

BRB No. 04-138 BLA  
Case No. 02-BLA-5111

ETHEL THACKER	)	
	)	
Claimant-Petitioner	)	DATE ISSUED: 10/30/2003
	)	
v.	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION UNITED STATES	)	
DEPARTMENT OF LABOR	)	
	)	
Respondent	)	ORDER

The Board acknowledges receipt of claimant's Notice of Appeal of the administrative law judge's Decision and Order – Denial of Benefits filed September 4, 2003. Claimant's appeal is assigned the Board's docket number, BRB No. 04-138 BLA. This number should be used on all future correspondence concerning this appeal.

Section 802.205 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.

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 a 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. 20 C.F.R. §802.207. Moreover, the date appearing on the postmark when available and legible, shall be *prima facie* evidence of the date of mailing. 20 C.F.R. §802.207(b).

Section 802.221 provides that whenever the last day of the designated filing period falls on a Saturday, Sunday, or legal holiday, the filing date runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. 20 C.F.R. §802.221.

In the instant case, the administrative law judge's Decision and Order was filed in the Office of the District Director on September 4, 2003. The time period for filing an appeal

with the Board expired on Monday, October 6, 2003. Claimant's appeal was postmarked October 18, 2003, and was received by the Board on October 21, 2003. Claimant's appeal should have been filed with the Board on or before October 6, 2003. Accordingly, claimant's appeal is dismissed as untimely filed. 33 U.S.C. §932(a); 20 C.F.R. §§802.205, 802.221(a).

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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PETER A. GABAUER, JR.  
Administrative Appeals Judge