03-0751 W.P.O. v. Proffesional Services Corp. Issued: 4/21/05

W. P. O. asks the Utah Labor Commission to review Administrative Law Judge George's dismissal of Mr. O.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

ISSUES PRESENTED

In his motion for review, Mr. O. argues that Judge George erred in dismissing his claim. However, before considering the issue raised in Mr. O.'s's motion for review, the Labor Commission must first determine whether the motion for review was filed within the 30 day time limit imposed by the Utah Administrative Procedures Act ("UAPA"; Title 63, Chapter 46b, Utah Code Ann.).

FINDINGS OF FACT

Judge George issued his Order of Dismissal on March 7, 2005. That same day, a copy of the ALJ's decision was mailed to Mr. O. and his counsel of record, J. Keith Henderson, at their correct mailing addresses. On April 11, 2005, the Labor Commission received Mr. O.'s motion for review.

DISCUSSION AND CONCLUSIONS OF LAW

Section 63-46b-12 of UAPA allows a party dissatisfied with an ALJ's decision 30 days in which to file a motion for review with the Labor Commission. A motion for review is not "filed" until it is actually received by the Labor Commission.

In this case, Judge George's decision was issued on March 7, 2005, but Mr. O.'s motion for review was not received until 35 days later, on April 11, 2005. Consequently, Mr. O. failed to file his motion for review within the 30 day period allowed by law.

ORDER

The Labor Commission dismisses Mr. O.'s motion for review as untimely. The prior decision of the ALJ remains in effect. It is so ordered.

Dated this 21st day of April, 2005.

R. Lee Ellertson, Commissioner