

'lump sum settlement' expressly stated that it was under Sec. 13(j). [the employer and carrier] were not parties to this application. The commission's order approving the lump sum payment was also based upon Sec. 13(j). ***It assumes the existence of a particular obligation. Armstrong Tire & Rubber Co. v. Franks***, 137 So.2d 141, 145 (Miss. 1962).

5. ***Caution***

- a. Unweary claims adjusters encounter quite a surprise when they file a B-18 acknowledging that they are agreeing to pay out a rating (in a scheduled member case) or PTD benefits on a weekly basis.
- b. Injured employees can apply for a lump sum payment of benefits based upon the B-18 and the MWCC routinely issues orders granting same apparently on the basis that it is an obligation which has been agreed to by the employer-carrier.

D. **Filing a Form B-31**

1. "Within ***thirty (30) days*** after the final payment of compensation has been made, the employer shall send to the commission a notice in accordance with a form prescribed by the commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid." MISS. CODE ANN. § 71-3-37(7).
  - (1) The Form B-31, Notice of Final Payment, is used to provide the notice contemplated by MISS. CODE ANN. § 71-3-37(7).
  - (2) This form, when used properly, starts the ***one-year*** statute of limitations on cases where indemnity benefits are paid. If the form is not used properly, the statute of limitations will not begin to run. The B-31 Form is designed to accurately state all payments made in connection with a particular claim.
  - (3) In order to prevent a claim from becoming time-barred, under the one-year statute of limitations created by the B-31 form, the injured worker may request and enforce payment of medical benefits within the one year period. ***Barr v. Conoco Chems., Inc.***, 412 So. 2d 1193, 1196 (Miss. 1982).
  - (4) Whether or not an employee knows the implications of the B-31 form he signs, he is still bound by the statute of limitations it creates. ***Hancock v. Mississippi Forestry Comm'n***, 878 So. 2d 1058, 1061 (Miss. Ct. App. 2004).
- b. "If the employer fails so to notify the commission within such time, the commission may assess against such employer a civil penalty in an amount not exceeding One Hundred Dollars (\$100.00). No case shall be closed nor any penalty be assessed without notice to all parties interested and without giving to all such parties an opportunity to be heard." MISS. CODE ANN. § 71-3-37(7).

2. “An injured employee or, in case of death, his dependents or personal representative shall give receipts for payment of compensation to the employer paying the same; and whenever required, such employer shall produce the same for inspection by the commission.” MISS. CODE ANN. § 71-3-37(12).

3. ***Proper Filing of a Form B-31, Notice of Final Payment:***

a. If the claimant signs the Form B-31:

- (1) File the original, executed, Form B-31;
- (2) Ask the Commission to return to you a stamped “filed” copy of the executed Form B-31 for your file; and
- (3) The date that the Form B-31 is stamped “filed” will start the running of the one-year statute.

b. If the claimant refuses to sign the B-31:

- (1) Wait a reasonable time (a couple of weeks) after requesting that the claimant sign the Form B-31;
- (2) Complete another Form B-31;
- (3) File the original and two copies of the Form B-31;
- (4) Ask the Commission to return to you the two stamped “filed” copies of the Form B-31;
- (5) Send a copy of the stamped “filed” Form B-31 by certified mail, return receipt requested along with a letter explaining that the matter should be considered closed; and
- (6) The date that the claimant receives the stamped “filed” Form B-31 will start the running of the one-year statute.
  - (a) The one-year statute starts on the date the postal service indicates delivery was attempted, even if the Claimant later provides a signed B-31 that is properly filed at the Commission. *See Leggett & Platt v. Brinkley*, 150 So. 3d 106 (Miss. Ct. App. 2014).
  - (b) The Court of Appeals recognized that both the United States and Mississippi Supreme Court have considered the effect of written notice by mail in a court proceeding which permitted such a communication. The courts have uniformly recognized that there is a presumption that mail properly directed and deposited is timely delivered to the individual to whom it was addressed. Moreover, mere denial of receipt is insufficient to create a triable issue of fact. *See Leggett & Platt v. Brinkley*, 150 So. 3d 106 (Miss. Ct. App. 2014).

- c. If an additional claim for benefits is made within the one-year time period, then this procedure needs to be performed all over again. *See Taylor v. The Salvation Army*, 744 So. 2d 825 (Miss. Ct. App. 1999).
- 4. Upon receipt of a Notice of Final Payment, the Commission should issue a Form C-1, Notice of Filing of Report of Payment and Settlement Receipt to the claimant.
- 5. ***Improper Filing of a Form B-31***
  - a. “[T]he filing of a Form B-31 containing errors as to the amount of benefits paid is sufficient to begin the running of the statute of limitations, and that the filing of a corrected form will not interrupt the running of the statute of limitations period, even if it is without notice to the claimant.” *McCrimon v. Red Arrow Car Wash*, 859 So. 2d 395, 399 (Miss. Ct. App. 2003) *citing Carter v. Wrecking Corp. of America*, 107 So. 2d 116, 119 (Miss. 1958).

## VII. APPEALS

### A. Levels of Review

#### 1. ***Evidentiary Hearing before Administrative Law Judge***

- a. “No controversy shall be heard by the commission or an award of compensation made therein while the same matter is pending either before a federal court or in any court in this state.” MISS. CODE ANN. § 71-3-51.
- b. Petition for Review:
  - (1) Any decision of the Administrative Judge is final “unless ***within twenty (20) days [from the date of the filing of the Judge’s Order]*** a request or petition for review by the full commission is filed.” MISS. CODE ANN. § 71-3-47; MWCC Proc. R. 10. (as amended 2001)
  - (2) In *Ford v. KLLM, Inc.*, 909 So. 2d 1194 (Miss. Ct. App. 2005), a petition for review that was filed on the twenty-first (21<sup>st</sup>) day from the date of the ALJ Order was considered untimely, absent showing of unique facts demonstrating constructive timely filing. The fact that petition was placed in the mail on the 20<sup>th</sup> day did not constitute such evidence. Therefore, the appeal was dismissed.

#### 2. ***Review by Full Commission***

- a. Parties:
  - (1) Appellant — Party requesting review of the decision made at the lower level.
  - (2) Appellee — Party responding to the request for review.
- b. Oral Arguments: