

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

Employee thereafter filed a claim for compensation with the Division of Workers' Compensation ("the Division"), identifying Employer and Employer's home address in the claim for compensation. The Division issued a letter acknowledging receipt of Employee's claim for compensation and notified Employer at his home address of 15816 Plattsburg Rd., Kearney, MO 64060.¹ Employer was notified that he was to provide insurance information to the Division within fifteen days. None of these notifications were ever returned to the Division as undeliverable. Employer never filed an answer to the claim for compensation and never responded to the Division's insurance inquiry.

During the pendency of the claim for compensation, Employee sent copies of medical records, medical reports, a request for mediation, and a request for final hearing to Employer at his address via first-class mail and none of these mailings were ever returned as undeliverable. Employer never responded to any of these mailings, did not participate in mediation, and did not assert any objection to Employee's request for final hearing.

A notice of hearing before an administrative law judge ("ALJ") was sent by the Division to the Employer. Employee's claim proceeded to a hearing on September 15, 2020, wherein Employee appeared in-person and was represented by counsel, but Employer did not appear. In the ALJ's "Findings," the following pertinent facts were testified to by Employee and found by the ALJ to be credible and undisputed:

[Employee] testified that he has worked as a tree trimmer for 26 years. On June 19, 2018, he had been employed by Employer for eight months as a tree trimmer. Employer used his personal residence in Kearney, Missouri as the center of operations for his tree trimming business. Employer hired Employee in Kearney, Missouri. [Employee] testified that Employer employed more than five employees and he regularly saw more than five employees working for Employer. Employer directed and controlled the method and manner of Employee's work.

¹ Employer acknowledged that 15816 Plattsburg Rd., Kearney, MO 64060 is, in fact, an accurate address for him. Employer has likewise acknowledged that, at all times during the pendency of Employee's claim for compensation and Employer's appeal to this Court, his address has remained the same.

On October 6, 2020, the ALJ entered a final award in favor of Employee. The ALJ concluded that Employer had notice of the injury, as Employer was present when the injury occurred. The ALJ also concluded that Employer was operating subject to the Missouri Workers' Compensation Law as of the June 19, 2018 date of injury in this matter, and that Employer was uninsured on the date of injury. The ALJ's findings also stated that Employer did not appear at the hearing despite being notified of the hearing.

The Division sent a copy of the final award to Employer by certified mail to the same address as used in all previous communications to Employer. Employer admitted receiving a copy of the final award on October 14, 2020. Then, for the first time during the entire pendency of the claim for compensation, Employer responded to the notification of final award in favor of Employee—by claiming he had never received any prior mailings from the Employee or the Division about the claim for compensation.

Employer filed a timely application for review with the Labor and Industrial Relations Commission ("Commission") claiming that he did not receive notice of the filing of the claim for compensation or the notice of the hearing, and Employer attached his self-serving affidavit to his application for review stating the same. Employer asserted in his affidavit that he was unaware of Employee's claim until October 14, 2020, when he received a copy of the final award. Employer's application for review did not contest the finding of the ALJ in the final award that he was uninsured on the date of Employee's injury.

The Commission dismissed Employer's application for review because Employer failed to file a bond along with his application for review. The Commission permitted Employer fifteen days to respond. In Employer's response, he asserted that his due process rights were violated when the ALJ issued a final award despite him never receiving notice of the filing of the claim or

notice of the hearing, and that requiring him to post a bond along with his application for review would deprive him of his property without due process.

On February 25, 2021, the Commission issued its order returning Employer’s application for review as “not filed,” concluding that because Employer was determined to be subject to workers’ compensation laws and was uninsured, a bond was a mandatory accompanying prerequisite to his application for review.

Employer now appeals.

Standard of Review

“This Court has a duty to determine *sua sponte* whether we have jurisdiction to review an appeal.” *Gerken v. Mo. Dep’t of Soc. Servs., Fam. Support Div.*, 415 S.W.3d 734, 737 (Mo. App. W.D. 2013) (citation omitted). “This Court has no appellate jurisdiction in a workers’ compensation case except as expressly conferred by statute.” *Eldridge v. Barnes*, 189 S.W.3d 182, 183 (Mo. App. W.D. 2006); *see also Williams v. Tyson Foods Inc.*, 530 S.W.3d 522, 523 (Mo. App. W.D. 2017). “‘If this [c]ourt lacks jurisdiction to entertain an appeal, the appeal must be dismissed.’” *Williams*, 530 S.W.3d at 524 (quoting *Wunderlich v. Wunderlich*, 505 S.W.3d 434, 436 (Mo. App. W.D. 2016)).

Analysis

Employer raises two points on appeal, both asserting due process rights violations relating to his claim that he *never* received any notifications from the Division or the Employee about the Employee’s claim for compensation and that the *only* notification he ever received— notwithstanding the same address was used in *all* notifications to the Employer—was the notice of final award in favor of the Employee. We address the points together.

A party to a workers' compensation case may file an application for review with the Commission within twenty days of the issuance of a final award. § 287.480.1.² Where an employer has been determined to be an employer subject to Chapter 287, the Workers' Compensation Act, and has also been determined to be uninsured, "such application for review *shall* be accompanied . . . [by] a bond which shall be conditioned for the satisfaction of the award in full." § 287.480.2 (emphasis added). "No appeal to the commission shall be considered filed unless accompanied by such bond" *Id.* Though "[s]ection 287.495 authorizes an appeal from the final award of the commission to the appellate court," *Eldridge*, 189 S.W.3d at 183 (internal quotation marks omitted), "such bond *shall* also be a prerequisite for appeal" to the appellate court. § 287.480.2 (emphasis added).³

The ALJ, in issuing a final award in Employee's favor, heard evidence and made factual findings that supported the ALJ's determination that Employer was subject to Chapter 287 and was also uninsured. This explicit finding by the ALJ was adopted by the Commission in its order returning Employer's application⁴ and is supported by sufficient competent evidence heard by the ALJ at the hearing.⁵ The Commission's order rejecting Employer's application for review acknowledged that Employer was subject to Chapter 287 and uninsured. And, in so doing, the Commission returned Employer's application for review to Employer due to Employer's failure to accompany his application with a bond as required by section 287.480.2.

² All statutory references are to the REVISED STATUTES OF MISSOURI 2016, as supplemented.

³ Employer posits no argument before this Court challenging the constitutionality of section 287.480.2.

⁴ This Court reviews the findings and award of the Commission, not the ALJ. *Austin v. AM Mech. Servs.*, 604 S.W.3d 665, 668 (Mo. App. W.D. 2020). However, where the Commission affirms the ALJ's Award and incorporates the ALJ's findings by reference into the Commission's Final Award, as is the case here, we review for error the ALJ's findings and conclusions as adopted by the Commission. *Hayes v. Ginger C, LLC*, 582 S.W.3d 140, 146 (Mo. App. W.D. 2019).

⁵ An employer for purposes of the Workers' Compensation Act is any person or entity, like Employer here, that employs the services of five or more employees for pay and retains the right to control the means and manner of the service. § 287.030.1(1) & (3); *Timster's World Found. v. Div. of Emp. Sec.*, 495 S.W.3d 211, 220 (Mo. App. W.D. 2016).

The law is clear and mandatory in this respect; an application for review must be accompanied by a bond where an employer is determined to be subject to Chapter 287 and uninsured. *Eldridge*, 189 S.W.3d at 184. The Commission, and this Court, are otherwise without jurisdiction to review the merits of an employer’s application for review. § 287.480.2. Employer concedes that he did not file a bond with his application for review and still has not filed a bond as required by section 287.480.2.

There was nothing prohibiting Employer from making the argument in his application for review to the Commission that the ALJ’s Final Award violated due process (as well as any other argument that Employer wished to make in his administrative appeal to the Commission)—as long as Employer filed the requisite bond. Instead, Employer essentially argues that his self-serving affidavit should be deemed sufficient to give him a “do-over” without the necessity of a bond (or proof of insurance). These self-serving assertions, however, do not overcome his obligation to file a bond with his application. *Sims v. Bestway Cleaning Co.*, 701 S.W.2d 791, 793 (Mo. App. E.D. 1985) (“[Employer’s] mere allegation that it did not receive the notice, which does not prove itself and which is totally unsupported by evidence, is irrelevant . . .”), *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 231 (Mo. banc 2003). Employer’s self-serving assertions do not explain how Employer, in fact, received notice of the final award, but did not receive any other notices—where the final award notification was mailed to the identical address as numerous other mailings from the Division to Employer, including the notice of hearing.

While due process demands that parties have “the opportunity to be heard in a meaningful manner,” *Wunderlich v. Jensen*, 496 S.W.3d 522, 528-29 (Mo. App. W.D. 2016), “Employer’s failure to take advantage of the opportunity to be heard is not a due process failure.” *Id.* at 526.

Points I and II are denied.

Conclusion

Because Employer is an uninsured employer subject to the Workers' Compensation Act, and Employer's appeal to this Court was not accompanied by the requisite bond, we dismiss this appeal as not filed in accordance with section 287.480.2.

/s/ *Mark D. Pfeiffer*

Mark D. Pfeiffer, Presiding Judge

Gary D. Witt and Anthony Rex Gabbert, Judges, concur.