CASE NO. 6474 CRB-4-22-4 CLAIM NOS. 400111358 & 400111359	:	COMPENSATION REVIEW BOARD
AJREDIN AJDINI CLAIMANT-APPELLEE	:	WORKERS' COMPENSATION COMMISSION
v.	:	MARCH 17, 2023
FRANK LILL & SON INCORPORATED EMPLOYER		
and		
ARCH INSURANCE GROUP, INCORPORATED INSURER		
and		
GALLAGHER BASSETT SERVICES CLAIMS ADMINISTRATOR RESPONDENTS-APPELLANTS		

APPEARANCES:

The claimant was represented by Andrew E. Wallace, Esq., Jacobs & Wallace, PLLC, 1087 Broad Street, Suite 400, Bridgeport, CT 06604.

The respondents were represented by Peter M. LoVerme, Esq., Tentindo, Kendall, Canniff & Keefe, LLP, 75 Hood Park Drive, Boston, MA 02129.

This Petition for Review from the April 12, 2022 Finding of Preclusion by Brenda D. Jannotta, the Administrative Law Judge acting for the Fourth District, was heard September 30, 2022 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Daniel E. Dilzer and Carolyn M. Colangelo.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The respondents have petitioned for review from the April 12, 2022 Finding of Preclusion (finding) issued by Judge Brenda D. Jannotta, Administrative Law Judge acting for the Fourth District. We do not find any error and, therefore, affirm that finding.

The claimant alleged that he sustained an injury to his right knee when some plywood fell onto him during the course of his employment on July 6, 2018, with the respondent-employer. See Findings, ¶ 3. He further alleged that he sustained injuries to his right shoulder and right leg/knee on July 17, 2018, during the course of his employment with the respondent-employer when he sat on a chair that was broken, thereby causing him to fall to the floor. See Findings, ¶ 4. As a result of these alleged injuries, the claimant sent two separate forms 30C to the Workers' Compensation Commission (commission) and the respondent-employer, all of which were received on May 3, 2019. See Findings, ¶¶ 5-6. The parties stipulated that the information on these forms 30C provided adequate notice to apprise the respondents of the claims for compensation. See Findings, ¶ 7. In response to the receipt of these forms 30C, the respondents mailed two forms 43 seeking to contest the compensability of these claims. All copies of these forms 43 were placed in the mail on May 29, 2019. See Findings, ¶¶ 8-11. The commission, however, did not receive the two forms 43 until June 3, 2019. See Findings, ¶¶ 8, 10. The claimant did not receive copies of the forms 43 until June 6, 2019. See Findings, ¶¶ 9, 11. The claimant filed a motion to preclude the respondents from contesting liability on June 26, 2019, based on the alleged late filing of the forms

43. See Findings, ¶ 12. The respondents filed an opposition to the motion to preclude on August 13, 2019, see Findings, ¶ 13, and argued that the act of placing the forms 43 in the mail on May 29, 2019, was sufficient for them to meet their obligations under the Act. See Findings, ¶ 16.

A formal hearing was conducted on January 4, 2022, regarding the sole issue of the claimant's motion to preclude the respondents from contesting liability pursuant to General Statute § 31-294c (b).[1] At the outset of the formal hearing, the parties stipulated that an employer-employee relationship existed at all times relevant hereto; sufficient notices of claim for both files were received by the respondents; and the respondents did not commence payment of any benefits to, or on behalf of, the claimant within the twenty-eight day statutory period. See January 4, 2022 Transcript, p. 4. After consideration of the parties' arguments, the administrative law judge issued a finding of preclusion dated April 12, 2022. The current appeal followed.

The respondents contend that they met their obligation to notify the claimant of its intention to contest liability because forms 43 were mailed to the commission and the claimant on May 29, 2018, or twenty-six days after the receipt of the form 30C notice of claim on May 3, 2018. The respondents argue that the act of mailing the forms 43 complies with the statutory requirements because "mailing" is the same as "filing." We disagree.

[1] General Statutes § 31-294c (b) states in relevant part: "Whenever liability to pay compensation is contested by the employer, he shall file with the commissioner, on or before the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested, the name of the claimant, the name of the employer, the date of the alleged injury or death and the specific grounds on which the right to compensation is contested."

The crux of this appeal is the meaning of § 31-294c (b), in which it is stated that,

> [w]henever liability to pay compensation is contested by the employer, he shall *file* with the commissioner, on or about the twenty-eighth day after he has received a written notice of claim, a notice in accord with a form prescribed by the chairman of the Workers' Compensation Commission stating that the right to compensation is contested . . . .

(Emphasis added.) In considering this appeal, therefore, we must interpret the statute and its application to the case at hand.

> When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature…. In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case . . . . In seeking to determine the meaning … [we] first … consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered . . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . .
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> Moreover, [i]n applying these general principles, we are mindful that the [Workers' Compensation Act (act), General Statutes §31-275 et seq.] indisputably is a remedial statute that should be construed generously to accomplish its purpose . . . . The humanitarian and remedial purpose of the act counsel against an overly narrow construction that unduly limits eligibility for workers' compensation . . . . Accordingly, [i]n construing workers' compensation law, we must resolve statutory ambiguities or lacunae in a manner that will further the remedial purpose of the act . . . . [T]he purposes of the act itself are best served by allowing the remedial legislation a reasonable sphere of operation considering those purposes. (Internal quotation marks omitted.)

Quinones v. R.W. Thompson Co., 188 Conn. App. 93, 98-99 (2019), *quoting* Kinsey v. World PAC, 152 Conn. App. 116, 124 (2014).

With the rules of statutory construction clearly delineated, we must determine if the language of § 31-294c (b) is clear and unambiguous. We believe that it is sufficiently clear that the form 43 must be *filed* with the commission on or before the twenty-eighth day after receipt of the notice of claim in order for the respondent to avoid preclusion. Nevertheless, we will address the respondents' argument that the term "filing" is open to interpretation and that it can be accomplished through the act of placing the form 43 in the U.S. mail.

The respondents' primary arguments are that the form 43 itself states that it "must be *served* upon the Administrative Law Judge and Employee . . . ." and that the mailbox rule suggests that the date of service is deemed to be the date of mailing. These arguments, however, are flawed in several ways. (Emphasis added.) See Respondent-Appellant's Brief, p. 4.

In Ugrin v. Cheshire, 307 Conn. 364, 380 (2012), our Supreme Court noted that:

> [w]hen a statute is in derogation of common law or creates a liability where formerly none existed, it should receive a strict construction and is not to be extended, modified, repealed or enlarged in its scope by the mechanics of [statutory] construction. . . . In determining whether or not a statute abrogates or modifies a common law rule the construction must be strict, and the operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope. (Internal quotation marks omitted.) Spears v. Garcia, 263 Conn. 22, 28 (2003).
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> Finally, "[i]n the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly." General Statutes §1-1(a). 'If a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary. (Internal quotation marks omitted.) Wilton Meadows Ltd. Partnership v. Coratolo, 299 Conn. 819, 826 (2011).

The Ugrin court, id., 383, further noted that:

> [I]n interpreting a statute, we do not interpret some clauses of a statute in a manner that nullifies other clauses but, rather, read the statute as a whole in order to reconcile all of its parts. . . . Every word and phrase is presumed to have meaning, and we do not construe statutes so as to render certain words and phrases surplusage. (Citation omitted; internal quotation marks omitted.) Vibert v. Board of Education, 260 Conn. 167, 176, 793 A.2d 1076 (2002).

General Statutes § 31-294c (b) uses the word "files" not "serve." It is, therefore, necessary to look to the plain meaning of the word "file." Black's Law Dictionary, Seventh Edition (1999), p. 642, defines file as "[t]o deliver a legal document to the court clerk or record custodian for placement into the official record." Furthermore, while the term "file" is not defined in § 31-294c (b), it is defined in other sections of the Regulations of Connecticut State Agencies (2022 Edition). Date of Filing, Section 10-392-14 of the Regulations of Connecticut State Agencies states that,

> [a]ll orders, decisions, findings of fact, correspondence, petitions, applications, motions and any other documents shall be deemed to have been filed or received on the date on which they are received by the executive director at the commission's principal office as set forth in section 10-392-5 of the Regulations of Connecticut State Agencies.

Similarly, Date of Filing, Section 13b-17-106a of the Regulations of Connecticut State Agencies states that, "[t]he submission of all notices, correspondence, memoranda, motions, exhibits, briefs, petitions, complaints, applications or any other document shall be deemed to have been filed on the date they are stamped at the agency office as described in subsection (c) of section 13b-17-117a." The customary usage, as well as other sections of the Regulations of Connecticut State Agencies, therefore, all dictate that the meaning of the word "file" is the actual presentation of a document at the relevant agency for inclusion into the official record.

It is also instructive to look to how the commission treats the filing of other forms, such as a form 36. As with the form 43, the form 36 uses the term "serve." Section 31-296 (b) states, however, that "[b]efore discontinuing or reducing payment on account of total or partial incapacity under any such agreement, the employer or the employer's insurer, if it is claimed by or on behalf of the injured employee that such employee's incapacity still continues, shall notify the commissioner and the employee . . . ." According to Black's Law Dictionary, Seventh Edition (1999), p. 1090, "notify" is defined as "[t]o inform (a person or group) in writing or by any method that is understood." Despite this apparent lesser standard, though, this board has repeatedly stated that "in granting a Form 36, a trial commissioner should discontinue or reduce benefits effective on the date the Form 36 was filed, unless extenuating circumstances dictate that a later date is more appropriate." Recalde v. POP Fasteners, 4183 CRB-5-00-2 (March 7, 2001), *appeal withdrawn*, A.C. 21748 (2001), *quoting* Stryczek v. State of Connecticut/Mansfield Training School, 14 Conn. Workers' Comp. Rev. Op. 32, 34, 1765 CRB-2-93-6 (May 4, 1995).

The respondents' argument regarding the mailbox rule is also misplaced. "The mailbox rule 'provides that a properly stamped and addressed letter that is placed into a mailbox or handed over to the United States Postal Service raises a rebuttable presumption that it will be received.'" Bozelko v. Commissioner of Correction, 196 Conn. App. 627, 634-635 (2020), *quoting* Echavarria v. National Grange Ins. Co., 275 Conn. 408, 418 (2005). We note that the presumption that something is received, however, does not necessarily correlate to it being received in a timely manner. We further note that our Supreme Court has refused to even accept the federal prison mailbox

rule that deems the filing date to be the date on which a prisoner delivers a petition to prison authorities for forwarding to the court. See Hastings v. Commissioner of Correction, 82 Conn. App. 600, 604 (2004). We, therefore, see no basis in the statutes, regulations, or case law of this state to support the respondents' contention that the date of mailing should be considered the date of filing.

Finally, it is noted that the respondent argued that pursuant to Lamar v. Boehringer Ingelheim Corporation, 138 Conn. App. 826, 834 (2012), [cert. denied, 307 Conn. 943 (2012)], the certified mailing of the forms 43 should be deemed sufficient notice to the claimant and that to find otherwise could result in claimants intentionally not accepting the form 43 and then filing for preclusion against the respondents. See Brief of the Respondent-Appellant, p. 6. This argument is specious at best. First, the fact pattern in Lamar, is distinctly different than the facts of the case at hand. In Lamar, the claimant refused receipt of the preemptory form 43 and argued that it was improperly served. The claimant further alleged that the second form 43 was flawed on its face. In its decision, our Appellate Court held that the certified mailing of the form 43 was sufficient to satisfy the respondents' obligations. There was no contention, though, that the form 43 was late since it was a preemptory contest of claim. As such, the argument that the certified mailing of a form 43 adequately meets the respondents' statutory obligation is misplaced under the facts of the current case. Furthermore, it should be noted that the language of 31-294c (b) requires only filing with the commission within twenty-eight days. The manner of service to the claimant is set forth in 31-321,[2] which requires that the notice be sent by personal service or registered or certified mail but does not specify a time

[2] General Statutes § 31-294c (b) states in relevant part: "The employer shall send a copy of the notice to the employee in accordance with section 31-321."

deadline.[3] This argument by the respondents, therefore, is inherently flawed since the potential of preclusion is based on the date of filing of the document with the commission and not the date of receipt by the claimant.

Based on the foregoing, the April 12, 2022 Finding of Preclusion of Brenda D. Jannotta, Administrative Law Judge acting for the Fourth District, is hereby affirmed.

Administrative Law Judges Daniel E. Dilzer and Carolyn M. Colangelo concur in the Opinion.

[3] General Statutes § 31-321 states in relevant part: "Unless otherwise specifically provided, or unless the circumstances of the case or the rules of the commission direct otherwise, any notice required under this chapter to be served upon an employer, employee or commissioner shall be by written or printed notice, service personally or by registered or certified mail addressed to the person upon whom it is to be served at the person's last-known residence or place of business."