

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2003-CA-000269-WC

ANGIE PATRICK

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-60803

CHRISTOPHER EAST HEALTH CARE;
HON. ROGER D. RIGGS,
ADMINISTRATIVE LAW JUDGE; AND
KENTUCKY WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BAKER, GUIDUGLI, AND PAISLEY, JUDGES.

BAKER, JUDGE. Angie Patrick petitions us to review a decision of the Workers' Compensation Board entered June 8, 2003. We affirm.

On September 12, 1999, Patrick suffered a work-related injury while in the employe of Christopher East Health Care (Christopher). Patrick gave notification of her injury to the

duty nurse and, thereafter, sought medical treatment for same. It appears from the record that Patrick worked for only one day after her injury and has not worked since. Christopher, however, paid no voluntary temporary total disability (TTD) benefits. In fact, Christopher did not file its first report of injury until October 29, 1999, and it filed a subsequent report of injury (form IA-2) three weeks later on November 19, 1999. As the form IA-2 indicated that Christopher denied Patrick's claim, the commissioner of the Department of Workers' Claims issued a denial letter to Patrick dated November 19, 1999. The letter apprised Patrick of the denial of her claim and of the applicable statute of limitations.

Patrick then filed an Application for Resolution of Injury on September 28, 2001. The Administrative Law Judge (ALJ) ultimately concluded that Patrick's claim was time-barred under Kentucky Revised Statute (KRS) 342.185. Patrick thereupon pursued a review by the Workers' Compensation Board. The Board affirmed the ALJ and, likewise, concluded that Patrick's claim was time-barred. This review follows.

Patrick contends that the Board and the ALJ erred by concluding that her claim was time-barred under KRS 342.185. The statute of limitations for workers' compensation claims is contained in KRS 342.185(1) which provides in relevant part:

[N]o proceeding under this chapter for compensation for an injury or death shall be maintained . . . unless an application for adjustment of claim for compensation with respect to the injury shall have been made with the department within two (2) years after the date of the accident, or in the case of death, within two (2) years after the death, whether or not a claim has been made by the employee himself for compensation. . . . If payments of income benefits have been made, the filing of an application for adjustment of claim with the department within the period shall not be required, but shall become requisite within two (2) years following the suspension of payments or within two (2) years of the date of the accident, whichever is later.

Under KRS 342.185(1), an application must be filed within either two years from the date of injury or two years from the date of termination of voluntary income benefits by the employer.

Patrick specifically argues that Christopher had a duty under KRS 342.040(1) to notify the commissioner that it was denying her claim for TTD benefits and that 803 KAR 25:170 § 2 mandated Christopher to file the form IA-2 within one week of her injury. Because Christopher failed to comply with 803 KAR 25:170 § 2, Patrick maintains that the statute of limitations should be tolled during this period rendering her claim timely.

803 KAR 25:170 § 2 provided as follows:¹

(2) Beginning with work-related injuries and occupational diseases reported to employers on or after January 1, 1996, each carrier shall file the information

¹ We cite to the version of 803 KAR 23:170 in effect at the time Patrick filed her claim.

required on the Form IA-2 with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format:

(a) As soon as practicable and not later than one (1) week from the date payments to an employee are commenced, terminated, changed, or resumed, . . .

As concluded by the Board, we are of the opinion that 803 KAR 23:170 § 2 is inapplicable to the case at hand. That regulation clearly requires the employer to file form IA-2 within seven days from the date payments to an employee are "commenced, terminated, changed, or resumed." In the case at hand, payments were not commenced, terminated, changed, or resumed. In fact, Patrick received no payments from Christopher. Thus, we do not believe 803 KAR 25:170 § 2 required Christopher to file the form IA-2 within a week of Patrick's injury.

Upon the whole, we are compelled to agree with the Board and the ALJ that the statute of limitations began to run on September 28, 1999, and that Patrick had two years from that date to timely file her claim. She was informed of such by the denial letter from the commissioner dated November 19, 1999. In sum, we conclude that Patrick's claim was time-barred under KRS 342.185.

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffrey J. Paige
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BRIEF FOR APPELLEE,
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