

STATE OF WEST VIRGINIA  
WORKERS' COMPENSATION OFFICE OF JUDGES  
P.O. Box 2233, Charleston, WV 25328  
Telephone (304) 558-0852

IN THE MATTER OF:

[REDACTED]  
CLAIMANT

and

[REDACTED]  
EMPLOYER

OOJ Case ID: [REDACTED]

JCN: [REDACTED]

CRN: [REDACTED]

DOI: [REDACTED]

**ORDER DENYING EMPLOYER'S MOTION TO CANCEL HEARING,  
ORDER DENYING MOTION TO REMOVE CLAIM FROM EXPEDITED  
HEARING PROCESS AND ORDER DENYING MOTION TO DISMISS  
PROTEST AS UNTIMELY FILED**

By motions dated July 20, 2009, the employer by counsel, Jeffrey B. Brannon, requested to remove the claim from the expedited hearing process and to dismiss the claimant's protest as untimely. By motion dated July 21, 2009, the employer moved to cancel the hearing scheduled from August 10, 2009.

By Claim Administrator's Order dated February 27, 2009, the claimant's application for carpal tunnel syndrome was denied as the disability complained of was not due to an injury received in the course of and resulting from employment. By undated letter received April 22, 2009, the claimant protested the Claim Administrator's Order. By Notice dated April 30, 2009, the claimant was advised that her protest could not be acknowledged as not all parties were copied and a copy of the order was not included in the protest. The claimant was allowed 45 days to comply or her protest may be permanently dismissed. By undated letter received May 11, 2009, the claimant resubmitted her protest showing all parties copied and included a copy of the protest. The claimant's protest was acknowledged and a time frame entered on June 23, 2009, giving the parties until September 21, 2009, to submit evidence. By undated letter received July 9, 2009, the claimant requested to have her claim expedited. By Notice dated July 16, 2009, an expedited hearing was scheduled for August 10, 2009, and the time frame was amended to expire on August 10, 2009.

By motion dated July 20, 2009, the employer sought removal of the claim from the expedited hearing process and to set aside Notice of Expedited Hearing and Amend the Time Frame Order dated July 16, 2009. The employer asserts this claim is an occupational disease claim, and therefore, should not be placed

[REDACTED]

in the expedited adjudication process. The employer states it is the intent of 93 CSR § 1-9.8, that carpal tunnel claims should be considered as a complex issue. The employer further states that it would be a severe abridgement of the employer's due process right to avail the claimant to an expedited litigation process.

By motion dated July 20, 2009, the employer moved to dismiss the claimant's process as untimely filed. The employer states the claimant was permitted until April 29, 2009, to protest the February 27, 2009 Order. The employer states a review of the documents in the claim file reveal several undated documents from the claimant that were stamped by the WVOIC on April 22, 2009, April 27, 2009, and May 11, 2009. There are no dates stamped by the Office of Judges on these documents. The employer argues the claimant failed to file a protest within her statutorily prescribed.

By motion dated July 21, 2009, the employer moved to cancel the hearing scheduled for August 10, 2009. The employer states that the employer has been placed into the expedited hearing process in error by the Office of Judges as this is an occupational disease claim and not applicable for the expedited process.

Upon review of the claim file and in consideration of the employer's motion to remove the claim from the expedited hearing process and set aside the Notice of Expedited Hearing and Amended Time Frame Order, it is ORDERED that the motion be DENIED. 93 CSR § 1-9.8 states the expedited adjudicated process shall not be available for occupational pneumoconiosis, hearing loss claims or complex issues as identified at the discretion of the Office of Judges. Carpal syndrome claims are not precluded from the expedited adjudication process. The employer has not provided good cause to show that the claim is of a complex nature.

It is further ORDERED that the employer's motion to dismiss the claimant's protest as untimely filed be DENIED. It is found that the claimant's protest to the Claim Administrator's Order dated January 27, 2009, was received by the Office of Judges on April 22, 2009, and therefore, the protest was timely filed. The employer should be aware that any document received by the Office of Judges by mail will be stamped WVOIC as the Office of Judges is part of the WVOIC.

It is ORDERED that the employer's motion to cancel the hearing scheduled for August 10, 2009, be DENIED and the hearing held as scheduled. In accordance with the provisions of 93 CSR § 1-9.6 which states hearings shall not be continued except by agreement of the parties, or upon the most compelling of good cause. The employer has failed to provide good cause or shown that there is an agreement between the parties.

[REDACTED]

[REDACTED]

All of which is accordingly so ORDERED.

DATE: July 31, 2009

*Rebecca A. Roush*

Rebecca A. Roush,  
Chief Administrative Law Judge

RAR:AJH:lg:tlh

cc:

[REDACTED]

OE