

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-1013

RONALD L. COMPTON,

Petitioner,

versus

BELCHER & NEWSOME COAL COMPANY; OFFICE OF
WORKERS COMPENSATION PROGRAM,

Respondents.

On Petition for Review of an Order of the Benefits Review Board.
(94-0832-BLA)

Submitted: September 5, 1996 Decided: September 13, 1996

Before WIDENER and WILKINS, Circuit Judges, and PHILLIPS, Senior
Circuit Judge.

Dismissed by unpublished per curiam opinion.

Ronald L. Compton, Petitioner Pro Se. Mark Elliott Solomons,
Thomas Henry Odom, II, ARTER & HADDEN, Washington, D.C.; Patricia
May Nece, Elizabeth Ann Goodman, UNITED STATES DEPARTMENT OF LABOR,
Washington, D.C., for Respondents.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Ronald Compton seeks review of the Benefits Review Board's (Board) decision and order denying black lung benefits under 30 U.S.C.A. §§ 901-45 (West 1986 & Supp. 1996). The Respondent, Belcher & Newsome Coal Co., has filed a motion to dismiss this appeal on the ground that the appeal is untimely. The record discloses that the Board issued its decision on October 30, 1995. Compton filed a petition for review 65 days later, on January 3, 1996.

The applicable filing period for appeals to this court from decisions of the Board is sixty days. 33 U.S.C. § 921(c) (1988). Although Compton alleges that he timely mailed his petition, we have held that the statute requires that the petition be timely filed within 60 days, and that the failure to timely file deprives the court of jurisdiction to consider the appeal. See Adkins v. Director, Office of Workers' Compensation Programs, 889 F.2d 1360, 1363 (4th Cir. 1989). Because Compton failed to file his appeal within the applicable filing period, we grant Respondent's motion to dismiss this appeal. We note that our disposition of that motion renders moot Respondent's motion to hold the briefing schedule in abeyance. We also 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