
**APPEALS BOARD
UTAH LABOR COMMISSION**

ROBERT L. DRIPPS,

Petitioner,

vs.

**LIFETIME PRODUCTS and ZURICH
AMERICAN INSURANCE CO.,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 09-0179

Lifetime Products (“Lifetime”) and its insurance carrier Zurich American Insurance Co. (“Zurich”) ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Trayner's decision denying relief from the default order entered against them and in favor of Robert L. Dripps.

The Appeals Board exercises jurisdiction over this motion for review pursuant to §63G-4-301 of the Utah Administrative Procedures Act and §34A-2-801(3) of the Utah Workers' Compensation Act.

BACKGROUND AND ISSUE PRESENTED

Judge Trayner entered an order of default against Lifetime and Zurich on April 6, 2009, for failing to submit an answer to Mr. Dripps's claim for workers' compensation benefits. Lifetime and Zurich then filed a motion to set aside the default order, which Judge Trayner denied on July 27, 2009. Lifetime and Zurich now request that the Appeals Board review Judge Trayner's decision denying relief from the default order.

Lifetime and Zurich contend that the default order should be set aside because: 1) the notice and order for answer was not mailed to Zurich's current service agent; and 2) the notice and order for answer was not sent to Zurich's third-party administrator.

FINDINGS OF FACT

Zurich affirmatively designated Carl A. Hulbert as its agent to receive notices and orders from the Commission on August 28, 2006. Mr. Dripps suffered an injury to his right shoulder on October 24, 2008, while working for Lifetime, and filed an application for hearing with the Adjudication Division of the Commission on February 17, 2009. On February 24, 2009, the Adjudication Division mailed separate copies of the notice and order for answer to Lifetime and to Zurich's designated agent, Mr. Hulbert, informing them that an answer was due March 26, 2009. The orders for answer were delivered successfully, as they were not returned to the Commission.

ORDER AFFIRMING ALJ'S DECISION
ROBERT L. DRIPPS
PAGE 2 OF 4

On March 16, 2009, Zurich sent the Adjudication Division a memo making it known that it had changed its designated agent for service from Mr. Hulbert to Corporation Service Company. However, there is no indication that Zurich made any effort to determine what cases, including Mr. Dripps's claim, were pending before the Adjudication Division at that time. Additionally, there is no evidence that Lifetime or Zurich did not actually receive the notice and order for answer with respect to Mr. Dripps's claim.

By April 6, 2009, more than a week after the due date, the Adjudication Division still had not received an answer from Lifetime or Zurich. Judge Trayner therefore entered a default order awarding benefits to Mr. Dripps. Lifetime and Zurich then filed a motion to set aside the default order, which Judge Trayner denied.

DISCUSSION AND CONCLUSIONS OF LAW

The ultimate goal of Utah's workers' compensation system, and the Commission's adjudicative process, is to ensure that workers' compensation benefits are promptly paid to eligible injured workers. In disputed cases, this goal is best accomplished through full and fair evidentiary proceedings and speedy decisions that resolve the merits of the dispute. The Commission's rules, in conjunction with the Utah Administrative Procedures Act, are designed to facilitate this adjudicative process.

Section 34A-2-113 of the Utah Workers' Compensation Act requires Zurich to maintain a designated agent that is registered with the Adjudication Division and authorized to receive all notices or orders. On February 24, 2009, when the Adjudication Division sent out the notice and order for answer, Zurich's designated agent was Carl A. Hulbert. The Adjudication Division followed its established process of mailing copies of the notice and order for answer to Lifetime at the address listed with it, as well as to Mr. Hulbert, who was Zurich's designated agent at the time. This notice clearly instructed Lifetime and Zurich to file an answer to Mr. Dripps's claim or risk an order of default. Neither Lifetime nor Zurich complied with this instruction to file an answer.

Lifetime and Zurich argue that the default order should be set aside because the Adjudication Division sent the notice and order for answer to its previous agent, Mr. Hulbert, not its proper agent, Corporation Service Company. However, the evidence confirms that at the time the Adjudication Division sent the notice and order for answer, it was sent to Zurich's designated agent of record, Carl A. Hulbert. It is important to note that the Adjudication Division sent the notice and order for answer approximately three weeks before Zurich changed its designated service agent to Corporation Service Company. Lifetime and Zurich then had 30 days to respond, which was ample time for them to arrange for the notice and order for answer to reach their desired destination. Even if Zurich's previous service agent was no longer going to serve as its designated agent to receive the notice and order for answer, it is Zurich's responsibility, not the Adjudication Division's, to see that any such pending notice be forwarded to the appropriate office. Both Lifetime and Zurich had 30 days to accomplish that and failed to do so.

ORDER AFFIRMING ALJ'S DECISION
ROBERT L. DRIPPS
PAGE 3 OF 4

Lifetime and Zurich also contend that the default order should be set aside because the notice and order for answer was not sent to Zurich's third-party administrator, Gallagher Bassett. However, there is nothing in the record to indicate that Gallagher Bassett was ever designated as an agent to receive such notices or orders from the Commission. In fact, the evidence clearly shows that the Adjudication Division sent the notice and order for answer to Carl A. Hulbert, who was Zurich's designated service agent of record as of February 24, 2009, when the notice was sent. Although Zurich may have intended for Gallagher Bassett to receive the notice, there is no evidence that Zurich or Lifetime ever designated Gallagher Bassett as an agent with the Adjudication Division.

In summary, the Commission concludes that Lifetime and Zurich each received proper notice of the requirement to file an answer to Mr. Dripps's claim, but failed to take reasonable steps to do so. It would be contrary to the orderly administration of the workers' compensation system, as well as the fundamental purposes of that system, to delay resolution of Mr. Dripps's claim under these circumstances.

ORDER

The Appeals Board affirms Judge Trayner's decision of July 27, 2009, on this matter. It is so ordered.

Dated this 27th day of October, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

ORDER AFFIRMING ALJ'S DECISION
ROBERT L. DRIPPS
PAGE 4 OF 4

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.