

Wiyrick, Robert

BOARD

Motion to vacate order adopting proposed decision and order

Failure of a law office to correctly calendar the due date for filing a petition for review is not excusable neglect. ...*In re Robert Wiyrick*, BIIA Dec., 01 11323 (2003)

Scroll down for order.

1 properly. Due to this mistake, the time in which to file a petition for review was not noted within the
2 appropriate time for the claimant to file the petition for review. This motion should be analyzed in
3 the context of whether the claimant's failure to file a timely petition for review was due to excusable
4 neglect.
5

6 Our review of the appellate authority in this area suggests that the failure to file a timely
7 petition for review due to a breakdown of office procedures is not considered excusable neglect.
8 *B & J Roofing, Inc. v. Board of Industrial Ins. Appeals*, 66 Wn. App. 871 (1992). In that case, B & J
9 Roofing filed a petition for review with the attorney general's office, but not with the Board. As in
10 this circumstance, having received not petition for review, the Board issued an order that adopted
11 the Proposed Decision and Order as the final order of the Board. B & J Roofing requested
12 reconsideration from the Board, claiming that the petition for review was misdirected to the attorney
13 general's office due to secretarial error. The Board denied the request. The matter was ultimately
14 resolved in the Court of Appeals. The court concluded that the misfiling of B & J Roofing's petition
15 for review does not amount to excusable neglect. See also, *Fay v. Northwest Airlines, Inc.*,
16 115 Wn.2d 194 (1990). In addition, our Supreme Court has found that inadequate office
17 procedures do not serve as an excuse for failure to timely file a notice of appeal. *Beckman v.*
18 *Department of Soc. & Health Servs.*, 102 Wn. App. 687 (2000). The breakdown of office
19 procedures or secretarial error, which results in claimant's failure to file a timely petition for review,
20 cannot be considered excusable neglect.
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22 Claimant has also argued CR 60(a) as a basis for vacating the Order Adopting Proposed
23 Decision and Order. Cases interpreting this rule indicate that to determine whether a clerical error
24 exists in the record, judgment, or order of the court, it is necessary to address the intention of the
25 court in issuing the order or judgment. The rule itself, and interpreting case law, however, makes it
26 clear the CR 60(a) does not apply to an attorney's failure to meet a deadline, but instead, applies to
27 mistakes contained in the judgment, order, or on the record, which appear to alter the intentions of
28 the court.
29

30 Finally, claimant argues that the Board should exercise its discretion in providing relief from
31 the Order Adopting Proposed Decision and Order. The authority cited by the claimant in support of
32 this proposition does not include cases under similar situations. Pursuant to statute, once the time
33 for filing a petition for review has expired, the Proposed Decision and Order is deemed adopted as
34 the Board's final decision. RCW 51.52.104. The Board does not have discretion to determine that
35 the clear terms of the statute shall not apply.
36

37 Because the claimant has not established any reason, pursuant to CR 60(a) or CR 60(b), for
38 vacating the Order Adopting Proposed Decision and Order, it is hereby ORDERED that the motion
39 is denied.
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41 DATED: August 26, 2003.
42

43 BOARD OF INDUSTRIAL INSURANCE APPEALS

44 /s/ _____
45 THOMAS E. EGAN Chairperson
46

47 /s/ _____
FRANK E. FENNERTY, JR. Member