

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210326

RUTH WILKINSON, EMPLOYEE	CLAIMANT
HARP'S FOOD STORES, INC., EMPLOYER	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, INSURANCE CARRIER	RESPONDENT

ORDER FILED DECEMBER 1, 2004

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

Claimant represented by the HONORABLE CHARLES E. DAVIS,
Attorney at Law, Springdale, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is currently before the Full Commission on
the respondents' Motion to Dismiss Claimant's Notice of
Appeal to the Arkansas Court of Appeals. The Full
Commission's opinion was entered on September 16, 2004.
Claimant's attorney's office signed the return receipt on
September 20, 2004. This means our opinion was received by
claimant on that date. The claimant's notice of appeal
should have been filed on or by October 20, 2004. See, Ark.

Code Ann. § 11-9-711(b)(A); McCarty v. Board of Trustees, 45 Ark. App. 102, 872 S.W.2d 74 (1994). Otherwise, our opinion becomes final.

Claimant filed his notice of appeal in the Circuit Court on October 18, 2004. This error was not discovered by claimant until he forwarded his notice of appeal to the Clerk of the Arkansas Workers' Compensation Commission on October 21, 2004. Thus, our order became final before claimant's notice of appeal was properly filed with the Commission. We find claimant's notice of appeal is untimely.

Pursuant to Ark. R. App. Rule 3(b), this Commission can dismiss an appeal to the Court of Appeals only if the motion to dismiss is filed with the Commission before the record is docketed with the Court, and if all parties to the appeal petition for dismissal and jointly stipulate that the case is to be dismissed. In Re Arkansas Rules of Appellate Procedure 3(b). In the present case, the claimant and the respondent have not jointly stipulated to dismiss the appeal. Because the Commission still retains jurisdiction over this claim, we find that the respondents' Motion to

Dismiss Claimant's Appeal to the Arkansas Court of Appeals
is hereby denied.

_____IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner