

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000527-WC

DAVID BELSITO

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-07-92594

U-HAUL CO. OF KY AND HON.
JAMES L. KERR, ADMINISTRATIVE
LAW JUDGE

APPELLEES

OPINION AND ORDER DISMISSING

** ** * * * * *

BEFORE: MOORE AND NICKELL, JUDGES; HARRIS,¹ SENIOR JUDGE.

MOORE, JUDGE: On December 15, 2005, David Belsito filed a claim for worker's compensation against U-Haul of Kentucky, alleging entitlement to benefits as the result of a work-related injury to his lower back that occurred on December 26, 2000. U-Haul moved to dismiss on the ground that Belsito's claim

¹ Senior Judge William R. Harris, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

was barred pursuant to the two-year statute of limitations stated in Kentucky Revised Statute (KRS) 342.185.

In an October 1, 2008 order, an Administrative Law Judge (ALJ) sustained U-Haul's motion and dismissed Belsito's claim, holding that it was barred on the basis of the statute of limitations. On February 27, 2009, the Workers' Compensation Board (the Board) affirmed.

David Belsito now petitions this Court for the review of the Board's opinion affirming the decision of the ALJ to dismiss his claim against U-Haul Company of Kentucky. Belsito names, as appellees, "U-Haul" and "Hon. James L. Kerr-ALJ." Of critical importance, however, Belsito does not name the Board as an appellee in his petition before this Court, nor has Belsito listed the Board in his petition's certificate of service. In finding Belsito has failed to serve the Board with a copy of his petition, we dismiss.

"When an appeal is brought . . . by grant of statute, the parties must strictly comply with the dictates of that statute." *Kentucky Unemployment Ins. Com'n v. Providian Agency Group, Inc.*, 981 S.W.2d 138, 140 (Ky. App. 1998) (citing *Board of Adjustments of the City of Richmond v. Flood*, 581 S.W.2d 1, 2 (Ky. 1978); *Compton v. American Commercial Barge Line*, 664 S.W.2d 950, 952 (Ky. App. 1984)). Thus, "[w]here the conditions for the exercise of power by a court are not met, the judicial power is not lawfully invoked. That is to say, that

the court lacks jurisdiction or has no right to decide the controversy.” 581 S.W.2d at 2.

In the case at bar, Belsito’s failure to serve a copy of his petition upon the Board was fatal to his petition for review. Our direct review of decisions of the Workers' Compensation Board is subject to the procedures set forth in Kentucky Rule of Civil Procedure (CR) 76.25. CR 76.25(4)(a) mandates that a petition for review of a Workers’ Compensation Board decision “. . . shall specifically designate as appellees all adverse parties and the Workers' Compensation Board.” While the Supreme Court stated unequivocally in *Hutchins v. General Electric Company*, 190 S.W.3d 333 (Ky. 2006) that CR 76.25(4)(a) does not deem the Board an indispensable appellee, the Supreme Court nonetheless interpreted CR 76.24(4)(a) as “requir[ing] the appellant to serve the Board with a copy of the petition.” *Id.* at 337. Under *Hutchins*, when Belsito failed to comply with CR 76.25(4)(a) by failing to serve the Board with a copy of his petition, he failed to follow the mandate of the statute and dismissal is warranted.

This Court being otherwise duly advised, hereby ORDERS that the claim in this petition be and is hereby DISMISSED.

ALL CONCUR.

ENTERED: _____

JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Wayne C. Daub
Louisville, Kentucky

BRIEF FOR APPELLEE:

W. Barry Lewis
Hazard, Kentucky