

BRB No. 04-0409
Case No. 03-LHC-0208
OWCP No. 15-0045727

CATALINA CACHOLA)	
)	
Claimant-Petitioner)	DATE ISSUED: <u>February 18, 2004</u>
)	
v.)	
)	
HICKMAN YOUTH CENTER)	
)	
and)	
)	
AIR FORCE INSURANCE FUND)	
)	
Employer/Carrier-)	
Respondents)	ORDER

The Board acknowledges receipt of claimant=s Notice of Appeal of the administrative law judge=s Order Denying Award of Attorney's Fees, dated December 23, 2003, and filed in the District Director=s office on December 30, 2003. Claimant=s appeal is assigned BRB No. 04-0409. All future correspondence filed with the Board must bear this number.

By letter dated February 4, 2004, employer filed a motion requesting that the Board dismiss claimant=s appeal as untimely filed. Section 802.205(a) 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.

In the captioned case, the administrative law judge=s Order Denying Award of Attorney's Fees, dated December 23, 2003, was filed in the District Director=s office on December 30, 2003. Therefore, the thirty (30) day filing period ended on January 29, 2004. Claimant=s appeal, therefore, should have been filed no later than January 29, 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. In the instant case, claimant=s Notice of Appeal was postmarked January 30, 2004, and received by the Board on February 9, 2004.

Accordingly, the Board grants employer=s motion and dismisses claimant'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.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge