

OPINION
64-273

May 28, 1964 (OPINION)

WORKMEN'S COMPENSATION BUREAU

RE: Claims - Time Limit

This is in response to your letter in which you ask for an opinion on the time limit for filing of claims. You call our attention to the provisions of section 65-05-01 of the North Dakota Century Code, which provides as follows:

CLAIMS FOR COMPENSATION - WHEN AND WHERE FILED. All original claims for compensation for disability or death shall be made within sixty days after injury or death. For any reasonable cause shown, however, the bureau may allow original claims for compensation for disability or death to be made at any time within one year after the injury or death. No compensation or benefits shall be allowed under the provisions of this title to any person, except as provided in section 65-05-04, unless he or she, or someone on his or her behalf, shall make a written claim therefor within the time specified in this section. Such claim shall be made by:

1. Delivering it at the office of the bureau or to any person whom the bureau by regulation may designate; or
2. Depositing it in the mail properly stamped and addressed to the bureau or to any person whom the bureau by regulation may designate."

You then state that a claimant was injured on the seventh day of February, 1963, and you did not receive notice of this claim until February 7, 1964. You further state that the office received the notice on February 8, 1964, but the claimant had deposited the letter in the United States mail on February 7, 1964. The envelope in which the claim was transmitted was postmarked February 7, 1964. You then ask the following questions:

1. On the above facts, would the claimant be entitled, with no showing of any reasonable cause for delay over the sixty day period, to have an original hearing on his claim;
2. The above statute states 'within one year.' Is the mailing of the letter of February 7, 1964, within our statutes of one year from the date of the claim which was which was February 7, 1963."

The time of presenting a claim is set forth in section 65-05-01 of the North Dakota Century Code. The North Dakota Supreme Court in *Bjorseth v. North Dakota Workmen's Compensation Bureau* said that the time of presenting a claim within the statutory time designated is jurisdictional. This principle was reaffirmed in subsequent cases

found in 67 N.D. 512 and 13 N.W.2d. 610. The North Dakota Court, however, has not had under consideration the specific questions asked.

In referring to other statutes requiring the doing of a certain thing within a certain time, we note that section 16-04-02 requires that candidates present petitions to the Secretary of State not more than sixty days nor less than forty days prior to the election. In construing this section the Court said in *Burchard v. Byrne*, 54 N.D. 274, that the petitions in question may be presented to the Secretary of State through the agency of postal or express facilities and that the delivery of the petitions to the persons authorized to receive mail or express within the time prescribed by the statute constitutes delivery to the Secretary of State.

In construing a similar provision, the North Dakota Supreme Court in *Campbell v. Torgerson*, 57 N.D. 152, said that the requirement for presenting a petition to the county auditor within the statutory time was mandatory. Again on a somewhat similar question, the Court in *State ex rel Englert v. Meier*, 115 N.W.2d. 574, held that petitions mailed and postmarked on the final date for receiving petitions by the Secretary of State constituted timely presentation to the Secretary of State where the envelope bore the postmark of the last day for presenting petitions to him where public announcements were made by the Secretary of State that he would accept petitions under such conditions. In this connection we must observe that the statute under consideration here specifically provides that a claim may be made by "depositing it in the mail properly stamped and addressed to the bureau or to any person whom the bureau by regulation may designate."

We further note that the statute does not use the term "file a claim" but rather uses the term "shall be made." The term "file" implies presenting it and putting it on record whereas the term "making a claim" does not imply that the claim must be recorded and put on file within the specific time.

We are also aware that the Courts have consistently held that Workmen's Compensation acts should be "liberally construed to effectuate the purposes for which they were enacted and that the construction should be to afford coverage in all cases reasonable within its purview." (99 C.J.S. Section 20) The same authority continues on by saying that the construction where there is doubt should be resolved in favor of those whom the act intended to benefit. The construction, however, should not be strained.

Following the reasoning of the Court in *State ex rel Englert v. Meier*, supra, we must necessarily conclude that the mailing of claim within the statutory time constitutes making a claim. The statute specifically provides that the claim shall be made within one year. It does not provide that it must be made before the end of one year but rather within. In this connection we consider the provisions of section 1-02-15 of the North Dakota Century Code, which provides that the time in which an act provided by law is to be done is computed by excluding the first day and including the last, unless the last is a holiday and then it also is excluded. By applying this statute to these present facts the first day can be excluded, which would make

February seventh the anniversary a year from date of injury and would bring February 7, 1964, within the term "within one year."

Therefore, in direct response to the second question, it is our opinion that a claim mailed on February 7, 1964, for an injury sustained on February 7, 1963, constitutes making a claim within the time limit as contemplated under the provisions of section 65-05-01.

In response to the first question, it is our opinion that the claimant must be given an opportunity to show why the claim was not filed within sixty days. However, we wish to make the further observation that the sixty-day provision may be waived by the Bureau. In reviewing cases discussing the sixty-day period, we find that the Court has been rather consistent in its attitude toward permitting claims to be filed after the sixty days if any showing has been made. In other words, the sixty-day limitation is not jurisdictional. We know of no court case which sustained a denial of a claim because it was not filed within sixty days.

Being that the Courts have held that the act is to be construed liberally in favor of the claimant, this would indicate that any reason given by the claimant for not filing within the sixty-day period should be given considerable weight. In the absence of the claimant being fully aware of the sixty-day provision, we have serious doubts that such sixty-day provision could be employed and relied upon solely to deny a claim which is otherwise just and proper.

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