

MADELINE C. ERICKSON, Employee, v. M.D. KELLY and K.J. DEE d/b/a THE FIRM, UNINSURED, Employer/Appellant, and GREAT WEST LIFE/DCA, INC., MN DEP'T OF LABOR & INDUS./VRU, and MN DEP'T OF ECONOMIC SEC., Intervenors, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS
APRIL 9, 1999

No. [REDACTED SSN]

HEADNOTES

APPEALS - NOTICE OF APPEAL. In determining the time period for appeal under Minn. Stat. § 176.421, subd. 1, the period of time "shall be computed so as to exclude the first and include the last day" of the prescribed 30 day period. Minn. Stat. § 645.15. The employer's notice of appeal was timely filed on the 30th day, and the employee's motion to dismiss is denied.

Motion to dismiss appeal denied.

Determined by Johnson, J., Wilson, J., and Pederson, J.

OPINION

THOMAS L. JOHNSON, Judge

The employee has moved this court to dismiss the appeal of the uninsured employer, asserting the appeal was not timely filed. The motion is denied.

PROCEDURAL BACKGROUND

On February 8, 1999, a compensation judge at the Office of Administrative Hearings served and filed a Findings and Order in this case. The uninsured employer filed a notice of appeal to the Workers' Compensation Court of Appeals on March 10, 1999. On March 18, 1999, the employee filed a motion for dismissal of the uninsured employer's appeal contending the appeal was not filed within the 30-day period set forth in Minn. Stat. §176.421. The appellant filed its response objecting to the employee's motion to dismiss on March 22, 1999.

DECISION

Minn. Stat. § 176.421, subd. 1, provides that a party may appeal to the Workers' Compensation Court of Appeals "within 30 days after a party in interest has been served with notice of an award or disallowance of compensation, or other order affecting the merits of the case." The service and filing of a notice of appeal are jurisdictional requirements. Carpenter v. Woodvale, Inc., 400 N.W.2d 727, 39 W.C.D. 430 (Minn. 1987). Where subject matter

jurisdiction is lacking, this court cannot reach the merits of the case. Hemmesh v. Molitor, 328 N.W.2d 445, 35 W.C.D. 541 (Minn. 1983).

The employee argues the notice of appeal was filed on the 31st day after service and filing of the findings and order. This argument is premised on the contention that the date of service and filing, February 8, 1999, constitutes the first day of the 30-day period. Thus, March 10, 1999 would be the 31st day making the appeal untimely. Accordingly, the employee asks the appeal be dismissed.

Where the performance or doing of an act is ordered or directed and the period of time or duration for the performance or doing thereof is prescribed and fixed by law, the time period “shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time.” Minn. Stat. §645.15. “The day on which an act or event occurs is excluded in the determination of all questions of time.” Nebola v. Minnesota Iron Co., 102 Minn. 89, 112 N.W. 880 (1907). Minn. Stat. § 645.15 applies to the computation of the 30-day period prescribed by Minn. Stat. §176.421. Kearns v. Julette Originals Dress Co., 267 Minn. 278, 126 N.W.2d 266, 23 W.C.D. 127 (1964); Nelson v. Sandkamp, 227 Minn. 177, 34 N.W.2d 640 (1948) (Minn. Stat. § 645.15 provides a uniform rule for computation of time periods prescribed in statutes establishing periods of time). See also Friedman v. Miner’s, Inc., slip op. (W.C.C.A. Sept. 28, 1993); Minn. R. 1415.0700, subp. 3 (“[c]omputation of time for service is governed by Minnesota Statutes Section 645.15.”).

Here, the first day of the prescribed period was February 8, 1999, the date of service and filing. Since the day on which the prescribed act occurs is excluded under Minn. Stat. § 645.15, the 30-day period began running on February 9, 1999. The uninsured employer’s appeal was filed on March 10, 1999, the 30th day after service of the Findings and Order. The appeal was, therefore, timely filed. The employee’s motion to dismiss the appeal is denied.