

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by NEWMAN
Commissioner

July 19, 2019

MATTHEW WOODS v. MECKLENBURG COUNTY PUBLIC SCHOOLS
VIRGINIA ASSOCIATION OF COUNTIES GROUP S, Insurance Carrier
RISK MANAGEMENT PROGRAMS, INC., Claim Administrator
Jurisdiction Claim No. VA00001320337
Claim Administrator File No. WC058B186951
Date of Injury: April 6, 2017

B. Mayes Marks, Jr., Esquire
For the Claimant.

Richard D. Lucas, Esquire
For the Defendant.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia.

The claimant requested review of the Deputy Commissioner's March 15, 2019 Opinion denying the claimant's request for a 20% penalty for late payment of benefits due in accordance with a December 11, 2018 Order. We AFFIRM.

I. Material Proceedings

The claimant sustained injuries in an April 6, 2017 compensable work accident. On December 11, 2018, the Commission approved the parties' Compromise Settlement, which included payment of a lump sum as well as an attorney's fee. The defendant sent payment via certified mail received by the USPS on January 23, 2019. On January 28, 2019 and February 5, 2019, the claimant filed claims seeking a 20% penalty for an alleged late payment of settlement proceeds.

The parties submitted position statements for an on-the-record hearing before Deputy Commissioner Hunter. The claimant asserted the defendant did not send the payment directly to the claimant, pursuant to Commission Rule 9.2, when they mailed the payment by certified mail, which required a signature upon receipt. The Deputy Commissioner found the defendant timely mailed payment and no penalty was due.

The claimant filed a timely request for review.

II. Findings of Fact and Rulings of Law

The parties entered into a settlement agreement pursuant to the Commission's Order dated December 11, 2018. The parties had thirty days in which to appeal the Order, and pursuant to Virginia Code § 65.2-524, claimant was due payment within two weeks after the expiration of the appeal period. Thus, payment was due on January 24, 2019. The defendant sent payment via certified mail received by the USPS on January 23, 2019.

Pursuant to Virginia Code § 65.2-524, if compensation is not paid within two weeks after it becomes due, a penalty of 20% shall be added to any unpaid compensation. Commission Rule 9.2 requires all compensation due an injured employee must be paid directly to the beneficiary in accordance with the award. “[A] benefit is ‘paid’ when payment is mailed *directly* to the claimant, at his current residential address, within two weeks after it becomes due.” *Audobon Tree Serv. v. Childress*, 2 Va. App. 35, 41 (1986) (emphasis in original).

The Deputy Commissioner considered “whether sending their checks via certified mail qualifies as ‘payment mailed directly’ to the claimant and to his attorney.” (Op. 4.) The Deputy Commissioner held:

Upon consideration, we find that it does. We cannot find a case on point and note that the claimant failed to cite any cases in support of his argument. In reaching our decision, we are guided by Va. Code § 65.2-101, and the vast number of supporting cases, which provide that the date a document is posted by certified mail at any post office is the same date it is considered filed with the Commission.

In response to one of the claimant's arguments, we note that every mailing done via the USPS has the postal service as the middleman.

Another of the claimant's arguments is about the certified mail process requiring the presentation of the certified mail slip, along with identification, to the post office. However, the claimant offered no evidence to show that he was required to travel to the post office to obtain his certified letter. In contrast, the evidence presented by the defendant[], the USPS Tracking Results, is sufficient to persuade us that the claimant's certified letter was delivered to his home address in Red Oak, Virginia on January 28, 2019. A "Matt Woods" signed for it. Attorney Marks' address of record is a post office box, which is where his certified check was sent.

We, therefore, find that the defendant[] made payment within two weeks of the due date and no penalty is owed to the claimant under Va. Code § 65.2-524. In turn, the claimant's claims are hereby DENIED and DISMISSED with prejudice.

(Op. 4.)

The defendant mailed the payment to the claimant's current address of record via USPS Certified Mail on January 23, 2019, within the time period allowed pursuant to Virginia Code § 65.2-524. Virginia Code § 65.2-524 requires that payment be mailed, not received, within this time period. On review, the claimant agrees that if the payment had been mailed by the defendant via certified mail without requiring a signature by the recipient, then this would have constituted mailing of the item. Here, however, since there was an added requirement of a signature, the payment was not made on the date it was delivered to the USPS. The claimant also argues that the Deputy Commissioner erred in failing to take judicial notice of the process by which certified mail is handled, requiring one to come to the post office to sign a receipt. As we held in *Laine v. Prince*

George County, JCN VA00001356624 (July 3, 2019), “[t]he statute and the rule do not provide additional restrictions or requirements pertaining to the manner in which the payment is mailed directly to the claimant at his current address of record. The claimant cites no case law or Rule to support the proposition that certified mail does not constitute mailing.” We hold the defendant satisfied the requirements of Virginia Code § 65.2-524 and Commission Rule 9.2 when mailing the payment directly to the claimant at his current address of record via certified mail on January 23, 2019. The Deputy Commissioner did not err in her determination.

III. Conclusion

The Deputy Commissioner’s March 15, 2019 Opinion is AFFIRMED.

This matter is hereby removed from the review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within 30 days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks’ Offices of the Commission and the Court of Appeals of Virginia.