

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. E314523, E319786,
E410661, E410662, E500999

SHIRLEY TYUS, EMPLOYEE CLAIMANT

AMERICAN TRANSPORTATION,
A SELF-INSURED EMPLOYER RESPONDENT NO. 1

TRAVELER'S INSURANCE COMPANY, CARRIER RESPONDENT NO. 2

ORDER FILED JULY 13, 2004

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

Claimant, Ms. Shirley Tyus, 719 First Street, Conway, Arkansas, appeared pro se.

Respondent No. 1 represented by HON. J. MATTHEW MAULDIN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HON. PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is Claimant's Appeal of the Order of Dismissal with Prejudice which was entered by Judge William Daniels on March 31, 2003.

Claimant's Notice of Appeal was received by the Commission on March 30, 2004. After reviewing the claimant's appeal, the respondents response thereto, and all other matters properly before the Commission, we find that the claimant's appeal was not timely filed and must be dismissed.

Claimant contends that she was suddenly taken ill, was hospitalized for several months and was unable to "help [her]self." The rule of unavoidable casualty does not apply

to the failure to file a notice of appeal in a timely manner. Williams v. Luft Construction Co., 31 Ark. App. 198, 790 S.W.2d 921 (1990). Accordingly, we find that the claimant has failed to establish a sufficient reason for her failure to timely appeal the Order of Dismissal.

On appeal, we have made a copy of the cover letter mailed with the March 31, 2003, Order, a part of the record. The letter reflects that the Order was mailed to the claimant's last known address via certified and regular U.S. mail. The regular mail was never returned to the Commission.

Pursuant to Ark. Code Ann. §11-9-711(a)(1) (Repl. 2002), the opinion of the Administrative Law Judge became final unless the claimant filed an appeal in writing within 30 days from the receipt of the opinion. The procedural requirements set forth in the statute are mandatory or jurisdictional and require strict compliance. Cooper Industrial Products v. Meadows, 5 Ark. App. 205, 634 S.W.2d 400 (1982); Lloyd v. Potlatch Corporation, 19 Ark. App. 335, 721 S.W.2d 670 (1986). Therefore, the opinion of the Administrative Law Judge became final and the Full Commission cannot review it since the petition for review was not received within 30 days, as set forth in the statute. Smith v. Servomation, 8 Ark. App. 274, 651 S.W.2d 115 (1983).

Since the claimant's notice of appeal was not filed within thirty days of receipt, it was untimely filed. Accordingly, we find that the claimant's appeal must be dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I respectfully dissent from the Majority's Order finding that Claimant's notice of appeal was not timely filed. I find that this matter should be remanded to the Administrative Law Judge to give the parties an opportunity to develop a record and present evidence on Claimant's receipt, if at all, of the Administrative Law Judge's March 31, 2003, Order.

SHELBY W. TURNER, Commissioner