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Workers Compensation Practitioners Beware: All Claim Forms Must Be Received By The Commission to Be Deemed Filed For Limitations Purposes Under 2015 Court of Appeals Decision

Pursuant to the 2015 decision of the Court of Appeals, Hranicka v. Chesapeake Surgical Ltd., et. al., 443 Md. 289, 116 A.3d 507 (Md. 2015) the Court of Appeals held unequivocally that an electronic submission of a claim form without the claimant's signature was not a "filing" for limitations purposes. The bottom line is that the claim form must be filed with the claimant's signature and received to be considered filed and to toll the statute of limitations pursuant to Hranicka.

Although this decision on it's face may be surprising given the fact that case law mandates that the workers' compensation laws must be interpreted liberally to favor the injured worker, the final result is not surprising given the existing regulations at the time and their clear language that a claim is not deemed filed until the signed claim form and signed authorization for disclosure of health information is received by the Commission. In this case, the Commission had procedurally created a relation back rule that circumvented the regulations and the Court of Appeals rejected the Commission's procedural approach. However, the Commission has fixed this problem with new regulations effective December 10, 2015.

#### **A. Introduction and Procedural History**

Several years ago, the workers' compensation commission initiated an electronic filing procedure such that attorneys could file the claim forms on line on behalf of the

claimant and also file other documents. However, the claim forms must be signed on both pages one and two and dated by the claimant and then submitted in the mail to the commission before they will get electronically entered as a claim form in the Commission's data base.

In Hranicka, the claimant Mark Hranicka was injured in a work related motor vehicle accident on January 6, 2010 and originally filed a claim with the Commission on January 28, 2010.<sup>1</sup> The claim was contested and Hranicka decided to withdraw his claim before a hearing, which he was entitled to do.

Nothing further occurred until January 17, 2012 when Hranicka submitted his employee claim form again electronically before the two year deadline after the Employer's First Report of Injury had been filed. However, he did not file the actual claim form with his signatures until January 24, 2012 (i.e. four days after the two year deadline). The Employer/Insurer contested the claim on limitations and a hearing was held in front of Hon Cynthia S. Miraglia. Commissioner Miraglia stated the Commission's practice as follows:

"[Hranicka]'s claim form came in on the 17th. When an electronic claim is filed, we accept the claim for statu[t]e [of limitations]purposes. But you cannot file an electronic signature because of the concern of privacy and security. So the claim is –for limitation[s] purposes on the 17th. However, we don't have a final notice until we get in the signed claim forms...

But just for everyone's edification, when an electronic claim form comes in to the Commission, that date is the date we use for limitation[s] purposes. Now, if you never send in a

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<sup>1</sup> The Employer filed a First Report of Injury form which was received on January 21, 2010. Pursuant to Maryland law, Labor and Employment Article §9-709(b)(3), the two year limitations period does not begin to run until this form is filed.

signed copy, then, obviously, then we're at another issue. But in this case, they clearly did."

Accordingly, Commissioner Miraglia held that the claim was timely filed.

Hranicka, supra at 510.

Procedurally, the Employer/Insurer filed a Motion for Rehearing which was summarily denied and then filed a Petition for Judicial Review in the Circuit Court. The Employer/Insurer's Motion for Summary Judgment was denied by the Circuit Court and Hranicka's Motion was granted.<sup>2</sup>

The case was then appealed to the Court of Special Appeals which reversed the Circuit Court and Commission and held that using the date a claim form was electronically filed and not the actual receipt of the paper copy was inconsistent with the Commission's regulations and incorrect as a matter of law. The Court of Appeals then issued certiorari in this case and affirmed the Court of Special Appeals with three judges issuing a concurring opinion.

#### **B. Arguments Made by The Claimant**

Claimant made many arguments to the Court of Appeals including:

1) The Court of Special Appeals "erred by concluding that the Commission could not generate a procedural rule to relate claims back to their electronic submission dates for purposes of the statute of limitations."

2) "COMAR 14.09.02.02A does not prohibit the Commission from accepting the date a claim form is electronically submitted by a claimant as the filing date."

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<sup>2</sup> I assume Hranicka's Motion was granted although the Court of Appeals decision does not reference same.

3) “The Commission’s website provides instructions indicating that a claim has been ‘filed’ once the claim has been submitted electronically.”

4) Given the remedial nature of the workers’ s compensation statute, any ambiguity in terms of the filing date should be interpreted in favor of the claimant.

### **C. Arguments Made by The Employer/Insurer**

The Employer/Insurer made the following arguments:

1) “COMAR 14.09.02.02A makes clear that electronic submission of a claim form does not constitute ‘filing.’

2) “Neither the Workers’ Compensation Act nor the Commission’s regulations permit, for purposes of the statute of limitations, a ‘relation back’ to the date on which a claimant electronically submitted a claim form.”

3) “COMAR 14.09.02.02A(4) and (5) require an original signature for the filing of any document, and point out that an electronic submission does not contain an original signature.

### **D. The Applicable Regulations In Existence Before December 2015**

The Court of Appeals relied almost exclusively on the Commission’s own regulations which set forth the requirements to file and amend a claim. This regulation states as follows:

COMAR 14.09.02.02 “Requirements for Filing and Amending Claims

#### **A. Claim For Benefits**

(1) To initiate a claim for benefits, an employee shall file a claim form with the Commission.

- (4) The employee shall sign the claim form certifying that the information submitted on the claim form is accurate.
- (5) When completing the claim form, the claimant shall sign an authorization for disclosure of health information directing the claimant's health care providers to disclose...the claimant's medical records that are relevant[.]...
- (7) The Commission shall reject and return to the claimant a claim form that does not contain a signed authorization for disclosures of health information.
- (8) Date of Filing
  - (a) A claim is considered filed on the date that a completed and signed claim form, including the signed authorization for disclosure of health information is received by the Commission.
  - (b) For any claim form that has not been rejected or returned as incomplete..., the Commission's date of receipt is determined by the date stamp affixed on the claim form.
- (9) Electronic Submission
  - (a) A claim that is submitted electronically is not considered filed until the signed claim form, including the signed authorization for disclosure of health information, is received by the Commission
  - (b) The Commission' date of receipt is determined by the date stamp affixed on the claim form.

## **E. The Court of Appeals Holding**

The Court of Appeals relied totally upon the above regulations and their clear language to hold that “even after giving deference to the Commission’s interpretation of them” [the regulations], “a claim is filed with the Commission when the claim is filed on paper with and date-stamped by the Commission.” Specifically the Court referenced par. 9 of the regulations which makes it clear that a claim that is submitted electronically is not considered filed until the signed claim form and medical authorization is received by the Commission (i.e. date stamped by the Commission). The Court of Appeals stated:

“Plainly put, COMAR 14.09.02.02A’s language makes clear that a claim form must be filed on paper with and date-stamped by the Commission, and not simply electronically submitted, to constitute filing a claim for benefits. Nothing in the Workers’ Compensation Act or COMAR permits the Commission to ‘relate back’ the date of a claim to its electronic submission date.” *Id.* at 514.

The Court made it clear that COMAR 14.09.02.02A(9) was a specific regulation relating to the procedures regarding filing of claims and that the more general regulation found at COMAR 14.09.01.04A(1) would not be controlling and the former must control under canons of statutory interpretation.

The Court also rejected Hranicka’s argument that the Commission website deemed a claim filed when electronically filed. They specifically noted that the website stated that the website provided instructions that one must submit the signed claim form and mail it to the commission. *Id.* at 515-516. The Court of Appeals held that:

“In our view, the instructions on the Commission’s website, as the existed at the time Hranicka submitted his claim form electronically on January 17, 2012 are consistent with, and

reinforce, the regulatory language that provides that electronically submitting a claim form does not constitute filing of the claim itself. “ Id. at 516.

At the end of the day, the Court held that:

“In short, absent regulations governing the electronic filing of claims, this Court will not read into the existing regulations procedures for electronic filing of workers’ compensation claims. To be clear, nothing in this opinion precludes the Commission from promulgating new regulations to permit electronic filing of claims.”

**F. The Commission Fix**

On November 12, 2015 the Commission adopted an amendment to COMAR 14.09.02.02 with an effective date of December 10, 2015 to fix the problem in Hranicka.

The Commission’s new regulation is as follows:

14.09.02.02(9) Date of Filing Following Electronic Submission

9(a) A claim that is submitted electronically is not considered filed until the signed claim form, including the signed authorization for disclosure of health information, is received by the Commission in person or by mail addressed to the Commission’s principal office in Baltimore City.

(b) For any claim form that has not been rejected or returned as incomplete under Section A(2) of this regulation, the Commission’s date of receipt is determined by the date stamp affixed on the electronically submitted claim form, provided that the signed claim form, including the signed authorization for disclosure of health information, is received by the Commission in person or by mail addressed to the Commission’s principal office in Baltimore City within 30 days of the electronically submitted claim.

(c) For any claim electronically submitted but not received by the Commission as provided in Sect A(9)(b) of this regulation, the claim will be dismissed without prejudice.

Thus after December 10, 2015 you can file the claim form electronically to toll the statute of limitations as long as the paper form is properly completed and submitted within 30 days to the Commission's office in Baltimore.

#### **G. Practical Tips/Lessons to Be Learned**

As an active workers' compensation practitioner, I always make sure on my first meeting with the client that a claim form is filed with the Commission within the two year limitations period. If it is not, then I make sure that the claim form is filed that day electronically and then we submit the hard paper copy of the claim form with the claimant's signatures on pages one and two as soon as possible thereafter. Now you just have to file it within 30 days.

What this decision and the new regulations means is that you need to take the extra step on the initial intake of the claim to determine that you have to submit the hard copy of the electronically filed claim form within 30 days after electronic filing. The bottom line is that you should not delay and get the claim submitted to the Commission the same day or next day that the client comes to your office if there is any question that the claim is approaching the two year limitations period. You should err on the side of caution and get the form submitted in hard copy form immediately.