

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G904871

ROBERT L. CRENSHAW, EMPLOYEE	CLAIMANT
TYSON POULTRY, INC., EMPLOYER	RESPONDENT
TYNET CORPORATION, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 5, 2022

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by the HONORABLE JEREMY SWARINGEN, Attorney at Law, Little Rock, Arkansas.

ORDER

In the above-styled matter, the Full Commission filed an order on January 19, 2022 and unanimously found that the claimant did not file a timely Notice Of Appeal of an administrative law judge's decision. The claimant has filed a motion for reconsideration. The Full Commission denies the motion.

I. HISTORY

The parties stipulated that the employment relationship existed "on March 18, 2019 through April 3, 2019." A pre-hearing order was filed on June 10, 2021. According to the text of the pre-hearing order, the claimant contended that he "passed out at work on April 3, 2019 as a result of an unspecified incident that happened at work between March 18 and March

22, 2019.” The parties stipulated that the respondents controverted the claim. The respondents contended, among other things, that the claimant could not prove he sustained “a specific incident of injury.” The parties agreed to litigate the following issues:

1. Whether the claimant sustained a compensable injury in March 2019 that led to his passing out at work on April 3, 2019.
2. Whether the claimant gave proper notice of the injury to the employer.

After a hearing, an administrative law judge filed an opinion on November 2, 2021. The administrative law judge found, “2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury on or about March 22, 2019, that led to his passing out at work on April 3, 2019.” The administrative law judge therefore denied and dismissed the claim.

The respondents’ Exhibit A indicates that the claimant received the administrative law judge’s November 2, 2021 opinion on November 5, 2021. The claimant sent a NOTICE OF APPEAL via certified mail on December 1, 2021:

This is notice that Claimant, Robert L. Crenshaw appeals the November 2, 2021 Opinion filed by Administrative Law Judge Joseph C. Self in the above referenced matter. Mr. Crenshaw would like to have the following issue reviewed:

1. Whether the Commission should have taken into consideration Crenshaw’s entire medical record and other

related non-medical documents which were provided to the Commission at the hearing on November 2, 2021.

The claimant's Notice Of Appeal was not filed with the Commission until December 8, 2021. The Clerk of the Commission informed the parties on December 13, 2021, "Claimant has filed a Notice of Appeal to the Full Commission of the administrative law judge's Opinion filed **November 2, 2021**. This case will be submitted to the Full Commission on **January 26, 2022**." The Clerk of the Commission advised the parties regarding a briefing schedule.

The claimant's Notice Of Appeal was again stamped "Filed" with the Commission on December 14, 2021. On December 17, 2021, the respondents filed a **MOTION TO DISMISS THE CLAIMANT'S APPEAL**. The respondents stated, among other things, "6. That the respondents are requesting that this appeal be Dismissed as it was untimely filed, pursuant to Ark. Code Ann. §11-9-711(a)(1), Ark. Code Ann. §11-9-704(b)(6), and Due Process."

The Full Commission filed an Order on January 19, 2022. The Full Commission unanimously determined in part:

Claimant received his copy of the decision rendered by the administrative law judge on November 5, 2021. Factoring in a weekend, the deadline to file a notice of appeal before the Full Commission was December 6, 2021. While claimant's Notice of Appeal was postmarked December 1, 2021, the Commission did not receive the claimant's Notice of Appeal until December 14, 2021. While it is unclear as to why it took

the Post Office two weeks to deliver claimant's Notice of Appeal, it is incumbent upon claimant to ensure that his appeal is not only mailed by timely filed. That he did not do.... Based upon the case law, the Full Commission has no other choice but to grant respondent's Motion to Dismiss Claimant's Appeal as untimely filed. Therefore, respondents' Motion to Dismiss Claimant's Appeal is hereby granted.

II. ADJUDICATION

Ark. Code Ann. §11-9-711(a)(Repl. 2012) expressly provides, in pertinent part:

(1) A compensation order or award of an administrative law judge or a single commissioner shall become final unless a party to the dispute shall, within thirty (30) days from receipt by him or her of the order or award, petition in writing for a review by the full commission of the order or award.

Ark. Code Ann. §11-9-704(b)(6)(Repl. 2012) provides, in pertinent part:

(A) If an application for review is filed in the office of the commission within thirty (30) days from the date of the receipt of the award, the full commission shall review the evidence or, if deemed advisable, hear the parties, their representatives, and witnesses, and shall make awards, together with its rulings of law, and file same in like manner as specified in the foregoing.

In the present matter, the claimant now requests that the Full Commission reconsider its opinion “[denying] him his appeal rights. According to the United States Postal Service, the letter was available for pickup by the Commission on December 4, 2021 within the filing deadline. Mr. Crenshaw has no control over when the Commission chooses to pick

up its mail but Mr. Crenshaw’s right to appeal should not be denied due to administrative procedures for picking up office mail.”

An administrative law judge filed an opinion on November 2, 2021 and essentially found that the claimant failed to prove he sustained a compensable injury. The claimant received the administrative law judge’s opinion on November 5, 2021. Therefore, the claimant’s 30-day deadline for filing an appeal was December 5, 2021. See Ark. Code Ann. §11-9-711(a)(1)(Repl. 2012), *supra*. The claimant sent a NOTICE OF APPEAL to the Full Commission via certified mail on December 1, 2021. The claimant has now submitted a “USPS Tracking Intranet” document indicating that the NOTICE OF APPEAL arrived at the Little Rock Postal Service on December 4, 2021. The “Tracking Intranet” document does not clearly show when a Workers’ Compensation Commission employee picked up the NOTICE OF APPEAL at the Post Office. However, there is at least one document in the Commission’s file indicating that the NOTICE OF APPEAL was not stamped “Filed” until December 8, 2021 at the earliest, which filing was outside the 30-day deadline.

The claimant states, “I do not have control over when the Commission picks up its mail.” Nevertheless, the claimant received the administrative law judge’s order on November 5, 2021. The claimant was statutorily required to file his application for review *in the office of the*

commission within 30 days, i.e., December 5, 2021. The Commission recognizes that December 5, 2021 was a Sunday, but the claimant's petition for review was not filed with the Commission until December 8, 2021 at the earliest. The timely filing of a notice of appeal is jurisdictional and should be raised by the Commission even if the parties do not raise it. *Lloyd v. Potlatch Corporation*, 19 Ark. App. 335, 721 S.W.2d 670 (1986).

The claimant in the present matter filed his appeal no earlier than December 8, 2021, outside of the statutory deadline enumerated in Ark. Code Ann. §11-9-711(a)(1)(Repl. 2012) and Ark. Code Ann. §11-9-704(b)(6)(A)(Repl. 2012). Regardless of when his appeal was received at the U.S. Postal Service, it was the claimant's responsibility to timely file his appeal of the administrative law judge's opinion. *Lloyd, supra*. The claimant's appeal in the present matter was not timely filed. The Full Commission therefore denies the claimant's motion for reconsideration.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my de novo review of the record in this claim, I dissent from the majority opinion denying the claimant's Motion for Reconsideration.

On November 2, 2021, the Administrative Law Judge (hereinafter, "ALJ") entered an opinion in this matter. The claimant mailed his notice of appeal which was due on December 6, 2021. However, the claimant's notice of appeal was not filed until December 14, 2021.

The respondents filed a Motion to Dismiss on December 17, 2021, which the Full Commission granted on January 19, 2022.

The claimant filed a Motion for Reconsideration on February 3, 2022. Attached to this Motion was a printout from the United States Postal Service that indicated the correspondence from the claimant was available for the Commission to pick up on December 4, 2021.

Ark. Code Ann. §11-9-711(a)(1) reads:
(1) A compensation order or award of an administrative law judge or a single commissioner shall become final unless a party to the dispute shall, within thirty (30) days from the receipt by him or her of the order or award, petition in writing for a review by the full commission of the order or award.

Ark. Code Ann. §11-9-704(c) requires that we construe workers' compensation statutes strictly. Strict construction requires that nothing be taken as intended that is not clearly expressed, and the doctrine requires that the plain meaning of the language be employed. *Curtis v. Big Lots*,

2009 Ark. App. 292, 307 S.W.3d 37 (2009) (citing *Lewis v. Auto Parts & Tire Co.*, 104 Ark. App. 230, 290 S.W.3d 37 (2008)). Applying this principle to Section 711(a)(1), it is imperative that the claimant petition in writing for a review by the Full Commission within the 30-day time period. I find that the claimant met this deadline.

I recognize that the Court in *Jackson v. Little Rock School District*, 1995 Ark. App. LEXIS 494 held that “even if timely mailed, a notice of appeal to the Commission is without effect if it is not timely received”. However, I find that the claimant met all the requirements necessary to perfect his appeal within the allotted 30-day time period. The Commission received the claimant’s Notice of Appeal in a timely manner when it was available to be retrieved from a post box rented by the Commission.

I find that the fact that the claimant’s written notice of appeal was clearly mailed and available for the Commission to pick up is sufficient to satisfy the law and the spirit of law. Based on this, I believe the claimant’s Motion for Reconsideration should be granted.

For the foregoing reason, I dissent from the majority opinion.

M. SCOTT WILLHITE, Commissioner