

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1379

HERMAN W. WAGNER, deceased, by Fred Wagner,
Executor,

Petitioner,

versus

CONSOLIDATION COAL COMPANY; DIRECTOR, OFFICE
OF WORKERS' COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Respondents.

On Petition for Review of an Order of the Benefits Review Board.
(03-398-BLA)

Submitted: July 25, 2005

Decided: August 12, 2005

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

James Hook, Waynesburg, Pennsylvania, for Petitioner. William S.
Mattingly, JACKSON KELLY, PLLC, Morgantown, West Virginia, for
Respondent Consolidation Coal Company.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Fred Wagner (Wagner), Executor of the estate of Herman W. Wagner, seeks to appeal the Benefits Review Board's (Board) decision affirming the Administrative Law Judge's decision denying black lung benefits on a living miner claim filed by Herman Wagner. We dismiss the appeal for lack of jurisdiction because the petition for review was not timely filed.

In a black lung benefits case, a party seeking review of a decision and order issued by the Board must file a petition for review in the court of appeals within sixty days after the order is issued. 33 U.S.C. § 921(c) (2000). The sixty-day period for seeking review is jurisdictional, and a petition for review must be filed with the clerk of this court to stop the running of this period. Adkins v. Dir., Office of Workers' Comp. Programs, 889 F.2d 1360, 1363 (4th Cir. 1989). "[T]he sixty day filing period begins to run with the filing of a Board opinion with the Clerk of the Board." Mining Energy, Inc. v. Dir. Office of Workers' Comp. Programs, 391 F.3d 571, 575-76 (4th Cir. 2004).

In this case, the Board's decision was issued and served on the parties on January 23, 2004. Wagner's petition for review was not filed until March 24, 2004, sixty-one days later. We therefore dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in

the materials before the court and argument would not aid the decisional process.

DISMISSED