

CASE NO. 6499 CRB-5-23-4 : COMPENSATION REVIEW BOARD
CLAIM NO. 500166398

KELLYANN JONELIS : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : MARCH 1, 2024

CUMBERLAND FARMS
EMPLOYER

and

INDEMNITY INSURANCE CO. OF
NORTH AMERICA
INSURER

and

GALLAGHER BASSETT SERVICES, INC.
ADMINISTRATOR
RESPONDENTS-APPELLEES

and

SECOND INJURY FUND
RESPONDENT-APPELLEE

APPEARANCES: The claimant appeared at oral argument before the board as a self-represented party.

The respondents-appellees were represented by Lynn M. Raccio, Esq., Tentindo, Kendall, Canniff & Keefe, LLP, 75 Hood Park Drive, Boston, MA 02129.

The respondent-appellee, Second Injury Fund, was represented by Assistant Attorney General Christopher K.C. Boyer who did not appear at oral argument as he waived the right to file a brief and appear at oral argument. At proceedings below, the Second Injury Fund was represented by Lisa Guttenberg-Weiss, Esq., Assistant Attorney General, Office of the Attorney General, 165 Capital Avenue, Suite 4000, Hartford, CT 06106.

This Petition for Review from the March 8, 2023 Finding and Award of Pedro E. Segarra, Administrative Law Judge acting for the Fifth District, was heard January 26, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges David W. Schoolcraft and Zachary M. Delaney.¹

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant appealed from the March 8, 2023 Finding and Award of Pedro E. Segarra, Administrative Law Judge acting for the Fifth District (finding), who determined that there had been an overpayment of benefits in this case. The respondents filed a motion to dismiss this appeal, arguing that as the appeal was not filed within the statutory twenty-day window from the administrative law judge's finding, that the appeal was jurisdictionally deficient.² After reviewing the facts herein, we concur with the respondents and as we lack jurisdiction to proceed, we are compelled to dismiss this appeal.

¹ We note that a motion for continuance was granted during the pendency of this appeal.

² General Statutes § 31-301 states: "(a) At any time within twenty days after entry of an award by the administrative law judge, after a decision of the administrative law judge upon a motion or after an order by the administrative law judge according to the provisions of section 31-299b, either party may appeal therefrom to the Compensation Review Board by filing in the office of the administrative law judge from which the award or the decision on a motion originated an appeal petition and five copies thereof. The administrative law judge within three days thereafter shall mail the petition and three copies thereof to the chief of the Compensation Review Board and a copy thereof to the adverse party or parties. If a party files a motion subsequent to the finding and award, order or decision, the twenty-day period for filing an appeal of an award or an order by the administrative law judge shall commence on the date of the decision on such motion."

The administrative law judge found the following facts after the conclusion of the formal hearing which was held on December 14, 2022. He found the claimant had been noticed of the hearing via regular and certified mail on or about October 31, 2022, but did not attend the hearing, nor had she contacted the commission to indicate her unavailability prior to the hearing. See Findings, ¶ 4; see also December 14, 2022 Transcript, pp. 3-4. Efforts to reach her on the day of the hearing were unsuccessful. The administrative law judge noted the claimant had also failed to attend prior hearings. As for the merits of the case, it was noted the claimant had sustained a compensable right ankle injury working for Cumberland Farms on April 6, 2016. She had been paid temporary total disability benefits from the date of the injury to October 16, 2017, receiving \$28,091.35. After that date, the claimant received 103 weeks of temporary partial disability benefits totaling \$36,232.31. See Findings, ¶¶ 7-8.

The administrative law judge noted that the claimant's concurrent employer, the United Methodist Church, sent a letter on November 6, 2017, representing that the claimant had worked for them continuously since 2008 and had lost no time from work because of her compensable injury and that she had an annual salary of \$4,079.92. The administrative law judge also noted the claimant had been advanced 2.571 weeks of permanent partial disability benefits for a total of \$904.55. He also took note of three separate forms 36 which had been filed. The first form 36, received on December 13, 2018, indicated the claimant had an earning capacity and therefore should receive temporary partial and not temporary total benefits. It was approved on July 12, 2021, changing claimant's benefits to temporary partial disability. The second form 36 which was initially filed on November 10, 2020, and resubmitted and received March 15, 2021,

alleged the claimant had been overpaid by \$26,932 as the result of her employment at the United Methodist Church. The final form 36, received June 3, 2021 and approved on June 12, 2021, acknowledged the claimant's permanent partial disability had been paid in full, despite the fact that she had not signed the voluntary agreement which memorialized and awarded these benefits.

Based on this evidence presented, the administrative law judge ordered relief for the respondents consistent with the evidence they presented in the form 36 approved on July 12, 2021. Among the findings he reached were the following:

- C. The claimant continued to work at the United Methodist Church while the doctor indicated that she was completely unable to work from April 6, 2016 through October 16, 2017. Since she received TTD while she was working, the claimant is not entitled to the benefits paid during that time. This amount (\$28,091.35) is an overpayment.
- D. The claimant continued to work at the United Methodist Church when she had light duty restrictions from October 17, 2017 through October 6, 2019. She should not have received her full compensation rate, but only the differential of \$340.51 per week. This resulted in an additional overpayment of \$1,159.78, bringing the overpayment to \$29,251.13.
- E. The claimant was found to be at MMI with a compromised 6.5% PPD right ankle which has a value of \$3223.68. She was advanced PPD from October 7, 2019 through October 24, 2019, making \$2,319.13 due in PPD benefits. This reduces the overpayment to \$26,932.00.

Conclusion, ¶¶ C-E.

The administrative law judge ordered the claimant to pay back the aforementioned overpayment to the respondents at the rate of \$150 per month. The finding was issued on March 8, 2023. The claimant did not file a motion to correct the finding and did not file her petition for review to this tribunal until April 14, 2023, more

than twenty days after the issuance of the finding. As a result, the respondents filed a motion to dismiss for lack of subject matter jurisdiction.

We must first resolve the question of subject matter jurisdiction before considering the merits of any appeal as “[o]nce a determination is reached that we lack subject matter jurisdiction no further inquiry is warranted.” Mankus v. Mankus, 4958 CRB-1-05-6 (August 22, 2006), *aff’d*, 107 Conn. App. 585, *cert. denied*, 288 Conn. 904 (2008). We find that we previously considered these issues in Swaggerty v. Hartford, 6262 CRB-1-18-4 (March 15, 2019), which we found indistinguishable from our earlier cases on untimely appeals, notably, Sutherland Hofler v. State/Dept. of Developmental Services, 6173 CRB-5-17-1 (December 12, 2017), A.C. 43383 (September 12, 2019) appeal dismissed (November 5, 2019) and A.C. 43444 (September 27, 2019) appeal dismissed (October 29, 2019) and A.C. 43474 (October 7, 2019) appeal dismissed (November 5, 2019). In Sutherland Hofler, we remarked that:

In the present matter, the claimant was obligated, if she was dissatisfied with or confused about the trial commissioner’s Finding and Denial, to either appeal to this tribunal within twenty days, or file an appropriate motion with the trial commissioner seeking a correction or clarification within that period. See Garvey v. Atlas Scenic Studios, Inc., 5493 CRB-4-09-9 (February 14, 2012). Otherwise, her appellate rights would be extinguished pursuant to General Statutes § 31-301 (a). The claimant failed to take either action within that twenty-day window. Given that the claimant, although aggrieved by the December 14, 2016 decision of the trial commissioner, took no responsive action within twenty days, we therefore lack subject matter jurisdiction to consider the appeal.

Id.

Subsequent to our holdings in Swaggerty, *supra*, and Sutherland Hofler, *supra*, we considered a similar argument as to whether a late appeal deprived us of jurisdiction in

Szyszka v. Rose City Taxi, LLC, 6371 CRB-3-20-1 (April 28, 2021). In Szyszka, we cited Stec v. Raymark Industries, Inc., 299 Conn. 346 (2010), which held “that the failure to take an appeal within the twenty day appeal limitation set forth in § 31-301 (a) deprives the board of subject matter jurisdiction” *Id.*, 371. We dismissed the appeal in Szyszka, supra, based on the precedent in Stec, supra. After consideration of the claimant’s arguments before our tribunal, we believe that the statute leaves us no alternative but to grant the respondents’ motion to dismiss.

Even had we been able to consider the merits of the claimant’s appeal, her argument focuses on her belief that the administrative law judge reached a factually incorrect decision as to the circumstances of her concurrent employment with the United Methodist Church. We note that the claimant did not attend the formal hearing to present her factual arguments and, therefore, the respondents’ arguments went unchallenged before the administrative law judge. At the hearing before our tribunal, the claimant stated that she had not been able to attend the December 14, 2022 formal hearing due to a family medical emergency. See January 26, 2024 Transcript, pp. 5-6. We have reviewed the transcript of the December 14, 2022 hearing and the administrative law judge noted that the claimant was not present, and she had not sent any notice to the commission advising that she would be absent. See December 14, 2022 Transcript, pp. 3-4. While it was unfortunate that the claimant did not advise the administrative law judge that she could not participate at this hearing and seek a postponement based on the alleged circumstances herein, we cannot find fault with the administrative law judge’s decision to proceed with a properly noticed hearing when the other parties were prepared to present their case. The administrative law judge reached a decision based on the facts presented

to him at the hearing and in light of the claimant's failure to file a timely appeal, we lack jurisdiction to disturb the decision. Therefore, we affirm the March 8, 2023 Finding and Award of Pedro E. Segarra, Administrative Law Judge acting for the Fifth District.

Administrative Law Judges David W. Schoolcraft and Zachary M. Delaney concur in this Opinion.