

NORMAN J. FERGUSON, Employee/Appellant, v. FORD MOTOR CO., SELF-INSURED, Employer.

WORKERS' COMPENSATION COURT OF APPEALS
AUGUST 20, 2001

No. [REDACTED SSN]

HEADNOTES

APPEALS; JURISDICTION - SUBJECT MATTER. Payment of the \$25.00 filing fee, within the 30-day appeal period, is jurisdictional. Because the employee failed to submit the filing fee in a timely manner, the Workers' Compensation Court of Appeals lacked subject matter jurisdiction to consider the merits of the appeal.

Appeal dismissed.

Determined by Wilson, J., Rykken, J., and Johnson, J.
Compensation Judge: Paul V. Rieke

OPINION

DEBRA A. WILSON, Judge

The pro se employee appeals from the compensation judge's decision dismissing his medical request, and his request for formal hearing, with prejudice. Because the employee failed to submit his filing fee within the time specified by Minn. Stat. § 176.421, we dismiss the appeal for lack of subject matter jurisdiction.

BACKGROUND

This case has a complicated history, but, for purposes of this appeal, the relevant proceedings commenced with a medical request filed by the employee on April 11, 2000. The self-insured employer denied liability for the claimed expenses due in part to a lack of documentation. An administrative conference on the dispute was rescheduled several times at the request of the employee, who now lives in West Virginia, but was finally held by telephone on September 20, 2000. In a decision and order issued on November 3, 2000, the department representative awarded certain expenses but denied others,¹ and, on November 24, 2000, the employee filed a timely request for formal hearing, pursuant to Minn. Stat. § 176.106.

A hearing on the employee's request for formal hearing was scheduled for February 2, 2001. At some point, the employee requested a continuance, based on his inability to

¹ In her decision, the department representative noted that she was forced to end the telephone conference abruptly due to the employee's inappropriate comments and behavior.

attend, and he also asked that he be allowed to submit his testimony by telephone. An order was issued by a compensation judge on February 7, 2001, granting the continuance but denying the request to testify via telephone. A notice of hearing was mailed to the parties on February 2, 2001, resetting the formal hearing for March 15, 2001, before Judge Paul Rieke. The proof of service for the notice of hearing indicates that the employee was served, by mail, at a West Virginia address.

On March 15, 2001, Judge Rieke issued an order dismissing the employee's medical request and request for formal hearing, with prejudice. According to the order, a representative of the employer, and employer's counsel, had appeared at the scheduled hearing, but the employee had not appeared nor had he notified the Office of Administrative Hearings [OAH] that he would not be attending. Counsel for the employer moved the court for dismissal with prejudice and, finding that the employee had not reasonably pursued his claim, Judge Rieke granted the motion.

On March 29, 2001, the employee filed a letter to Judge Rieke, suggesting that he had not received notice of the March 15, 2001, hearing² and that he had been unsuccessful in securing representation.³ Also on March 29, 2001, a notice of appeal to the Workers' Compensation Court of Appeals was filed. According to notes in the file, no filing fee was submitted with either document, and, on April 20, 2001, an administrative specialist from OAH wrote to the employee, indicating, "Pursuant to our telephone conversation of April 6, 2001, I still have not received your check in the amount of \$25.00 to cover the cost of filing your appeal." The specialist also notified the employee that the \$25.00 filing fee was required by statute, and she asked the employee to refile all documents, together with the filing fee. An acknowledgment of appeal dated May 3, 2001, indicates that the filing fee was received by OAH on April 30, 2001. OAH certified the official record in the matter to the Workers' Compensation Court of Appeals on May 4, 2001.

DECISION

This court's authority on appeal is governed by Minn. Stat. § 176.421. Subdivision 4 of that provision reads in relevant part as follows:

Subd. 4. Service and filing of notice; cost of transcript. Within the 30-day period for taking an appeal, the appellant shall:
(1) serve a copy of the notice of appeal on each adverse party;

² The address on the employee's letter was the same address reflected on the proof of service for the notice of hearing before Judge Rieke.

³ The employee had been represented by an attorney in earlier proceedings, but that attorney withdrew effective February 1, 2000, after the employee filed his second complaint against the attorney with the Minnesota Office of Lawyers Professional Responsibility. A second attorney commenced representation of the employee in late November 2000 but withdrew or was discharged by the employee in January of 2001.

- (2) file the original notice, with proof of service by admission or affidavit, with the chief administrative law judge and file a copy with the commissioner;
- (3) in order to defray the cost of the preparation of the record of the proceedings appealed from, pay to the state treasurer, office of administrative hearings account the sum of \$25.

Minn. Stat. § 176.421, subd. 4 (emphasis added). The service and filing requirements of this provision are jurisdictional. See, e.g., Bjerga v. Maislen Transp., 400 N.W.2d 99, 39 W.C.D. 309 (Minn. 1987); Carpenter v. Woodvale, Inc., 400 N.W.2d 727, 39 W.C.D. 430 (Minn. 1987); Kearns v. Julette Originals Dress Co., 267 Minn. 278, 126 N.W.2d 266, 23 W.C.D. 127 (1964). That is, this court has no authority to consider the merits of an appeal in the absence of timely service and filing. Among other things, the filing fee must be paid within the 30-day appeal period in order to perfect an appeal. Castrodale v. Noble Nursery, memo. op. (W.C.C.A. Apr. 7, 1993); Vertin v. Vertin's Café & Pub, memo. op. (W.C.C.A. Apr. 7, 1993). See also Heinsch v. Lot 27, Block I For's Beach, 399 N.W.2d 107 (Minn. App. 1987); County of Ramsey v. Minnesota Public Utilities Comm'n, 345 N.W.2d 740 (Minn. 1984).

In the present case, Judge Rieke's decision was served and filed on March 15, 2001, and the employee did not submit the \$25.00 filing fee until April 30, 2001, well beyond the 30-day appeal period. Under these circumstances, this court lacks subject matter jurisdiction to consider the employee's appeal.⁴ That appeal is, therefore, dismissed.

⁴ We would also note that the employee never filed an appellant's brief in the matter, and, pursuant to Minn. R. 9800.1710, this court would have, in any event, dismissed the appeal on this ground, subject to reinstatement. No reinstatement is possible when the requirements of Minn. Stat. § 176.421 have not been satisfied.