

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602743, F707801

OLA GRIFFIN, EMPLOYEE

CLAIMANT

KIMBERLY-CLARK CORPORATION,  
SELF-INSURED EMPLOYER

RESPONDENT

ORDER FILED SEPTEMBER 29, 2010

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

Claimant represented by the HONORABLE PHILLIP M. WILSON,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE CAROL LOCKARD  
WORLEY, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter comes on for review before the Commission on respondent's Motion to Dismiss Appeal. After our consideration of respondents' motion, claimant's response thereto , and all the matters properly before the Commission, we find that the Motion to Dismiss must 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 400 (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 her opinion on July 2, 2010. Claimant was represented by an attorney at the hearing. Claimant's attorney received the opinion on July 9, 2010, as evidenced by the certified mail receipt maintained by the Commission. Claimant filed a notice of appeal with the Commission on August 11, 2010. The proposition that a "notice to the attorney of a particular party operates as notice to the party" is an elementary concept of law. It has long been held that for appeal purposes in workers' compensation claims that receipt of a

workers' compensation opinion by a party's attorney constitutes notice or receipt by the party. Phillips v. Mid-America Packaging, Full Commission Order April 20, 2009 (F603359), Stella Caffey v. Sanyo Mfg. Co., Full Commission Order filed March 12, 1993 (C808187). At the time of the hearing, and when the opinion was issued by the Administrative Law Judge, the attorney-client relationship existed between the claimant and her attorney. Therefore we find that receipt of the opinion by the attorney representing the claimant at the hearing constitutes receipt by the party. This remains true even when the attorney-client relationship was subsequently terminated. Kathy Kohl v. Linda Shepard, P.A., Full Commission Order filed April 2, 1993 (E204291). Marques Fisher v. Capital Hotel, Full Commission Order filed December 8, 2003 (F211461). In the present claim, the Administrative Law Judge's opinion became final by at least August 8, 2010. Claimant did not file her Notice of Appeal until August 11, 2010, after the decision of the Administrative Law Judge became final.

Therefore, we find that the respondent's motion to dismiss the claimant's appeal 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.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.