



In the Missouri Court of Appeals Eastern District

DIVISION FOUR

JOHN W. TIPPIT,	)	
	)	No. ED113466
Appellant,	)	
	)	
v.	)	
	)	
STATE OF MISSOURI, SECOND	)	Injury No.: 15-069406
INJURY FUND,	)	
	)	Filed: October 21, 2025
Respondent.	)	

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

Introduction

John Tippit (Claimant) appeals the decision of the Labor and Industrial Relations Commission (Commission) dismissing as untimely his application for review of an Administrative Law Judge's (ALJ) award that dismissed his claim against the Second Injury Fund (Fund) filed with the Division of Workers' Compensation (Division). On appeal, Claimant challenges the Commission's finding that his application for review was untimely and argues the Division's notices were defective. We reverse and remand to the Commission.

Factual and Procedural Background

In January of 2016, Claimant filed a worker's compensation claim against his employer, St. Louis County, and the Fund for an injury that occurred on September 25, 2015. Claimant and his employer reached a settlement in December of 2016, but his claim against the Fund remained open. Claimant's attorney died in December of 2020, and in June of 2021, Claimant hired a new attorney, James Martin (Martin), who attempted to enter his appearance on Claimant's behalf. The Division's records do not show that it received a copy of Martin's entry of appearance, and Martin was not entered as counsel of record. On July 6, 2022, the Division sent Claimant a "Notice to Show Cause Why Claim Should Not be Dismissed" (show-cause notice) by certified mail, notifying Claimant that his case would be dismissed for failure to prosecute. The show-cause notice specified that Claimant should contact the ALJ via email at "2:30 AM" on September 14, 2022 regarding the status of the case. The certified mail tracking number indicated that the show-cause notice was delivered "to an individual" at Claimant's listed address on July 9, 2022 at 3:44 p.m.

Claimant did not contact the ALJ on September 14, 2022, and the ALJ signed and entered a dismissal memorandum, which stated "The Court on its own motion moves for the issuance of an Order of Dismissal For Failure to Prosecute" because Claimant "failed to appear."¹ Accordingly, the Division's records indicate that on September 19, 2022, the

¹ We note the many inconsistencies in the Division's record. Notably, the show-cause notice did not order Claimant to "appear" and there was no hearing scheduled at which he could appear. Rather, the show-cause notice ordered Claimant to contact the ALJ at "2:30 AM" on September 14, 2022 to provide an update on the status of his claim against the Fund. We anticipate the Commission will clarify the proper procedural history of this case on remand.

ALJ signed and entered an Order of Dismissal, dismissing Claimant's claim against the Fund with prejudice. The certified mail tracking number for the September 19, 2022 Order of Dismissal provided by the Division indicated that the Order of Dismissal was placed in the mail on September 15, 2022—four days before the order was signed and entered—and was delivered “to an individual” at Claimant's listed address at 3:32 p.m. on September 19, 2022. A week later, on September 26, 2022, Martin filed a second entry of appearance on Claimant's behalf, and the Division's records indicated it received the entry on September 27, 2022 and recorded Martin as Claimant's counsel of record.

On May 20, 2023, Claimant filed an application for review of the Order of Dismissal, asserting that neither he nor his attorney received notice of the Order of Dismissal until May 10, 2023. He requested that the Order of Dismissal be set aside, stating that neither he nor his attorney received the show-cause notice dated July 6, 2022 and thus were unaware of Claimant's obligation to contact the ALJ on September 14, 2022. The Commission reinstated Claimant's claim against the Fund for the sole purpose of remanding the matter to the Division for a hearing before an ALJ to allow Claimant to present evidence on his allegations that he did not receive either the Order of Dismissal or the show-cause notice (remand hearing).

After the remand hearing, the Commission found that the Division sent the September 19, 2022 Order of Dismissal to Claimant via certified mail, but Claimant did not file his application for review until approximately eight months later, which was untimely. Claimant's untimely application for review terminated the Commission's jurisdiction over the case, and thus the Commission dismissed Claimant's application for

review. The Commission noted that, because the timeliness issue was dispositive, it did not consider the underlying issues of whether Claimant had good cause for failing to respond to the show-cause notice or whether Claimant had good cause for failing to prosecute his claim. This appeal follows.

Standard of Review

This Court reviews a final decision of the Commission to determine whether it is authorized by law and supported by competent and substantial evidence based on the record as a whole. *White v. ConAgra Packaged Foods, LLC*, 535 S.W.3d 336, 338 (Mo. banc 2017); Mo. Const. art. V, sec. 18. Our review is limited to questions of law, and we may reverse the Commission's final decision only if (1) the Commission acted in excess of its powers, (2) the award was procured by fraud, (3) the facts found by the Commission do not support the award, or (4) there was insufficient competent evidence in the record to support the award. Section 287.495.1;² *Phelan v. Treasurer*, 249 S.W.3d 260, 263 (Mo. App. W.D. 2008). We review questions of law *de novo*, but we defer to the Commission on issues of fact. *Breckle v. Treasurer*, 516 S.W.3d 899, 901 (Mo. App. E.D. 2017). We do not, however, view the evidence in the light most favorable to the Commission's award. *Id.*

Analysis

The Commission's Finding That Claimant's Application For Review Was Untimely Was Not Supported By The Record

² All statutory references are to RSMo. 2016, unless otherwise indicated.

In his first point on appeal, Claimant challenges the Commission’s finding that his application for review was untimely. We agree. In his second point on appeal, Claimant argues that both the show-cause notice and the notice of the Order of Dismissal were constitutionally defective. Because Point One is dispositive, we deny Point Two as moot.

Initially, we note that, while Claimant challenges the Commission’s dismissal, he does not frame the issue as a question of jurisdiction, but rather, he attacks the Commission’s factual findings, arguing the Commission “ignored” his evidence. However, on appeal, we defer to Commission’s factual findings, credibility determinations, and decisions regarding weight of conflicting evidence. *Obermann v. Treasurer*, 681 S.W.3d 559, 563 (Mo. App. E.D. 2023). Nevertheless, whether an application for review was timely filed is a jurisdictional issue that this Court must determine, even if not raised by the parties. *See, e.g., Marty v. State*, 577 S.W.3d 155, 157 (Mo. App. E.D. 2019) (at outset of every case, we assess our own authority to address merits of appeal). The failure to comply with the statutory time to file an application for review terminates both the Commission’s jurisdiction over the matter and a claimant’s subsequent right to appeal. *Payne v. Treasurer*, 417 S.W.3d 834, 846 (Mo. App. S.D. 2014); *Malone v. Treasurer*, 72 S.W.3d 608, 610 (Mo. App. E.D. 2002); *see also* Section 287.800.1 (reviewing courts shall construe provisions of chapter 287 strictly). If Claimant’s application for review was untimely, this Court, like the Commission, has no authority to consider the merits of his appeal. *Malone*, 72 S.W.3d at 610; *see also Bordas v. FedEx Freight, Inc.*, --- S.W.3d ---, 2025 WL 28774519, *1-2 (Mo. App. E.D. Sept. 20, 2025).

A dismissal for failure to prosecute is deemed an award and is subject to review and appeal. Section 287.655; *Phelan*, 249 S.W.3d at 263. Section 287.480 provides that a claimant has 20 days to file an application for review of an ALJ's decision in a worker's compensation case, and this section does not provide a method to extend the deadline. *Phelan*, 249 S.W.3d at 263; *see also Marciante v. Treasurer*, 477 S.W.3d 704, 706 (Mo. App. E.D. 2016) (section 287.480's filing deadline does not create exception for untimely filings either for good cause or for ignorance of law). This 20-day period for filing an application for review begins to run when the Division has served notice of the award in accordance with the statute. *Phelan*, 249 S.W.3d at 263.

Section 287.520 provides that any notice required under chapter 287 shall be deemed to have been properly served when sent "by registered or certified mail properly stamped and addressed to the person ... at the last known address in time to reach the person ... in due time to act thereon," or, if the claimant is represented by counsel, to that person's counsel in the same way. Section 287.520.1; *see also* Section 287.655 (notice of dismissal for failure to prosecute shall be provided to employee by certified or registered mail unless employee is represented by counsel and counsel is also given notice); 8 C.S.R. 50-2.010(12)(c) (notice of dismissal shall be sent to parties by certified mail, or to party's attorney by ordinary mail).

The Division's records constitute *prima facie* evidence of the date it mailed notice to a claimant. *Phelan*, 249 S.W.3d at 264 (notice of order of dismissal); *Breckle*, 516 S.W.3d at 902 (show-cause notice); *see also* 8 C.S.R. 50-2.010(12)(c). Where the Division has complied with the statutory notice provisions, this compliance creates a rebuttable

presumption that the Division properly notified the parties. *See Breckle*, 516 S.W.3d at 902. However, if the Division fails to comply with statutory notice requirements, this failure extends the 20-day time limit for filing an application of review. *Mosby v. Treasurer*, 954 S.W.2d 11, 12 (Mo. App. E.D. 1997). Once the Division has adduced evidence that it mailed notice to the parties following the procedures set forth in Chapter 287, then the burden shifts to the claimant to rebut this presumption by showing the filing was not received. *See id.* If the claimant alleges non-receipt, the finder-of-fact weighs the contrary evidence to decide the issue. *See Breckle*, 516 S.W.3d at 902. On appeal, the Commission's findings of fact are conclusive and binding on this Court. *Cosby v. Treasurer*, 579 S.W.3d 202, 206 (Mo. banc 2019).

Here, the basis for the Commission's dismissal was that the Division properly mailed the September 19, 2022 Order of Dismissal to Claimant by certified mail, but this conclusion was not supported by sufficient competent evidence in the record. Rather, the Division's records do not establish that it mailed the September 19, 2022 Order of Dismissal to Claimant. The Division provided a certified mail tracking number as proof that it mailed the Order of Dismissal by certified mail to Claimant and that the Order of Dismissal was delivered to an individual at Claimant's address on September 19, 2022. However, the certified mail tracking number shows that the document was placed in the mail on September 15, 2022, but the ALJ did not sign and enter the Order of Dismissal until September 19, 2022. Thus, the document mailed by certified mail to Claimant on September 15, 2022, could not have been the Order of Dismissal, which did not yet exist.

While the ALJ signed and entered the “dismissal memorandum” on September 14, 2022, this document merely stated that the ALJ “move[d] for the issuance of an Order of Dismissal,” and, on its face, it was not the Order of Dismissal. There was no testimony at the hearing that could clarify this inconsistency in the Division’s records. Moreover, while a claimant’s actual notice can cure the Division’s failure to provide statutory notice, *see Phelan*, 249 S.W.3d at 265, there was no evidence in the record here that Claimant received actual notice of the Order of Dismissal until May 10, 2023.

Without evidence that the Division served Claimant with the Order of Dismissal in compliance with the statutory notice requirements, the 20-day period to file an application for review did not begin to run, and thus Claimant’s application for review was not untimely. *See Phelan*, 249 S.W.3d at 263 (20-day time limit for filing application for review begins to run when Division has served notice of award in accordance with statute); *Mosby*, 954 S.W.2d at 12 (Division’s failure to comply with statutory notice requirements extends 20-day time limit for filing application of review). The Commission erred in dismissing Claimant’s application for review as untimely because it was not supported by sufficient competent evidence in the record. *See* Section 287.495.1.

Point one is granted.

Conclusion

We reverse the Commission’s decision dismissing Claimant’s application for review as untimely, and we remand for the Commission to determine whether Claimant

had good cause for failing to respond to the show-cause notice and whether Claimant had good cause for failing to prosecute his claim against the Fund.



Gary M. Gaertner, Jr., J.

Rebeca Navarro-McKelvey, P.J., and
James M. Dowd, J., concur.