

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 99-1906**

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DANNY JOE SMITH,

Petitioner,

versus

SHARPLES COAL CORPORATION, DIRECTOR, OFFICE OF  
WORKERS' COMPENSATION PROGRAMS, UNITED STATES  
DEPARTMENT OF LABOR,

Respondents.

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On Petition for Review of an Order of the Benefits Review Board.  
(98-269-BLA, 96-1628-BLA)

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Submitted: October 14, 1999

Decided: October 28, 1999

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Before WIDENER and LUTTIG, Circuit Judges, and BUTZNER, Senior Cir-  
cuit Judge.

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Dismissed by unpublished per curiam opinion.

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Danny Joe Smith, Appellant Pro Se. Mary Rich Maloy, JACKSON &  
KELLY, Charleston, West Virginia; Dorothy L. Page, Christian P.  
Barber, UNITED STATES DEPARTMENT OF LABOR, Washington, D.C., for  
Respondents.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Danny Smith seeks review of the Benefits Review Board's decision and order denying black lung benefits pursuant to 30 U.S.C.A. §§ 901-45 (West 1994 & Supp. 1999). The applicable filing period for appeals to this court from decisions of the Board is sixty days. 33 U.S.C. § 921(c) (1994). The failure to file a petition for review in this court within the applicable filing period deprives this court of jurisdiction to consider the appeal. See Adkins v. Director, Office of Workers' Compensation Programs, 889 F.2d 1360, 1363 (4th Cir. 1989).

The Board issued its decision in this case on October 28, 1998. Because Smith filed a motion for reconsideration, however, the sixty-day period did not commence until January 21, 1999, when the Board issued its order denying the motion. See 20 C.F.R. §§ 802.406, 407 (1998); Midland Coal Co. v. Director, Office of Workers' Compensation Programs, 149 F.3d 558, 563 (7th Cir. 1998). The appeal period thus expired on March 22, 1999. Because Smith did not appeal until July 8, 1999, his appeal is untimely, and we lack jurisdiction to review it.

Accordingly, we dismiss this 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