



BRB No. 26-0023

SEMIR SAFUR)
)
 Claimant-Petitioner)
)
 v.)
)
 FLUOR CONOPS, LIMITED)
)
 and)
)
 STARR INDEMNITY AND LIABILITY)
 COMPANY)
)
 Employer/Carrier-)
 Respondents)

NOT-PUBLISHED

DATE ISSUED: 03/30/2026

ORDER

On October 4, 2024, Administrative Law Judge (ALJ) Jerry R. DeMaio, issued a Decision and Order Denying Benefits (D&O). On October 7, 2024, the district director filed the ALJ’s D&O.¹ and sent it by certified mail to Employer and its Carrier (Employer) and to Claimant’s counsel, Scott J. Bloch (Counsel); the district director requested Counsel to “[p]lease send a copy to the [C]laimant.”² On October 9, 2025, Claimant, without

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who filed the ALJ’s decision is located in New York. 33 U.S.C. §921(c); *Glob. Linguist Sols., L.L.C. v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45, 47 (2011).

² Correspondence from the Office of Workers’ Compensation Programs (OWCP) indicates Claimant lives in Bosnia and Herzegovina, and certified mail is not available for international delivery.

representation,³ appealed the ALJ's D&O, alleging his Counsel "never contacted [him] or explained . . . why [his] claim was denied." Cl. Notice of Appeal.

On December 2, 2025, Employer filed a Motion to Dismiss Claimant's appeal as untimely, and it asserted equitable tolling of the appeal deadline is not warranted. Emp. Mot. to Dismiss at 3-6. In his response, Claimant stated: "nobody informed me of the [appeal] deadlines." Cl. Response. He further indicated he continues to be unrepresented and that Counsel had advised him to find a new attorney in the interim between the denial of benefits and his appeal. *Id.*

Section 21(a) of the Act, 33 U.S.C. §921(a), states a compensation order becomes effective when filed in the district director's office as provided in Section 19(e), 33 U.S.C. §919(e), and becomes final unless appealed within thirty days after the date of filing. 33 U.S.C. §921(a); 20 C.F.R. §702.350. Section 19(e) provides compensation orders "shall be filed in the office of the [district director], and a copy thereof shall be sent by registered mail or by certified mail to the claimant and to the employer at the last known address of each." 33 U.S.C. §919(e). The implementing regulation 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.

20 C.F.R. §702.349(a) (emphasis added).

For the Board to consider the issue of timeliness of an appeal, a party must raise it as an affirmative defense, and Employer has done so. *Dominguez v. Bethlehem Steel Corp.*,

³ Counsel represented Claimant throughout the proceedings before the Office of Administrative Law Judges (OALJ) and did not withdraw his representation until November 19, 2025. On that date, Counsel filed a Notice of Withdrawal with the Benefits Review Board indicating he had represented Claimant "through" the issuance of the ALJ's D&O but was withdrawing from further representation of Claimant and was not involved with Claimant's October 9, 2025 appeal. On December 2, 2025, the Board acknowledged it would review the appeal under the general standard of review because Claimant was no longer represented by an attorney.

59 BRBS 53, 55 (2025) (Section 21(a) is a claim-processing rule, as opposed to a jurisdictional mandate, and is subject to ordinary rules of waiver and forfeiture). Consequently, it is Employer’s burden to establish by a preponderance of the evidence that Claimant’s appeal was untimely filed. *Id.*, 59 BRBS at 55; *see also, e.g., Universal Mar. Corp. v. Moore*, 126 F.3d 256, 267 (4th Cir. 1997) (timeliness of request for relief under 33 U.S.C. §908(f) is an affirmative defense the Director must raise); *Newton-Sealey v. ArmorGroup Services (Jersey), Ltd.*, 49 BRBS 17, 19 (2015) (33 U.S.C. §933(g) is an affirmative defense the employer must raise and bears the burden of proving); *Tennant v. Gen. Dynamics Corp.*, 26 BRBS 103, 107 (1992) (Section 8(f)(3) is an affirmative defense the Director must raise).

Counsel did not withdraw his representation of Claimant before the OALJ or during the entire year before Claimant filed his appeal with the Board. Additionally, Claimant does not contest that the district director properly served his Counsel by certified mail. 33 U.S.C. §919(e); 20 C.F.R. §702.349(a); Counsel’s Notice of Withdrawal; Cl. Notice of Appeal; October 7, 2024 Certificate of Filing and Service. Moreover, Claimant does not allege he never received the D&O or that his attorney failed to forward it to him as the district director requested; rather, he asserts only that Counsel “never contacted [him] or explained . . . why [his] claim was denied.” Cl. Notice of Appeal. However, he also noted Counsel “advised [him] to find another attorney *last year*,” undercutting his initial claim that Counsel “never contacted [him].” Cl. Response (emphasis added). Because Claimant was represented when the district director filed the D&O and served his Counsel, but he did not file an appeal until over one year later, Employer raised the challenge and satisfied its burden. Therefore, we agree that Claimant’s appeal was untimely filed.⁴ *See Ins. Co. of N. Am. v. Gee*, 702 F.2d 411, 414 (2d Cir. 1983) (“The policy requiring that appeals be

⁴ The Board recently held Section 21(a) of the Act is a claim-processing rule and is subject to ordinary rules of waiver and forfeiture, but “[left] for another case the question of whether Section 21(a) permits equitable tolling.” *Dominguez v. Bethlehem Steel Corp.*, 59 BRBS 53, 55 (2025). This is not that case. “Generally, 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.” *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005) (citing *Irwin v. Dep’t of Veterans Affs.*, 498 U.S. 89, 96 (1990)). Counsel did not withdraw his appearance before OALJ or at any point during the year before Claimant filed his appeal with the Board, Claimant does not allege Counsel failed to forward him the filed D&O, and Claimant stated he had discussed his representation with Counsel at some point after the denial of benefits but before filing his appeal. We agree with Employer that Claimant has failed to demonstrate that he diligently pursued his appeal. *See Pace*, 544 U.S. at 418 *Irwin*, 498 U.S. at 96; Emp. Mot. to Dismiss at 4-6. Consequently, even if equitable tolling is available under Section 21(a), it would not be warranted in this instance.

timely taken is so strong that ministerial failures . . . cannot be allowed to overcome it.”) (citation omitted); *see also Carillo v. La. Ins. Guar. Ass’n*, 559 F.3d 377, 381 (5th Cir. 2009) (“filing” under the Longshore Act “does not depend on whether others are informed,” and both the Act and its implementing regulation indicate that the district director’s filing of the order is completed *and then* the copy is mailed.); *Sea-Land Serv., Inc. v. Barry*, 41 F.3d 903, 908 (3d Cir. 1994) (“it is clear that filing and mailing are two distinct procedures”); *Jeffboat, Inc. v. Mann*, 875 F.2d 660, 664 n.6 (7th Cir. 1989) (recognizing if “the deputy commissioner failed to notify both [a party] and its counsel of the ALJ’s decision, a question might be raised whether [the party’s] loss of appeal rights deprived it of due process of law.”).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge