

BRB No. 04-939
Case No. 03-LHC-1856
OWCP No. 6-189843

CLEVELAND J. WILSON)	
)	
Claimant-Petitioner)	DATE ISSUED: 09/29/2004
)	
v.)	
)	
INTERNATIONAL SHIP REPAIR)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSN., LTD.)	
)	
Employer/Carrier-)	
Respondents)	ORDER

The Board acknowledges receipt of claimant's Notice of Appeal of the administrative law judge's Decision and Order – Denying Benefits filed August 11, 2004. Claimant's appeal is assigned the Board's docket number, BRB No. 04-939. This number should be used on all future correspondence concerning this appeal.

Section 802.205 of the Board's Rules of Practice and Procedure provides that a Notice of Appeal must be filed within thirty (30) days from the date upon which the decision or order was filed in the Office of the District Director. 20 C.F.R. §802.205.

Although Section 802.207(a) of the aforementioned Rules provides that a Notice of Appeal is considered filed as of the date it is received in the Office of the Clerk of the Board, Section 802.207(b) provides that if a Notice of Appeal is sent by mail and the fixing of the date of delivery as the date of filing would result in a loss or impairment of appeal rights, the appeal will be considered to have been filed as of the date of mailing. 20 C.F.R. §802.207. Moreover, the date appearing on the postmark when available and legible, shall be *prima facie* evidence of the date of mailing. 20 C.F.R. §802.207(b).

In the instant case, the administrative law judge's Decision and Order was filed in the

Office of the District Director on August 11, 2004. Claimant's appeal was postmarked September 11, 2004, and was received by the Board on September 16, 2004. Claimant's appeal should have been filed with the Board on or before September 10, 2004. Accordingly, claimant's appeal is dismissed as untimely filed. 33 U.S.C. §932(a); 20 C.F.R. §§802.205, 802.221(a).

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge