

Circuit Court for Anne Arundel County
Case No. C-02-CV-16-003954

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 877

September Term, 2017

ALLEN BOYD

v.

AMERICAN AIRLINES, INC. AMR CORP.,
et. al

Graeff,
Berger,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: October 18, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from a workers’ compensation claim that appellant, Allen Boyd, filed against appellees, American Airlines, Inc., AMR Corp., and its insurer, New Hampshire Insurance Co., for injuries he sustained while working as a cargo clerk. On December 9, 2016, the Maryland Workers’ Compensation Commission (“Commission”) issued an order finding that Mr. Boyd sustained “10% industrial loss of use of the body,” with 5% “reasonably attributable to the accidental injury (right shoulder, 1%, thoracic spine, 2%, and lumbar spine, 2%)” and 5% “due to a pre-existing condition (lumbar spine).”

Mr. Boyd filed a petition for judicial review in the Circuit Court for Anne Arundel County. Appellees moved to dismiss, citing Mr. Boyd’s failure to attach the order of the Commission to his petition, as required by Maryland Rule 7-202(c)(2). The circuit court granted the motion to dismiss the petition, and it subsequently denied Mr. Boyd’s motion to reconsider.

On appeal, Mr. Boyd presents the following questions for this Court’s review, which we have rephrased slightly, as follows:

1. Did appellees have standing to file a motion to dismiss Mr. Boyd’s petition for judicial review for failure to attach a copy of the order of the Commission?
2. Did the circuit court err in dismissing Mr. Boyd’s timely filed petition for judicial review based on his failure to strictly comply with Md. Rule 7-202, where there was no prejudice from the delay in filing a copy of the order?
3. Did the circuit court abuse its discretion in refusing to allow Mr. Boyd to supplement his petition for judicial review by filing a copy of the Commission’s decision?

For the reasons set forth below, we answer the second question in the affirmative, and therefore, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Boyd was a cargo clerk at American Airlines.¹ On January 3, 2012, as Mr. Boyd was lifting a piece of cargo, he slipped, fell, and sustained injuries to his back and right shoulder. He subsequently filed a workers' compensation claim. On December 9, 2016, the Maryland Workers' Compensation Commission ("the Commission") found that Mr. Boyd sustained a "10% industrial loss" of the use of his body, with 5% "reasonably attributable to the accidental injury" and 5% "due to a pre-existing condition." The Commission ordered that American Airlines pay Mr. Boyd compensation for permanent partial disability in the amount of \$162.00 per week for 25 weeks, beginning on January 4, 2012.

On December 30, 2016, Mr. Boyd filed a petition in the Circuit Court for Anne Arundel County seeking *de novo* review of the Commission's decision. In the petition, Mr. Boyd quoted a portion of the Commission's decision, but he did not attach either a copy of his original claim or the Commission's order.

On March 17, 2017, appellees filed a motion to dismiss the petition, alleging that Mr. Boyd violated Rule 7-202(c)(2) by failing to attach a copy of the "employee claim

¹ Mr. Boyd retired in February 2014.

form or any of the Commission's other orders."² Approximately two months later, on May 16, 2017, Mr. Boyd filed an opposition to the motion to dismiss, including the missing documents and noting that opposing counsel had the documents and was not prejudiced.

On May 19, 2017, the circuit court held a hearing on appellees' motion to dismiss.³ Mr. Boyd argued that dismissal was not the appropriate sanction for violating Rule 7-202(c)(2) because the purpose of the rule was merely to minimize paperwork. He argued that dismissal for failure to attach the Commission's order was not appropriate for several reasons: (1) the substance of the order was recited in the petition; (2) all parties received a copy of the order; and (3) there was no intention when the Rule was drafted that a case would be thrown out on that basis. Mr. Boyd further argued that the requirement was a technicality that was "cured" when he submitted the required documents in his opposition motion.

² Maryland Rule 7-202(c)(2) requires that a party seeking review of a workers' compensation decision attach to the petition:

(A) a certificate that copies of the petition and attachments were served pursuant to subsection (d)(2) of this rule, and

(B) if no issue is to be reviewed on the record before the Commission, copies of (i) the employee claim form and (ii) all of the Commission's orders in the petitioner's case.

³ The court had not seen Mr. Boyd's opposition to the motion to dismiss and the accompanying documents, i.e., the Commission's order and the claim form, at the time of the hearing because, as counsel acknowledged, it was filed late. The record reflects, however, that counsel for Mr. Boyd provided the court with a copy of the filing at the beginning of the hearing.

Appellees argued that the court had the power to dismiss the petition. Counsel stated, however, that he was not aware of any legal authority that mandated dismissal for the “technical [o]missions” involved in the case, and he acknowledged that appellees had not been prejudiced.

The circuit court stated that it “strictly appl[ies] the rules, and that’s just so that it can never be said that they’re being inequitably applied in various cases from one case to the next.” It found, “following the four corners of the rules,” that the failure to attach the claim form and the order was dispositive, and it granted appellees’ motion to dismiss the petition for judicial review. After the court denied Mr. Boyd’s motion for reconsideration, he noted this appeal.

DISCUSSION

We begin with Mr. Boyd’s contention that the circuit court erred in dismissing his timely filed petition for judicial review. He does not dispute that he failed to comply with Maryland Rule 7-202(c)(2), which requires that a party seeking review of a workers’ compensation decision “attach to the petition . . . copies of (i) the employee claim form and (ii) all of the Commission’s orders in the petitioner’s case.”

Mr. Boyd contends, however, that, in determining whether the failure to comply with the rule warranted dismissal of the petition, the circuit court applied the wrong standard, i.e., it looked to whether there was strict compliance with the rule, as opposed to substantial compliance. He further argues that, applying the proper standard, he substantially complied with the rule, and because his failure to attach the documents did

not prejudice appellees, the court's order dismissing the petition should be reversed. We agree.

Several cases have addressed the standard to be applied when there is a violation of the rule regarding a petition for review of an agency decision. In *Colao v. Cty. Council of Prince George's Cty.*, 346 Md. 342, 364–65 (1997), the Court of Appeals explained that, although the court does not have discretion to consider untimely filed petitions, mere technical irregularities regarding the petition do not merit dismissal if the petition otherwise substantially complies with the procedural rules. *Accord Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 705 (1999), *cert. denied*, 354 Md. 113 (1999).

In *Town of Somerset v. Montgomery Cty. Bd. of Appeals*, 245 Md. 52, 60 (1966), a timely petition for judicial review was filed, but the petition did not expressly allege that petitioners were persons aggrieved by the agency's order, as required under the predecessor to Rule 7-202(c). The Court of Appeals recognized that, “[w]here there is compliance with the substance of the requirements of statutes or rules and the other parties have not been prejudiced, technical irregularities cannot be made the basis for depriving persons of the opportunity to assert their legal rights.” *Id.* at 61. The Court ultimately held that the petitioners' failure to allege expressly in their petition that they were aggrieved parties was a technical irregularity that did not require dismissal of the parties. *Id.*

In *Wormwood*, 124 Md. App. at 698, 705, petitioners filed a timely petition for judicial review, but they failed to ensure that the record had been transmitted to the circuit court within 60 days after the agency received the petition, in violation of Maryland Rule 7-206(d). Recognizing that “the transmittal of the record” was “neither jurisdictional nor

in the nature of a statute of limitations,” this Court held that “the rule governing transmittal is subject to substantial compliance.” *Id.* at 705. We concluded that there was substantial compliance with the rule in that case because the “delay was not solely attributable to” the petitioner, and the “entire record, including the transcript, was before the circuit court at the time it was asked to dismiss the appeal because of [petitioner’s] non-compliance with Rule 7-206.” *Id.*

Here, the petition was filed within 30 days of the Commission’s order, and therefore, it was timely filed. *See* Md. Rule 7-203(a). Thus, as the appellate courts have held in the above cases, the rule requiring that the Commission’s order be attached to a petition for judicial review is subject to substantial compliance. In dismissing the petition based upon the standard of strict compliance, the circuit court erred. *See Wormwood*, 124 Md. App. at 701 (circuit court, in determining that petitioner’s violation of the rule regarding the transmittal of the record made dismissal of the petition mandatory, “committed an error of law”).

We next address whether Mr. Boyd substantially complied with Rule 7-202(c)(2). Although Mr. Boyd failed to attach the order of the Commission and claim form to the petition, the petition did quote a significant portion of the Commission’s order, including the award for damages. And Mr. Boyd did provide the order of the Commission and the claim form to the court prior to the time the court made its ruling on the motion to dismiss.

Accordingly, we conclude, under the circumstances of this case, that there was substantial compliance with Rule 7-202(c)(2).

Because Mr. Boyd substantially complied with Rule 7-202(c)(2), and appellees were not prejudiced,⁴ the circuit court erred in granting the motion to dismiss the petition.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
REVERSED; CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY APPELLEES.**

⁴ There is no dispute in this case that appellees were not prejudiced by Mr. Boyd's failure to strictly comply with Rule 7-202(c)(2). Counsel for appellees conceded, at the hearing on the motion to dismiss, there was no prejudice.