

Lois A. RAMBO v. DIRECTOR OF LABOR

E 86-59

709 S.W.2d 411

Court of Appeals of Arkansas

En Banc

Opinion delivered May 7, 1986

PER CURIAM. Appellant's motion for Rule on the Clerk is denied.

MELVIN MAYFIELD, Judge, dissenting. I regret that I am unable to get in step with the majority of the court. In March of this year, I dissented when the majority granted a motion for Rule on the Clerk and required the clerk to file a transcript from the Workers' Compensation Commission even though the files of the Commission did not contain a notice of appeal and the appellants admitted the notice they claimed was mailed was "lost, misplaced or for some reason failed to get in the file." See *Mullins v. Varner*, 17 Ark. App. 152, 705 S.W.2d 17 (1986).

Today, the majority denies a motion for Rule on the Clerk because the clerk's files do not contain a notice of appeal, even though the appellant states she mailed a notice of appeal to the clerk the day after she received the decision of the Arkansas Board of Review—which was well within the 20 days she had to file the appeal. See Ark. Stat. Ann. § 81-1107(d)(7) (Supp. 1985).

Although I did not agree with the majority in *Mullins v. Varner*, I see no reason for the majority to reach a different result

in today's case; therefore, I dissent.

---