

BRB No. 04-0712
OWCP No. 07-0166675

DONALD SHIRES)
)
Claimant-Respondent) DATE ISSUED: August 17, 2004
)
v.)
)
WORLDWIDE PROFESSIONAL SERVICES,)
INC.)
)
and)
)
TEXAS MUTUAL INSURANCE COMPANY)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) ORDER

By letter dated June 24, 2004, the Board acknowledged employer's Notice of Appeal of the district director's Order of Withdrawal of Claim, dated and filed May 7, 2004, in the captioned case.

By motions dated July 30, 2004 and August 4, 2004, respectively, the Director and claimant have requested that the Board dismiss employer's appeal as untimely filed. In support of their motions, the Director and claimant state that employer's appeal should have been filed no later than June 7, 2004.

Section 802.205(a) of the Board's Rules of Practice and Procedure provides that a Notice of Appeal must be filed with the Board 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.

In the captioned case, the district director's Order of Withdrawal of Claim was dated and filed on May 7, 2004. Therefore the thirty (30) day filing period ended on June 6, 2004. Since June 6, 2004, was a Sunday, the filing period was extended to Monday, June 7, 2004. 20 C.F.R. §802.221(a). Employer's appeal, therefore, should have been filed no later than June 7, 2004. 20 C.F.R. §§802.205, 802.221. 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 the 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. 20C.F.R. §802.207(b). In the instant case, employer's Notice of Appeal was postmarked June 8, 2004, and received by the Board on June 14, 2004.

Accordingly, the Board grants the Director's and claimant's motions, and dismisses employer's appeal as untimely filed. 33 U.S.C. §921(c); 30 U.S.C. §932(a); 20 C.F.R. §802.205.

Service of this Order has been made on all parties, the Solicitor of Labor and the District Director.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge