

CASE NO. 03401 CRB-07-96-08
CLAIM NO. 0700006410

: COMPENSATION REVIEW BOARD

JAMES DACRES
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

DAVID D. ZEIGLER
EMPLOYER
RESPONDENT-APPELLEE

: JANUARY 6, 1998

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES:

The claimant was not represented at oral argument. Notice sent to Stephen M. Chizmadia, Esq., 125 Sun Dance Road, Stamford, CT 06905.

The respondents were represented by Philip F. Spillane, Esq., 24 Delay St., Danbury, CT 06810.

The Second Injury Fund was not represented at oral argument. Notice sent to Michelle Truglia, Esq., Assistant Attorney General, 55 Elm St., P. O. Box 120, Hartford, CT 06141-0120.

This Petition for Review from the August 5, 1996 Finding and Dismissal of the Commissioner acting for the Seventh District was heard March 14, 1997 before a Compensation Review Board panel consisting of the Commission Chairman Jesse M. Frankl and Commissioners John A. Mastropietro and Stephen B. Delaney.

OPINION

JESSE M. FRANKL, CHAIRMAN. The claimant has petitioned for review from the August 7, 1996 Finding and Dismissal of the Commissioner acting for the Seventh

District. There, the trial commissioner decided that there was no employer-employee relationship between the claimant and the respondent, and dismissed a compensation claim relating to the claimant's November 7, 1993 back injury.

Generally, the question of whether a claimant is an employee or an independent contractor is a question of fact for the trier. Dupree v. Masters, 13 Conn. Workers' Comp. Rev. Op. 316, 317, 1791 CRB-7-93-7 (April 25, 1995). This case is no different. The commissioner made findings that legally support the conclusion that the claimant was an independent contractor, and we may not retry the case on appeal. Webb v. Pfizer, Inc., 14 Conn. Workers' Comp. Rev. Op. 69, 70-71, 1859 CRB-5-93-9 (May 12, 1995). The claimant also did not file a Motion to Correct, so we may not question the accuracy of the findings themselves on review. Seltenreich v. Stone & Webster Engineering Corp., 15 Conn. Workers' Comp. Rev. Op. 135, 136, 2196 CRB-3-94-10 (Jan. 17, 1996).

Even more significantly, the trier's decision was dated and certified sent on August 5, 1996. There is no allegation that this date is inaccurate. The petition for review was received on August 16, 1996. As Thursday, August 15, 1996 was a regular business day for the Workers' Compensation Commission (see Practice Book § 4010), the petition for review was filed one day late under § 31-301(a) C.G.S. This board does not have jurisdiction to consider late appeals, even if they are tardy by only a day. O'Connor v. United Parcel Service, 13 Conn. Workers' Comp. Rev. Op. 204, 206, 1741 CRB-4-93-5 (March 30, 1995). The language of the statute is absolute. Thus, we must dismiss the claimant's petition for review.

Commissioners John A. Mastropietro and Stephen B. Delaney concur.