JOHN R. BROOS, JR., Employee/Appellant, v. PORTEC, INC., SELF-INSURED/GAB ROBINS, INC., Employer.

WORKERS' COMPENSATION COURT OF APPEALS
SEPTEMBER 21, 1999

No. [REDACTED SSN]

HEADNOTES

PRACTICE & PROCEDURE - SERVICE; JURISDICTION - SUBJECT MATTER. Where the employee failed to serve the employer with notice of his appeal (request for formal hearing) from a summary decision within the time specified by statute, the Office of Administrative Hearings lacked subject matter jurisdiction, and the compensation judge properly dismissed the appeal.

Affirmed.

Determined by Wilson, J., Pederson, J., and Rykken, J.
Compensation Judge: John A. Ellefson.

OPINION

DEBRA A. WILSON, Judge

The employee, pro se, appeals from the compensation judge's decision dismissing with prejudice the employee's appeal of a summary decision. We affirm.

BACKGROUND

The employee sustained a work-related injury to his left hand and wrist on February 13, 1979, while working for Portec, Inc. [the employer]. The employer was self-insured for workers' compensation purposes. On July 20, 1998, the employee filed a claim petition seeking payment of mileage, $73.25 in nursing care, and penalties for late payment under an award on stipulation filed on June 1, 1998. The matter was set for a settlement conference at the St. Paul Settlement Office of the Office of Administrative Hearings.

At the settlement conference, it was disclosed that the employer had paid the mileage, but the parties were unable to reach an agreement as to the remaining disputed claims. On January 7, 1999, a summary decision was filed pursuant to Minn. Stat. § 176.305. In that decision, the judge found that the nursing service charges were payable but that the claims for penalties and interest had been closed out by the June 1, 1998, award on stipulation. The summary decision clearly stated on its face:

> A Summary Decision is final unless a written request

> for a formal hearing is served on all parties and filed within 30 days after the date of service and filing of the Summary Decision.

On January 27, 1999, the Office of Administrative Hearings received a letter from the employee stating, in part, "I wish to appeal the decision served and filed on 1-7-99." No proof of service upon the employer was attached to that letter.

On February 24, 1999, the Office of Administrative Hearings served the employee and James Waldhauser, attorney for the employer, with a notice of hearing. The hearing took place on March 26, 1999, and, at that hearing, Mr. Waldhauser brought a motion to dismiss the employee's appeal based on the employee's failure to serve the employer with notice as required by Minn. Stat. § 176.305. The employee offered no evidence at hearing in response to the motion to dismiss, instead submitting evidence regarding his penalty claim. In findings and order filed on April 20, 1999, the compensation judge found that the employee had failed to give proper notice to the employer, which deprived the Office of Administrative Hearings of jurisdiction to hear the employee's appeal from the summary decision. The employee appeals from the findings and order.

STANDARD OF REVIEW

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

In his brief on appeal to this court, the employee does not address the issue of whether the compensation judge properly dismissed the appeal from the summary decision; the brief does not allege that the employee served the employer with notice of the appeal.[1] Rather, the employee argues his entitlement to a penalty for the late payment of benefits pursuant to the award on stipulation.

Minn. Stat. § 176.305, subd. 1a, states, in part:

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[1] Attached to the notice of appeal to this court was a letter from the employee to Mr. Waldhauser dated January 12, 1999. In that letter, the employee outlined a proposed settlement, and concluded the letter by stating, "[i]f we do not hear from you by January 22, 1999, we will go ahead and appeal." Even if this letter had been introduced into evidence at the hearing before the compensation judge, which it was not, it would not constitute service of a "written request for a formal hearing" as required by Minn. Stat. § 176.305, subd. 1a.

> The summary decision is final unless a written request for a formal hearing is served on all parties and filed with the commissioner within 30 days after the service and filing of the summary decision.

This statutory requirement was clearly paraphrased within the summary decision. However, there is no evidence that the employee served the employer in a timely fashion. Generally, the statutory service and filing requirements for appeals are jurisdictional. Bjerga v. Maislin Transp., 400 N.W.2d 99, 99, 39 W.C.D. 309, 310 (Minn. 1987); Kearns v. Julette Originals Dress Co., 267 Minn. 278, 126 N.W.2d 266, 23 W.C.D. 127 (1964); Bostrom v. Minn. Fabrics, slip op. (W.C.C.A. Mar. 20, 1992); Carlisle-Palmer v. Sammy's Pizza, slip op. (W.C.C.A. July 23, 1993). Because the employee's request for formal hearing was not served upon the employer, jurisdiction was lacking. Meissner v. Southview Acres Health Care Center, 45 W.C.D. 524 (W.C.C.A.1991). Therefore, the compensation judge properly dismissed the employee's request for formal hearing, and we affirm that decision.