

WILLIAM JONES)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
FLORIDA INTERNATIONAL)	DATE ISSUED: 10/15/2012
TERMINAL)	
)	
and)	
)	
CHARTIS SPECIALTY INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	ORDER on MOTION
Respondents)	for RECONSIDERATION

Claimant, on his own behalf, appealed Administrative Law Judge Donald W. Mosser’s Decision and Order Denying Benefits, which was filed in the office of the district director on January 24, 2012. Claimant’s appeal was received in the Office of Administrative Law Judges (OALJ) on March 6, 2012. Upon employer’s motion, the Board dismissed claimant’s appeal as untimely filed. *Jones v. Florida Int’l Terminal*, BRB No. 12-0346 (June 5, 2012). By letter post-marked July 3, 2012, claimant timely moves for reconsideration of the Board’s Order. 33 U.S.C. §921(b)(5); 20 C.F.R. §§802.221(b), 802.407. Claimant argues that his delay in receiving a copy of the administrative law judge’s Decision and Order tolled the time for filing his appeal with the Board. Employer responds, urging the Board to reject claimant’s motion. For the reasons set forth below, we deny claimant’s motion for reconsideration and affirm the dismissal of his appeal.

Section 21(a) of the Act provides:

A compensation order shall become effective when filed in the office of the [district director] as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

33 U.S.C. §921(a) (emphasis added). Section 19, to which Section 21(a) refers, states:

The order rejecting the claim or making the award (referred to in this chapter as a compensation order) 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) (emphasis added). Section 702.349 of the Act's regulation provides that, upon rendering a decision, the administrative law judge must deliver to the district director the compensation order and the record.

Upon receipt thereof, the district director . . . shall formally date and file the transcript, pleadings, and compensation order (original) in his office. Such filing shall be accomplished by the close of business on the next succeeding working day, and the district director shall, *on the same day as the filing was accomplished*, send by certified mail a copy of the compensation order to the parties and to representatives of the parties, if any.

20 C.F.R. §702.349 (emphasis added). The issue claimant raises in his motion for reconsideration is whether the time for filing an appeal to the Board is tolled until a party receives the administrative law judge's Decision and Order. Claimant's motion fails because proper "filing" of the administrative law judge's Decision and Order, which starts the 30-day period for appealing, does not encompass the mailing requirement. *Id.*

In addressing whether a compensation order had been "filed" so as to commence the time for paying benefits and avoid an additional assessment under 33 U.S.C. §914(f), the United States Court of Appeals for the Fifth Circuit applied the "widely accepted definition that a 'paper is filed when it is delivered to the proper official and by him received and filed.'" *Carillo v. Louisiana Ins. Guaranty Ass'n*, 559 F.3d 377, 381, 43 BRBS 1, 4(CRT) (5th Cir. 2009) (quoting *United States v. Lombardo*, 241 U.S. 73, 76 (1916)).¹ The Fifth Circuit reasoned that, by this definition, "filing" under the Longshore Act "does not depend on whether others are informed," and both the Act and its regulation indicate that filing of the order by the district director is completed *and then*

¹The court stated that an order's becoming "effective" upon filing under Section 21(a) is equivalent to compensation becoming "due" under Section 14(f). *Carillo*, 559 F.3d at 379, 43 BRBS at 2(CRT); see 33 U.S.C. §§914(f), 921(a); *Tidelands Marine Service v. Patterson*, 719 F.2d 126, 16 BRBS 10(CRT) (5th Cir. 1983). Therefore, the definition of "filing" is the same whether the issue involves counting days for the commencement of benefits or the filing of an appeal.

the copy is mailed. *Carillo*, 559 F.3d at 381, 43 BRBS at 4(CRT); 20 C.F.R. §702.349 (district director is to send out copies “on the same day as the filing is accomplished”).² The court held that filing occurs once the district director performs the acts he must perform: formal dating and filing in his office, and, while sending of the copies must occur by the end of that same day, the court could find “no manner in which to make receipt of the order in a timely fashion by a party fit within the statute and regulation’s description of the act of filing.” *Carillo*, 559 F.3d at 381, 43 BRBS at 4(CRT).

Other courts have reached this same conclusion. *Sea-Land Service, Inc. v. Barry*, 41 F.3d 903, 908, 29 BRBS 1, 7(CRT) (3^d Cir. 1994) (“it is clear that filing and mailing are two distinct procedures, and that service is not necessary to trigger the ten day payment period”); *Jeffboat, Inc. v. Mann*, 875 F.2d 660, 663, 22 BRBS 79, 81(CRT) (7th Cir. 1989) (“the regulation does not make proper mailing part of filing”); *Lauzon v. Strachan Shipping Co.*, 782 F.2d 1217, 1220, 18 BRBS 60, 64(CRT) (5th Cir. 1985) (“the time for payment started running when the award was *filed* and not when [the employer] was *served*”); *Ins. Co. of North America v. Gee*, 702 F.2d 411, 414, 15 BRBS 107, 112-113(CRT) (2^d Cir. 1983) (policy requiring timely appeals is strong); *cf. Nealon v. California Stevedore & Ballast Co.*, 996 F.2d 966, 27 BRBS 31(CRT) (9th Cir. 1993) (service, but not actual receipt, on the parties must occur before a compensation order can be considered “filed”). Thus, “filing” requires neither “service” nor “receipt” of the administrative law judge’s decision, and the time for filing an appeal with the Board begins to run on the date the district director filed the decision in his office. *Carillo*, 559 F.3d at 381, 43 BRBS at 4(CRT); *Gee*, 702 F.2d at 414, 15 BRBS at 112-113(CRT).

In this case, on January 24, 2012, the district director filed and then mailed claimant a copy of the administrative law judge’s decision and order to his address of record in Miramar, Florida. The district director, therefore, complied with Section 19(e) of the Act and Section 702.349 of the regulation, as he filed the order and then sent copies by certified mail to the last known addresses of the parties. Thus, claimant was properly served. Thereafter, according to the postal tracking form, delivery to claimant at the Miramar address was not possible, as the addressee was unknown. However, once the district director learned of claimant’s new address, delivery was made on February 15, 2012. Although claimant failed to inform the district director he had moved, he nevertheless received his copy of the decision within the 30-day window after the January 24 filing, giving him time to file an appeal of the administrative law judge’s decision. Claimant did not file a notice of appeal until March 6, 2012, when he filed it

²See also *Grant v. Director, OWCP*, 502 F.3d 361, 41 BRBS 49(CRT) (5th Cir. 2007) (“filing” requires the formal action of dating the order and attaching the service sheet).

with the OALJ.³ As claimant's appeal to the Board was filed on March 6, 2012, and that was more than 30 days after the district director filed the administrative law judge's order on January 24, 2012, the Board correctly dismissed his appeal as untimely. *Carillo*, 559 F.3d 377, 43 BRBS 1(CRT); *American Steamship Co. v. Nelson*, 1 BRBS 30 (1974).

Accordingly, claimant's motion for reconsideration is denied. The dismissal of claimant's appeal as untimely filed is affirmed.⁴ 20 C.F.R. §§802.205(a), (c), 802.409.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge+

BETTY JEAN HALL
Administrative Appeals Judge

³The administrative law judge issued an Order dated March 26, 2012, forwarding the notice to the Board. 20 C.F.R. §802.207(a)(2) (notice of appeal filed with another governmental agency shall be promptly forwarded to the Clerk of the Board and, if in the interests of justice, shall be considered filed as of the date it was received by the other governmental agency).

⁴We need not address claimant's arguments pertaining to 28 U.S.C. §2107 and Federal Rule of Civil Procedure 4(a)(6), as the Act and its regulations address the requirements for filing and serving an administrative law judge's decision and for timely filing an appeal.