

KENT COUNTY BOARD OF EDUCATION,

Appellant

v.

KENT COUNTY TEACHERS' ASSOCIATION, INC.,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

Opinion No. 08-46

OPINION

INTRODUCTION

On May 28, 2008, the State Board issued a declaratory ruling in this matter. On June 11, 2008, Kent County Teachers' Association, Inc. (KCTA) filed a Motion for Reconsideration and a Request for Hearing. Five days later, KCTA filed an appeal in the Circuit Court for Kent County of the State Board's declaratory ruling.

On July 1, 2008, the local board responded to KCTA's Motion for Reconsideration. KCTA filed a Reply to the Local Board's Response to the Motion for Reconsideration.

Thereafter, on July 23, 2008, the local board sent a letter to Board staff questioning whether the State Board had jurisdiction to decide the Motion for Reconsideration. The local board asserted that jurisdiction had been transferred to the Circuit Court for Kent County because KCTA had filed its appeal there and because the administrative record had been transferred to the Circuit Court. Both counsel were then asked to file legal memoranda on the jurisdiction issue.

LEGAL ANALYSIS

There are two rules at play here. First, under State Board regulations, a party may request reconsideration of a Board decision by filing the request within 30 days of the date of the decision. COMAR 13A.01.05.10(A). Similarly, a party may appeal a State Board decision to the circuit court by filing an appeal within the same 30 day time period for filing the motion for reconsideration. COMAR 13A.01.05.11.

The 30 day time period for filing an appeal derives from Md. Rule 7-203 which states: "Except as provided in this Rule or by statute, an [appeal] shall be filed within 30 days . . . of the date the administrative agency sent notice of the agency's action" The 30 day filing period is like a statute of limitations which means that, if an appeal is filed after the 30 day period, the circuit court is without authority to extend the time period for filing or to hear the case. *Colaco v. County Council*, 346 Md. 342, 360-63 (1997).

The interplay between the two rules creates the question presented in this case - - what is the effect of filing an appeal on this Board's jurisdiction to decide a Motion for Reconsideration?

As a general rule, the filing of an appeal will preclude a judicial body from "exercising its jurisdiction in a way that would affect the subject matter of the appeal or the appellate proceeding." See *County Commissioners of Carroll County v. Carroll Craft*, 384 Md. 23, 45 (2004). The State Board has applied that rule in the past. In *Bowers v. Howard County Board of Education*, 4 Op. MSBE 351 (1986), the Appellants filed their Request for Reconsideration on the same day they filed their appeal in the Circuit Court. The State Board ruled that "[o]nce the Appellants filed an order for Appeal in the Circuit Court, this Board lost the jurisdiction to entertain the Request for Reconsideration" *Id.* at 352.

Admittedly, this rule places a losing party in a procedural conundrum. Should a party file for reconsideration within the 30 days and demur from filing an appeal on the theory that filing the appeal could deprive the Board of jurisdiction to hear the reconsideration motion? If a party decides not to file an appeal within the 30 day time period, however, it could risk losing its right to appeal at all on untimeliness grounds. The KCTA in this case chose to cover all its bases and put this case on a dual track - - asking for reconsideration and judicial review. KCTA argues that because the Board has no regulation in place that stops the 30 day appeal clock, it is only fair to allow the dual track approach. When it comes to jurisdictional issues, however, the concept of "fairness" bows to the legal requirement that a judicial (or quasi-judicial) body either has the power to act or it does not.

KCTA points to a statute governing practice before the Worker's Compensation Commission, Labor & Emp. Md. Code Ann. § 9-726. That statute states:

Effect on time for taking appeal. – If a party files a motion for a rehearing in accordance with subsection (a) of this section, the time within which an appeal may be taken from the decision starts on:

- (1) the date on which the Commission mails notice of the denial of the motion for a rehearing; or
- (2) if the Commission grants the motion for rehearing, the date on which the Commission mails notice of an order under subsection (e) of this section.

Id. § 9-726(f).

That statute stops the 30 day appeal clock established by Md. Rule 7-203. KCTA urges this Board to adopt that practice. There is, however, no similar statute governing the practice before this Board. Therefore, we considered whether, absent a statute, we had the authority to establish a rule in this decision under which the request for reconsideration would stop the 30 day appeal clock.

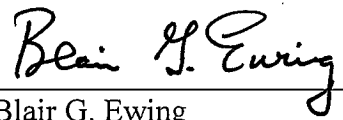
An administrative agency has no power but that granted by statute. The authority of an administrative agency to create a rule, whether by quasi-judicial decisionmaking or by promulgation of a regulation must be found either expressly or impliedly in statute. See *Adamson v. Correctional Medical Services*, 359 Md. 238, 250 (2000); *Linkus v. Maryland State Bd. of Heating*, 114 Md. App. 262, 277 (1997).


In this case, there certainly is no express statutory authority to create a rule affecting the time period for filing an appeal and, we can find no such authority implicitly granted. Indeed, in the Md. Rule 7-203, there appears to be direct prohibition against establishing such a rule by quasi-judicial or regulatory means. That rule, governing the filing of an appeal to circuit court, states explicitly that the 30 day time period applies to all cases, "except as otherwise provided . . . by statute." Absent a statute creating an exception to the 30 day appeal rule, the State Board has no authority to create that exception.

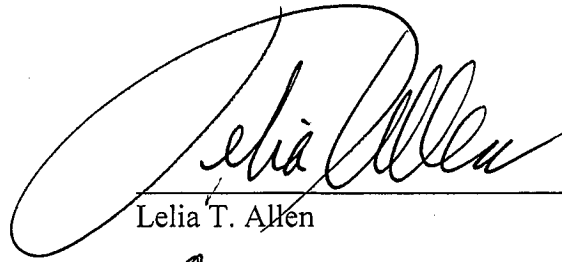
We then looked at whether we had the authority to establish dual track jurisdiction. The statute governing the Worker's Compensation Board specifically creates that dual track jurisdiction. It states "[e]ven if an appeal by another party is pending, the Commission promptly shall rule on a motion for rehearing." Md. Labor & Emp. Code Ann. § 9-726 (d); see also, *ABF Freight System v. Gilchrist*, 125 Md. App. 419, 424, 428 (1999). There is no similar statutory authority to expand this Board's jurisdiction to a dual track with the court.

Therefore absent a statute stating otherwise, the general rule applies to this Board's jurisdiction - - the Board has the power to act only until an appeal is filed. Therefore, the Motion for Reconsideration is denied.


James H. DeGraffenreidt, Jr.
President

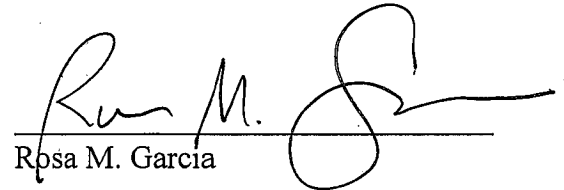

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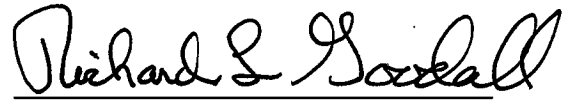

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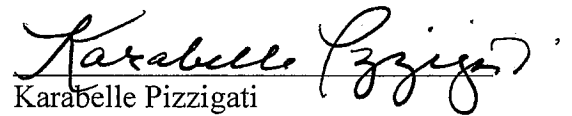

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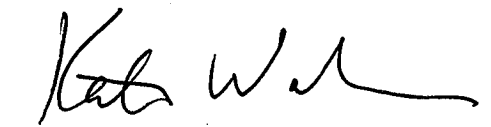

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September 23, 2008