

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JOHN NELSON)
Claimant)
V.)
)
NANO LLC) AP-00-0477-987
Respondent) CS-00-0470-162
AND)
)
MIDVALE INDEMNITY COMPANY)
Insurance Carrier)

ORDER

The claimant, pro se, requested review of Administrative Law Judge (ALJ) Kenneth Hursh’s Order, dated July 12, 2023. Kevin Johnson appeared for the respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of: (1) the preliminary hearing transcript, held July 12, 2023; (2) the preliminary hearing transcript, held November 2, 2022; (3) all exhibits uploaded and admitted under HE-00-0084-045; (4) documents filed with the Division; and (5) the parties’ briefs.

ISSUES

Was the claimant’s application for review filed on August 1, 2023, timely? If so, did the claimant prove he contracted COVID-19 (a/k/a COVID, coronavirus) arising out of and in the course of his employment?

FINDINGS OF FACT

Many of the facts of this case are not pertinent because this appeal must be dismissed on procedural grounds.

ANALYSIS AND CONCLUSIONS OF LAW

K.S.A. 44-551(l)(1) states, in part:

All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a, and amendments thereto, made by an administrative law judge shall be subject to review by the workers compensation appeals board upon written request of any interested party within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation.

K.A.R. 51-18-2 states the effective date of the ALJ’s awards, decisions, rulings, or modifications, for review purposes, shall be the day following the date noted thereon by the ALJ.

The Board may only review the Order if the claimant perfected an appeal within 10 days after the effective date of the ALJ’s ruling by filing an application for review with the Appeals Board or with one of the Division’s regional offices. The Order was dated July 12, 2023. The effective date of the Order was July 13. The first day of the 10-day appeal time was July 14. The last day of the appeal time was July 27. The claimant mailed a handwritten document, dated July 27, 2023, stating, “Please accept my appeal as soon as you could, according to Case No. CS-00-0470-162 (by Kenneth J. Hursh, ALJ)”. Such document was received by the Division of Workers Compensation on August 1, 2023, more than 10 days after the effective date of the Order. Although this document constitutes an application for review, it was filed out of time. Under K.S.A. 44-551(l)(1), the Board may not review the Order. The claimant’s appeal is out of time and dismissed for lack of jurisdiction.

AWARD

WHEREFORE, the Board dismisses the claimant’s application for review for lack of jurisdiction. ALJ Hursh’s Order remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of September, 2023.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (via OSCAR)
Kevin Johnson
Hon. Kenneth Hursh
c: (via USPS)
John Nelson, Pro Se Claimant
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