Whitmere Sign Company (Whitmere). The claim was reopened in 1996 after Whitmere denied responsibility for certain medical expenses arising out of Noel's treatment by Dr. Anthony Marrese.

The ALJ determined that Whitmere was not liable to Marrese for the costs of his medical treatment of Noel because that treatment "was not reasonable and necessary for the treatment and relief of the effects of the 1977 work-related injury." Marrese's motion for reconsideration was denied by a final order entered on March 4, 1997. Both Marrese and Noel appealed.

The record indicates that Marrese's notice of appeal from the March 4 order was mailed by certified mail, to an incorrect address, on April 3, 1997. The document was stamped by the Department of Workers' Claims (Appeals) as having been filed on April 8, 1997. Further, Noel's notice of appeal was stamped by the same department as having been filed on April 11, 1997. The board dismissed both appeals as untimely, and these petitions for review followed.

At the time in question, 803 KAR 25:010, Section 13(1) (now see Section 23), provided that

[w]ithin thirty (30) days after the date of filing of a final order of an administrative law judge as set forth in Section 1(5) of this administrative regulation any party aggrieved by the order may appeal to the board. As used in this section "final order" shall be determined in accordance with Civil Rule 54.02(1) and (2).

"Date of filing" is defined in 803 KAR 25:010, Section 1(5) as

the date a pleading, motion, or other document is received by the commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except final orders and opinions of administrative law judges and the board, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion.

Here, the ALJ's final order is dated March 4, 1997.

Thus, that order was deemed "filed" as of three days later, and any appeal was required to be filed within thirty days from March 7. Because thirty days from March 7 fell on Sunday, April 6, the parties' appeals could have been timely filed as late as April 7, 1997.

As noted above and as found by the board, Marrese's and Noel's notices of appeal were filed on April 8 and April 11, 1997, respectively. Thus, both notices of appeal were untimely. Moreover, we have found nothing in the administrative regulations to suggest that the running of time was stayed by the fact that Marrese mailed the document by certified mail. Indeed, for purposes of comparison, even CR 76.40 specifically provides that the mailing of a document by certified mail does not stay the running of time for filing that document. It follows, therefore, that the board did not err by dismissing these appeals as

untimely. In light of this conclusion, we need not address the merits of Marrese's arguments concerning the propriety of the ALJ's findings and conclusions.

Whitmere's motion to dismiss Marrese's appeal, which was passed to this panel of the court for a decision on its merits, is denied.

The board's order is affirmed.

ALL CONCUR.

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