

BRB No. 08-0166 BLA
Case No. 04-BLA-6419

D.C.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MARTIN COUNTY COAL CORPORATION)	DATE ISSUED: 07/16/2008
)	
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

By Order dated January 8, 2008, the Board acknowledged receipt of claimant's Notice of Appeal dated October 23, 2007, and postmarked October 24, 2007, of the Decision and Order Denying Benefits dated September 10, 2007 by Administrative Law Judge Stephen L. Purcell (the administrative law judge). [*D.C.*] v. *Martin County Coal Corp.*, BRB No. 08-0166 BLA (Jan. 8, 2008)(unpub. order). The Board also accepted claimant's appeal as timely filed. *Id.*

In a letter dated May 1, 2008, the Director, Office of Workers' Compensation Programs (the Director), states that he will not respond to the merits of the administrative law judge's denial of benefits unless the Board requests him to do so. Nonetheless, the Director argues that the Board erred in finding that claimant's appeal was timely filed. The Board will consider the Director's letter as a motion to dismiss claimant's appeal. Neither claimant nor employer has filed a response to the Director's motion.

Section 725.478 provides that on the date of issuance of a decision and order, the administrative law judge shall serve the decision and order on all parties to the claim by certified mail, and send the original record of the claim to the Division of Coal Mine Workers' Compensation (DCMWC). 20 C.F.R. §725.478. The pertinent regulation further provides that the decision and order shall be considered to be filed in the Office of the District Director, and therefore effective, on the date of its receipt by the DCMWC. *Id.* In addition, Section 802.205(a) provides that a notice of appeal must be filed within thirty (30)

days from the date that a decision and order has been filed in the Office of the District Director. 20 C.F.R. §802.205(a).

In the prior Order, the Board noted that the results of a tracking and confirmation search by the United States Postal Service indicated that the administrative law judge's decision was delivered to claimant on September 27, 2007. The Board additionally stated that "[s]ince there was a delay in the delivery of the decision, the thirty (30) day period for filing did not begin to run until at least September 27, 2007." [*D.C.*] v. *Martin County Coal Corp.*, BRB No. 08-0166 BLA, slip op. at 2 (Jan. 8, 2008)(unpub. order). The Board therefore accepted claimant's appeal as timely filed.

Upon further reflection, however, we conclude that there was no defect in the service of the administrative law judge's decision to claimant. The decision was issued by the administrative law judge on September 10, 2007 and sent to claimant's correct address by certified mail on the same date. The decision was also filed in the Office of the District Director on September 12, 2007. Further, the results of a tracking and confirmation search by the United States Postal Service indicate that claimant was left notice of the certified mail on September 13, 2007. As discussed, *supra*, the results of the search also indicate that the certified mail was delivered to claimant on September 27, 2007. However, no explanation was noted in the record for the delay in the delivery of the certified mail to claimant from the date that notice of the mail was left with him. Because the decision was sent to claimant on September 10, 2007 by certified mail in full compliance with the regulatory requirements for service, 20 C.F.R. §725.478, the thirty (30) day period for filing an appeal of the decision began to run on September 12, 2007, the date that the decision was filed in the Office of the District Director. 20 C.F.R. §802.205(a). Consequently, claimant's appeal in this case should have been filed no later than October 12, 2007, or thirty (30) days from the date that the decision and order was filed in the Office of the District Director.

Inasmuch as claimant's Notice of Appeal was neither received by the Board nor postmarked on or before October 12, 2007, claimant's appeal of the administrative law judge's decision is dismissed as untimely filed. 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

BETTY JEAN HALL
Administrative Appeals Judge