

ADVISORY NO. 150

TOPIC: DEADLINE MEANS FILED - NOT MAILED

The Appeals Panel has ruled that the carrier's failure to produce a file-stamped copy of its Notice of Refusal showing that it was filed within sixty days barred its defenses.

The carrier introduced testimony of the adjuster that the Notice of Refusal was "prepared and filed" on a specific date. There was no evidence that the Commission ever received it. The Hearing Officer found that it was not timely "filed" and the carrier appealed. The Commission affirmed the Hearing Officer, ruling that the carrier had waived its defenses. Appeal 941003. [See also Appeal 92278, Appeal 94292, and Appeal 94798]

Accordingly, when close to the end of the sixty-day window for disputing compensability, it is imperative that you obtain proof that the Notice of Refusal was filed, and not simply mailed, on or before the sixtieth day. If time permits, send your dispute by certified mail and obtain a signed receipt. Or, alternatively, mail a copy and then call by telephone to confirm the receipt. The best practice is to hand deliver the original and obtain a file-stamped copy to retain in your file.

We do not know if the "filed not mailed" requirement will be applied to the seven day period for filing TWCC-21s in cases where compensation is not paid or the ten day period for filing A-1s, A-2s, and A-3s. It almost certainly applies to the ten day time period for filing a TWCC-45 to dispute supplemental income benefits.