U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 24-0452
OALJ No. 2022-LHC-039041
OWCP No. LS-04039041

TIMOTHY SANSONE

Claimant-Petitioner

v.

PORTS AMERICA, INCORPORATED

and

PORTS INSURANCE COMPANY, INCORPORATED

Employer/Carrier-Respondents

NOT-PUBLISHED

DATE ISSUED: 02/17/2026

ORDER

On September 4, 2024, Claimant filed a Notice of Appeal of the Decision and Order Addressing Medical Benefits issued by Administrative Law Judge (ALJ) Lystra A. Harris on July 31, 2024. On September 11, 2024, Employer filed a Motion to Dismiss Claimant's appeal for being untimely; Employer maintained the last day for Claimant to file his appeal was Tuesday, September 3, 2024, and therefore Claimant's appeal was one day late and must be summarily dismissed in accordance with 20 C.F.R. §802.205(c).[1] Mot. to Dismiss at 3.

Claimant's counsel did not dispute that the ALJ's Order was filed on August 1, 2024, but instead responded by explaining he had recently moved offices and consequently

[1] The ALJ's Order, although dated July 31, 2024, was filed on August 1, 2024. Thirty days from August 1 was August 31, but because that date was a Saturday, and Monday, September 2 was a federal holiday (Labor Day), Claimant's 30-day appeal deadline was Tuesday, September 3, 2024.

he was without both postal delivery service and internet "for a substantial period of time." Cl.'s Resp. to Mot. to Dismiss at 1. He asserted his lack of postal delivery service and internet prevented him from "determining the exact date [the ALJ's Order] was served" by the Office of Workers' Compensation Programs (OWCP), especially because the OWCP's filing indicated it was sent to his prior address. Regardless, he maintained he promptly filed the appeal as soon as he had internet and mail access and there was no prejudice suffered by any party because of his late appeal.

Employer submitted a reply to Claimant's response, maintaining the appeal deadline of thirty days from the date of filing is a "rigid" rule for which equitable relief is unavailable. Even if equitable relief was available, Employer maintains Claimant would not be entitled to it as there was no excusable neglect. Specifically, Employer points out Claimant's counsel's notification of his address change was dated September 10, 2024, seven days after the notice of appeal was due, six days after the appeal was filed with the Board, and forty-one days after the ALJ's Order was filed with the OWCP. As Claimant's counsel fails to "explain how the filing of the decision . . . on August 1, 2024, was impacted by a move that occurred a month later," Employer urges the Board to dismiss the appeal.

While it is true Section 21(a) of the Act, 33 U.S.C. §921(a), provides that a compensation order becomes effective when filed in the district director's office as required by Section 19(e), 33 U.S.C. §919(e), and becomes final unless appealed within thirty days after the date of filing, *see also* 20 C.F.R. §§702.350, 802.205, 20 C.F.R. §702.349(a) states:

> Upon receipt [of the compensation order from the ALJ], the district director, being the official custodian of all records with respect to claims he administers, must formally date and file the transcript, pleadings, and compensation order in his office. Such filing must be accomplished by the close of business on the next succeeding working day, and the district director must, on the same day as the filing was accomplished, serve a copy of the compensation order on the parties and on the representatives of the parties, if any. Service on the parties and their representatives must be made by certified mail unless a party has previously waived service by this method under paragraph (b) of this section.

Here, Claimant's counsel asserts that he does not know when the district director served him with the ALJ's Order because he was without mail service and internet as a result of an office relocation. Not knowing when a compensation order was received is not the same as not having been served with that compensation order.

In fact, Claimant's counsel does not specifically assert that he did not receive the ALJ's Order or that he timely filed the notice of appeal. Instead, he urges the Board to equitably toll the thirty-day deadline because he filed the appeal "as soon as [his] Internet

Service was working [and he was] fully receiving U.S. Postal Service." Cl.'s Resp. to Mot. to Dismiss at 1.

The Board recently held Section 21(a) of the Act is a claim-processing rule, as opposed to a jurisdictional mandate, and therefore is subject to ordinary rules of waiver and forfeiture. *Dominguez v. Bethlehem Steel Corp.*, 59 BRBS 53, 55 (2025). But the Board declined to address whether Section 21(a) is subject to equitable tolling, as none of the captioned cases before it "squarely raise[d] or fully brief[ed] the issue," thereby "leav[ing] for another case the question of whether Section 21(a) permits equitable tolling." *Id.* This is not that case.

Although non-jurisdictional claim-processing rules are presumptively subject to equitable tolling, *see Harrow v. Dep't of Defense*, 601 U.S. 480, 489 (2024), a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently and (2) that some extraordinary circumstance stood in his way. *See, e.g., Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990). The United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this claim arises, has held equitable tolling is only available in certain "narrow" circumstances: when the appellant has filed a defective pleading within the deadline; when the appellant has been tricked by his opponent into letting the deadline pass; and when "'extraordinary circumstances beyond plaintiffs' control made it impossible to file the claims on time.'" *Chao v. Virginia Dep't of Transp.*, 291 F.3d 276, 283 (4th Cir. 2002) (quoting *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000)). The Supreme Court has "held that 'a garden variety claim of excusable neglect,' such as a simple 'miscalculation' that leads a lawyer to miss a filing deadline, does not warrant equitable tolling." *Holland v. Fla.*, 560 U.S. 631, 651-52 (2010) (citations omitted). And it has noted that "*Federal courts have typically extended equitable relief only sparingly* . . . . We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights." *Irwin*, 498 U.S. at 96 (emphasis added).

Claimant's counsel's failure to timely notify the district director of his change in location is not an "extraordinary circumstance" sufficient to warrant application of the equitable tolling doctrine, especially considering that his notice of a change of address was not provided until after he filed the present appeal and that the deadline is triggered by the district director's filing of the ALJ's Order. Consequently, even if equitable tolling is available under Section 21(a), it would not be warranted in this instance. 33 U.S.C. §921(a); *Dominguez*, 59 BRBS at 55; 20 C.F.R. §802.205.

Accordingly, we grant Employer's motion and dismiss as untimely Claimant's appeal of the ALJ's Decision and Order Addressing Medical Benefits.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge