

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F708317, F709754, F810724

DONNA M. FOSTER-GRAY, EMPLOYEE	CLAIMANT
NWA RENAL DIALYSIS, EMPLOYER	RESPONDENT NO. 1
TRAVELERS INSURANCE COMPANY, CARRIER	RESPONDENT NO. 1
FIRSTCOMP INSURANCE COMPANY, CARRIER	RESPONDENT NO. 2
DAVITA DIALYSIS, Formerly d/b/a NWA RENAL DIALYSIS, EMPLOYER	RESPONDENT NO. 3
NEW HARTFORD INSURANCE CO. c/o BROADSPIRE, CARRIER	RESPONDENT NO. 3

ORDER FILED AUGUST 17, 2009

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

Claimant appeared pro se.

Respondent No. 1 represented by the HONORABLE PHILLIP CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE CYNTHIA E. ROGERS, Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by the HONORABLE ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is presently before the Full Commission on a Joint Motion by respondent no. 1, respondent no 2, and respondent no. 3 to Dismiss Claimant's Appeal. After our consideration of the Motion and the claimant's lack of response thereto, and all other matters properly before the

Commission, we find that the Motion to Dismiss should be granted.

Pursuant to Ark. Code Ann. § 11-9-711(a)(1) (Repl. 2002), the opinion of the Administrative Law Judge becomes final unless the claimant files 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. Lloyd v. Potlatch Corporation, 19 Ark. App. 335, 721 S.W.2d 670 (1986); Cooper Industrial Products v. Meadows, 5 Ark. App. 205, 634 S.W.2d 4(1982). Therefore, the opinion of the Administrative Law Judge becomes final and the Full Commission cannot review it if the petition for review is not received within 30 days, as set forth in the statute. Smith v. Servomation, 8 Ark. App. 274, 651 S.W.2d 118 (1983). Moreover, 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). Burris v. Burris, 278 Ark. 106, 643 S.W.2d 570 (1982).

The Administrative Law Judge issued an opinion on May 20, 2009. The claimant was represented by an attorney at the

hearing. The claimant received the opinion on May 22, 2009, as evidenced by the certified mail receipt maintained by the Commission. The claimant filed a notice of appeal with the Commission on June 26, 2009. The claimant stated in her letter that she was no longer represented by Andrew Hatfield, who represented her at the hearing before the Administrative Law Judge.

The claimant did not file her notice of appeal with the Commission until June 26, 2009, after the opinion became final. Accordingly, we find that the Joint Motion to Dismiss Claimant's Appeal filed by respondent no.1, respondent no. 2 and respondent no. 3 is well taken and should be and hereby is granted. Since the claimant's notice of appeal was not filed within thirty days of receipt, it was untimely filed. Accordingly, the claimant's appeal must be, and hereby is, dismissed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.