

SUPREME COURT OF KENTUCKY

AK Steel Corporation v. Danny E. Carico

122 S.W.3d 585 (Ky. 2003) · No. 2003-SC-0124-WC · Decided December 18, 2003

SUMMARY

The Supreme Court of Kentucky affirmed dismissal of an untimely petition for review of a Workers' Compensation Board decision. The court held that CR 76.25(2) requires dismissal when a petition for review is not timely filed and that an attorney's misunderstanding of the filing deadline does not constitute excusable neglect permitting enlargement of the expired period.

CASE DETAILS

COURT	Supreme Court of Kentucky
JURISDICTION	Kentucky
DECIDED	December 18, 2003
DOCKET	2003-SC-0124-WC
DISPOSITION	affirmed
PROCEDURAL POSTURE	AK Steel appealed the Kentucky Court of Appeals' dismissal of its motion for an enlargement of time to file a petition for review of a Workers' Compensation Board decision.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; binding precedent in Kentucky.
PARTIES	AK Steel Corporation v. Danny E. Carico, Hon. Landon Overfield, Administrative Law Judge, Workers' Compensation Board

TOPICS

appellate jurisdiction appellate procedure civil procedure administrative law

PRACTICE AREAS

Kentucky workers' compensation appellate procedure administrative law

QUESTIONS PRESENTED

- Whether CR 6.02 permits enlargement of the time to file a petition for review under CR 76.25 after the filing deadline has expired based on counsel's alleged excusable neglect.

2. Whether the mandatory dismissal language of CR 76.25(2) requires dismissal of an untimely petition for review.

HOLDINGS

1. CR 6.02 does not permit enlargement of the time to file a CR 76.25 petition for review after the deadline has expired when the appellant's failure resulted from a misunderstanding of the filing date rather than failure to learn of the entry of the decision triggering the appeal period.

KEY QUOTATIONS

“Failure to file the petition within the time allowed shall require dismissal of the petition.” (122 S.W.3d at 586-87)

“CR 73.02(2), CR 76.20(2)(c), and CR 76.25(2) all indicate that a failure to timely file the document by which jurisdiction is invoked requires dismissal.” (122 S.W.3d at 587)

FACTUAL BACKGROUND

The administrative law judge determined that Carico retained the physical capacity to return to the type of work he performed when injured despite his work-related hearing loss, but Carico retired instead. The ALJ nevertheless awarded double benefits under KRS 342.730(1)(c)2, and the Workers' Compensation Board affirmed. AK Steel's counsel inadvertently missed the December 2, 2002 deadline for filing a petition for review and sought an extension three days later, explaining that he had confused the deadline with that in another appeal.

PROCEDURAL HISTORY

An administrative law judge awarded Danny E. Carico double workers' compensation benefits, and the Workers' Compensation Board affirmed. AK Steel missed the deadline to file a petition for review in the Court of Appeals and moved for an enlargement of time based on counsel's asserted excusable neglect. The Court of Appeals dismissed the motion and the petition, and the Supreme Court of Kentucky affirmed.

DISPOSITION

affirmed

CASES CITED

- Johnson v. Smith, 885 S.W.2d 944, 949-50 (Ky. 1994)
- Laurel Cookie Factory v. Foreman, 2003 WL 22160344 (2002-SC-0867-WC, rendered September 18, 2003)