

**ORIGINAL**

20030155

APPELLANT'S BRIEF AND APPENDIX

RECEIVED BY CLERK  
SUPREME COURT AUG 4 2003

Supreme Court of North Dakota

1 Brief filed with the Supreme Court of North Dakota as  
2 outlined by the North Dakota Rules of Appellant Procedure,  
3 Rule 31, filing and service of briefs and Rule 32, form of  
4 of briefs, the appendix and other papers.

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

Dudley Benson

Appellant

AUG 01 2003

STATE OF NORTH DAKOTA

vs.

CIVIL ORDER

Case #18-03-C-00029

Supreme Court #20030155

North Dakota Workers Compensation Bureau

1600 E Century Avenue, Suite 1

Bismarck, North Dakota 58506-5685

Appellee

5 Brief compiled and presented before the Supreme Court of North  
6 Dakota to dispute and argue in my own behalf in reference to  
7 Order Dismissing Appeal issued by Judge Bohlman, District Court  
8 of Grand Forks, North Dakota.

INDEX

	<u>Page</u>
1 Brief filed with the Supreme Court of North Dakota	1
2 Documentation and references to various NDCC,s to	
3 support Appellant,s request to overturn ruling issued	
4 by Judge Bohlman, District Court of Grand Forks	2-6
5 Copy of case profile by District Court outlining	
6 when appeal was filed, various correspondence with	
7 District Court and exhibits filed by Appellant	7
8 Copy of service from Grand Forks Sheriff's Department	
9 of of hand delivery of Findings of Fact from North	
10 Dakota Workers Compensation Bureau on December 17, 2002	8
11 Letter , dated January 3, 2003 from NDWC, of medical	
12 records requested of former treating doctor, needed for	
13 and requested for Administrative Hearing on October 10,	
14 that was mailed from Bismarck on October 9, 2002, and	
15 received after conclusion of Administrative Hearing	9
16 Copy of North Dakota Century Code 28-32-42 (1-4-6)	10-11
17 Copy of letter addressed to Ms. Jacqueline Anderson,	
18 representing NDWC, of notification of appeal, dated March	12
19 14, 2003	12
20 Copy of order dismissing appeal issued by Judge Bohlman	13
21 Copy of letter addressed to Judge Bohlman requesting	
22 an extension	14
23 Copy of order denying request for reconsideration	15-16
24 Copy of Rule 4, North Dakota Rule of Appellate Procedure,	
25 stating that the Trial Court may extend the time for filing	
26 notice of appeal	17
27 Copy of Rule 7, North Dakota Rules of Appellate procedure	

INDEX

28	Page 503, citing Latendresse v. Latendresse, 283 N.W.	
29	2d. 70 (N.D.1979)	18-19
30	Page 503, citing Farmers State Bank v. Thompson, 372	
31	N.W. 2d 862 (N.D. 1985)	19-20
32	Federal Land Bank v. Overboe, 426 N.W. 2d. 1 (N.D. 1988)	19-20
33	Copy of legal letter of Notice of Entry of Judgment by	
34	Ms. Jacqueline Anderson, listing incorrect NDWC claim	
35	of injured worker	22
36	Copy of NDCC 28-32-45, citing Consideration of Additional	
37	or excluded evidence, that the evidence be taken, heard,	
38	and considered by the agency	23
39	Summary of Brief admitted to the Supreme Court of previous	
40	statements attached to Brief	24-26

1 Appellant, Dudley Benson, filed a timely appeal with District  
2 Court on January 10, 2003, in reference to the Final Fact of  
3 Finding received from North Dakota Workers Compensation Bureau,  
4 (NDWC) on December 17, 2002.

5 Appellant filed on February 21, 2003, exhibits containing new  
6 documents received after Administrative Hearing on October 10,  
7 2002, in support of his exhibits presented at this hearing.  
8 These medical chart notes requested prior to Administrative  
9 Hearing were mailed from NDWC on October 9, 2002 and received  
10 after Administrative Hearing and Appellant was not able to  
11 present this medical records in support of his hearing with  
12 NDWC.

13 On the afternoon of March 14, 2003, Appellant made an inquiry  
14 with the clerk of District Court on the progress of his appeal  
15 and at that time received information that he was responsible  
16 to serve notice of appeal to NDWC and legal council representing  
17 the Bureau. NDCC 28-32-42 (4).

18 Appellant on filing appeal on January 10, 2003 and also again  
19 on February 21, 2003 on filing his brief that District Court  
20 would proceed with the legal notification to NDWC.

21 Appellant immediately drafted a letter to legal representative  
22 of NDWC (Ms. Jacqueline Anderson) of the filing of this appeal.  
23 Appellant also filed a copy of this letter of notice with the  
24 clerk of District Court on March 14, 2003.

25 Appellant, Dudley Benson, received in the mail on March 19, 2003,  
26 from Judge Bohlman, District Court of Grand Forks, dismissing  
27 appeal filed on January 10, 2003, citing failure of appellant

1 to follow guidelines of NDCC 28-32-42 (4) and (6).  
2 Immediately following receipt of this notice in the mail  
3 Appellant drafted a letter to Judge Bohlman, District Court,  
4 requesting an extension for Appellant to compile with NDCC  
5 28-32-42 (4) and reconsideration, dated March 19, 2003.  
6 Appellant, Dudley Benson, again on March 31, 2003, drafted  
7 another request to Judge Bohlman, District Court of Grand  
8 Forks, to re-instate order to continue with appeal entered  
9 with District Court on January 10, 2003 and again grant an  
10 extension for Appellant to compile with NDCC 28-32-42 (4)  
11 and (6).  
12 Appellant received in the mail on April 4, 2003, from District  
14 Court of Grand Forks, issued by Judge Bohlman, order dismissing  
15 appeal with the requirements of NDCC 28-32-42 (1), (4) and (6).  
16 Appellant made an observation on order issued and dated April  
17 3, 2003 now also includes NDCC 28-32-42 (1).  
18 Previous order dismissing my appeal dated March 18, 2003, did  
19 not include this additional century code.  
20 Appellant totally disputes violation of NDCC 28-32-42 (1).  
21 A timely appeal was filed within the 30 day time frame as listed  
22 in NDCC 28-32-42 (1). The final findings of Fact was received  
23 from NDWC on the evening of December 17, 2002 and Appellant  
24 filed appeal on January 10, 2003 with District Court of Grand  
25 Forks, within the guidelines governed by NDCC 28-32 and 65-10.  
26 Appellant admits possible negligence to NDCC 28-32-42 (4).  
27 Plaintiff, Dudley Benson, had no prior knowledge of North Dakota

1 Century Codes until after receiving order from Judge Bohlman,  
2 District Court of Grand Forks, on March 19, 2003 and was able  
3 to research these codes at UND Law Library.

4 Interpretation of Rule 4 (A) of the North Dakota Rules of  
5 Appellate Procedure states that the trial court may extend  
6 the time for filing the notice of appeal by any party for a  
7 period not to exceed 30 days from the expiration of the time  
8 otherwise prescribed for appeal. Also reference is made to  
9 paragraph stating that upon a showing of excusable neglect,  
10 the trial court may extend the time for filing the notice of  
11 appeal. Such an extension may be granted before or after the  
12 time otherwise prescribed by this subdivision has expired.

13 In order received from District Court, dated April 3, 2003,  
14 signed by Judge Bohlman, (line 14-19), in order denying request  
15 for reconsideration, states that the Court is unable to extend  
16 the time for proper filing of the Notice of Appeal.

17 Previously as stated in line 4-12 that interpretation of Rule  
18 4 (A) of the North Dakota Rules of Appellate Procedure that the  
19 Court had judicial power to grant this extension as previously  
20 requested in a letter directed to District Court on March 19  
21 by Appellant.

22 Appellant petitions the Supreme Court to waive requirements of  
23 NDCC 28-32-42 (6) as stated in order dismissing appeal issued  
24 and dated March 19, 2003, received from District Court and  
25 signed by Judge Bohlman.

26 Rule 7, North Dakota Rules of Appellate Procedures, states  
27 that failure to timely secure a cost or supersedeas bond is

1 not jurisdictional and does not mandate dismissal of the  
2 appeal, *Latendresse v. Latendresse*, 283 N.W.2nd 70 (N.D.  
3 1979).

4 Also cited by Appellant is on merits of requirements of  
5 securing needed bond in appeal is in ruling of *Federal Land*  
6 *Bank v. Overboe*, 426 N.W. 2nd 1 (N.D. 1988), that the failure  
7 is not an automatic ground for dismissal.

8 Also stated under Rule 3 is as noted: The fact that bond  
9 may not have been conditioned in an entirely appropriate  
10 form as required by Rule 7 is not automatic ground for  
11 dismissal. (*Farmers State Bank v. Thompson*, 372 N.W. 2d 862  
12 N.D. 1985).

13 Appellant requests that stated requirement of NDCC 28-32-42  
14 (6) be granted for relief and waived.

15 Appellant made an observation on Notice of Entry of Judgment  
16 and Affidavit of Service in regard to Civil Case #03-C-00029  
17 filed by legal representative of North Dakota Workers  
18 Compensation Bureau, Ms. Jacqueline Anderson, with the wrong  
19 claim number filed. Correct NDWC claim number should read  
20 1992-392-674 rather than 1992-386-631 on April 7, 2003. Error  
21 by Ms. Jacqueline Anderson has not as yet been corrected.

22 Appellant, upon filing notice of appeal with the Supreme Court  
23 of North Dakota, cites numerous errors following Administrative  
24 Hearing on October 10, 2002. Failure of North Dakota Workers  
25 Compensation Bureau to provide requested medical records that  
26 contained documented medical information relevant and needed  
27 during Administrative Hearing on October 10, 2002, in violation

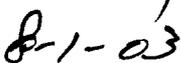
1 of NDCC 28-32-45. Medical chart notes documented Appellant's  
2 medical condition following accident on the job was created  
3 by enormous consumption of medication's prescribed by doctor's  
4 approved by NDWC and all expenses for medication was approved  
5 by NDWC.

6 Appellant petitions the Supreme Court of North Dakota to review  
7 and order North Dakota Workers Compensation Bureau to consider  
8 additional and excluded evidence not available to Appellant on  
9 conclusion of Administrative Hearing on October 10, 2002, as  
10 outlined in NDCC 28-32-45.

11 Appellant again strongly feels that Judge Bohlman, District  
12 Court of Grand Forks, ruling on NDCC 28-32-42 (4 and 6) on  
13 March 19 was weak. Appellant admits possible negligence to  
14 NDCC 28-32-42 (4) as I did not have any knowledge of legal  
15 responsibility when I filed my appeal on January 10, 2003, in  
16 District Court and also again when I filed my exhibits on  
17 February 21, 2003.

18 Appellant has been representing himself in all legal matters  
19 and living on a reduced fixed income since my accident and is  
20 unable to retain legal council.for assistance and advice.

21 Appellant also requests waiver of Rule 31(C), as I do not have  
22 access to a word processor or computer to assemble diskette as  
23 required as brief is completed on a typewriter and certified  
24 to be true.

  
APPELLANT  


Dated

CASE # 18-03-C-00029/001

B ON, DUDLEY

VS. WORKER'S COMPENSATION BUREAU

ACTION TYPE : ADMINISTRATIVE APPEAL  
COURT : DISTRICT DATE FILED : 1-10-03  
CURRENT STATUS: 420 NOTICE OF APPEAL  
JUDGE ASSIGNED: BRUCE E. BOHLMAN DATE CLOSED : 4-03-03

-----  
INTERESTED PARTIES CITY/STATE DOB  
AB 001 ANDERSON, JACQUELINE S FARGO, ND  
AJ 001 BENSON, DUDLEY  
AL 001 WORKER'S COMPENSATION BUREAU  
-----

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RECEIPT# DATE TIME CHECK# REMITTER DISTRIB VD TYPE  
227920 1-08-03 12:56 11611 BENSON (D) 80.00 MISC.  
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DOC # HISTORY EVENTS DATE & TIME JUDGE NAME ENTERED  
1 AFFIDAVIT OF DUDLEY BENSON 1-10-03  
2 COPY OF RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER 1-10-03  
3 COPY OF NOTICE 1-10-03  
4 COPY OF ORDER 1-10-03  
5 EXHIBIT'S TO BE REVIEWED BY DISTRICT COURT 2-21-03  
CK TO SEE IF JUD BOHLMAN SENT NOTE 4-14-03 BRUCE E. BOHLMAN 3-11-03  
BACK ON HOW TO PROCEED RS  
DISMISSED BRUCE E. BOHLMAN 3-19-03  
"CLOSED CASE" 3-19-03 BRUCE E. BOHLMAN 3-19-03  
6 ORDER DISMISSING APPEAL 3-19-03  
"REOPENED" BRUCE E. BOHLMAN 4-03-03  
JUDGMENT/ORDER ENTERED BRUCE E. BOHLMAN 4-03-03  
7 LETTER DATED 3/19/03 FROM MR BENSON 4-03-03  
8 LETTER DATED MARCH 24, 2003 FROM MR BENSON 4-03-03  
9 LETTER DATED 3/31/03 - MR BENSON 4-03-03  
10 ORDER DENYING REQUEST FOR RECONSIDERATION 4-03-03  
11 JUDGMENT 4-03-03  
12 NOTICE OF ENTRY OF JUDGMENT 4-09-03  
13 AFFIDAVIT OF SERVICE 4-09-03  
14 PETITION FROM APPELLANT FOR ADDITIONAL DOCUMENTS 4-28-03  
NOTICE OF APPEAL BRUCE E. BOHLMAN 6-02-03  
15 NOTICE OF APPEAL 6-02-03  
-----

STATE OF NORTH DAKOTA

County of Grand Forks

In the matter of the claim of:  
Dudley Benson,

vs.

Dudley Benson,

STATE OF NORTH DAKOTA

COUNTY OF GRAND FORKS

} SS.

IN COURT  
Case No.

} Plaintiff(s)  
} Defendant(s)

Sheriff's Return

} SS.

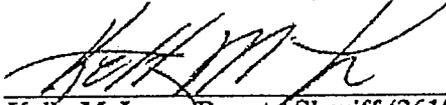
I, Dan Hill, Sheriff of said county, do hereby certify and return that the attached **Order and Recommended Findings of Fact, Conclusions of Law and Order** in the above entitled action came into my hands for service on **December 13, 2002**; that on **December 17, 2002**, within said County and State, I served said **Order et al** on **Dudley Benson**.

Defendant(s) \_\_\_\_\_ therein named by delivering to and leaving a true and correct copy of same with **Dudley Benson personally at 8:20 p.m.**

Dated at Grand Forks, North Dakota, this 26 December 2002

<b>FEE:</b>	
Service	\$10.00
Postage	
Mileage	6.50
Cell Phone Calls	
Total	\$16.50

**Dan Hill**  
Sheriff of Grand Forks County, North Dakota 58208-2608

By   
Kelly McLean, Deputy Sheriff (3619)



for reconsideration, and the necessity of a request for reconsideration in workers compensation cases prevailed over the general provisions in this section and section 28-32-15. *McArthur v. North Dakota Workers Comp. Bureau*, 1997 ND 105, 564 N.W.2d 655 (1997).

tion: Equal Protection Challenge to the Agriculture Exemption and Use of Rational Basis Scrutiny in *Haney v. North Dakota Workers Compensation Bureau* 518 N.W.2d 195 (N.D. 1994), 71 N.D. L. Rev. 781 (1995).

#### Law Reviews.

Constitutional Law — Workers Compensa-

**28-32-41. Effectiveness of orders.** Unless a later date is stated in the order, a final order of an administrative agency is effective immediately, but a party may not be required to comply with a final order unless it has been served upon the party and notice is deemed given pursuant to section 28-32-39 or the party has actual knowledge of the final order. A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order. This section does not preclude an agency from taking emergency action to protect the public health, safety, or welfare as authorized by statute.

Source: S.L. 2001, ch. 293, § 12.

#### **28-32-42. Appeal from determination of agency — Time to appeal — How appeal taken.**

1. Any party to any proceeding heard by an administrative agency, except when the order of the administrative agency is declared final by any other statute, may appeal from the order within thirty days after notice of the order has been given as required by section 28-32-39. If a reconsideration has been requested as provided in section 28-32-40, the party may appeal within thirty days after notice of the final determination upon reconsideration has been given as required by sections 28-32-39 and 28-32-40. If an agency does not dispose of a petition for reconsideration within thirty days after the filing of the petition, the agency is deemed to have made a final determination upon which an appeal may be taken.
2. Any interested person who has participated in the rulemaking process of an administrative agency may appeal the agency's rulemaking action if the appeal is taken within ninety days after the date of publication in the North Dakota Administrative Code of the rule resulting from the agency rulemaking action.
3. a. The appeal of an order may be taken to the district court designated by law, and if none is designated, then to the district court of the county in which the hearing or a part thereof was held. If the administrative proceeding was disposed of informally, or for some other reason no hearing was held, an appeal may be taken to the district court of Burleigh County. Only final orders are appealable. A procedural order made by an administrative agency while a proceeding is pending before it is not a final order.
  - b. The appeal of an agency's rulemaking action may be taken to the district court of Burleigh County.
4. An appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken, upon the administrative agency concerned, upon the attorney general or an assistant attorney general, and upon all the parties to the proceeding before the administrative agency, and by filing the notice

of appeal and specifications of error together with proof of service of the notice of appeal, and the undertaking required by this section, with the clerk of the district court to which the appeal is taken. In an appeal of an agency's rulemaking action, only the administrative agency concerned, the attorney general, or an assistant attorney general, as well as the legislative council, need to be notified.

5. The notice of appeal must specify the parties taking the appeal as appellants. The agency and all other parties of record who are not designated as appellants must be named as appellees. A notice of appeal of agency rulemaking actions need not name all persons participating in the rulemaking proceeding as appellees. The agency and all parties of record have the right to participate in the appeal. In the appeal of agency rulemaking action, any person who has participated in the rulemaking process has the right to participate in the appeal.
6. A bond or other undertaking for costs on appeal must be filed by the appellant as is required by appellants for costs on appeal in civil cases under the rules of appellate procedure. The bond or other undertaking must be filed with the clerk of the district court with the notice of appeal, must be made to the state of North Dakota, and may be enforced by the agency concerned for and on behalf of the state as obligee. A bond or other undertaking is not required when filing fees have been waived by a district court pursuant to section 27-01-07 or when the costs of preparation and filing of the record of administrative agency proceedings have been waived by a district court pursuant to subsection 3 of section 28-32-44.

Source: S.L. 2004, ch. 293, § 12.

#### Agency May Appeal.

Because construing this section to preclude the North Dakota Securities Commissioner from appealing would frustrate the Legislature's apparent intent, where an agency requests that the Office of Administrative Hearings designate an ALJ to issue a final decision, this section allows the requesting agency to appeal from that final decision unless such appeal is otherwise precluded. *JM Capital Corp. v. Juran & Moody, Inc.*, 2000 ND 136, 613 N.W.2d 503 (2000).

#### Appealable Order.

##### —In General.

A finding of probable cause of child abuse affects legal rights or interests of the person against whom it is directed and, therefore, constitutes an appealable final order under this chapter. *Raboin v. North Dakota Dep't of Human Servs.*, 552 N.W.2d 329 (N.D. 1996).

##### —Temporary Suspensions of Licenses.

Temporary suspensions of physician's licenses are not final orders, and the requirements of this chapter do not apply to such suspensions. *Bland v. Commission on Medical Competency*, 557 N.W.2d 379 (N.D. 1996).

#### Applicability of Rules of Civil Procedure.

Rule of Civil Procedure 6(b) does not autho-

rize the district court to enlarge the time limit to take an appeal under this section. *Basin Elec. Power Coop. v. North Dakota Workers Comp. Bureau*, 541 N.W.2d 685 (N.D. 1996).

#### Determination by Workmen's Compensation Bureau Final.

The catchall provision of this section does not apply to appeals from final actions of the workers compensation bureau, and an appeal of such an action cannot be entertained by a district court under its general jurisdiction. *Basin Elec. Power Coop. v. North Dakota Workers Comp. Bureau*, 541 N.W.2d 685 (N.D. 1996).

#### Dismissal.

The Workers' Compensation Bureau did not act improperly when it moved to dismiss employer's appeal for failure to serve all parties. *S & S Landscaping Co. v. North Dakota Workers' Comp. Bureau*, 541 N.W.2d 80 (N.D. 1995).

#### District Court's Jurisdiction.

The filing of an undertaking required by this section within the 30-day appeal period is not a prerequisite to the district court's acquisition of subject matter jurisdiction. *MacDonald v. North Dakota Comm'n on Medical Competency*, 492 N.W.2d 94 (N.D. 1992).

District court's judgment was void for want of jurisdiction and not appealable, where it

NDWC Claim #92-392674

March 14, 2003

Nilles, Hansen & Davies LTD.  
1800 Radisson Tower  
P.O.Box 2626  
Fargo, N.D. 58108

Ms. Jacqueline Anderson:

I filed a timely appeal with the District Court of Grand Forks within the thirty days as outlined with the Final Findings of Fact received and hand delivered by the Grand Forks Sheriff's Department from North Dakota Workers Compensation Bureau.

This appeal filed is in reference to the Administrative Hearing conducted by ALJ Al Wahl on the conclusion of this hearing on October 10, 2002.

Included with this filing on January 10, 2003, was a copy of the final Findings of Fact received from North Dakota Workers Compensation Bureau.

These exhibits presented by me and also a copy of this Final Order is, as I was informed on the afternoon of March 14th by a representative of the District Court, is to be reviewed by Judge Bruce Bohlman, of the District Court of Grand Forks.

Dudley Benson  
1609 2nd Ave No  
Grand Forks, N.D. 58203

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IN THE DISTRICT COURT, GRAND FORKS COUNTY, NORTH DAKOTA

Dudley Benson, )  
)  
)  
Plaintiff/Appellant )  
)  
vs. )  
)  
ND Workers Compensation )  
Bureau, )  
Defendant/Appellee )

Civil No. 03-C-00029  
ORDER DISMISSING APPEAL

FILED IN THE OFFICE OF  
CLERK OF DISTRICT COURT  
GRAND FORKS COUNTY, N. DAK. ON  
MAR 19 2003  
BY REBECCA ABSEY, CLERK  
Deputy

The plaintiff/appellant has filed a Notice of Appeal on January 10, 2003 from a decision of the ND Workers Compensation Bureau. There is no affidavit of service showing that the Notice of Appeal was served on the Bureau in accordance with NDCC §28-32-42 (4), and hence the appeal must be dismissed as failing to comply with the requirements of perfecting an appeal to the district court. Plaintiff/appellant also failed to comply with the statutory requirement of posting a bond under NDCC §28-32-42(6). It is therefore

**ORDERED** that the appeal is **DISMISSED**.

Dated this 18<sup>th</sup> day of March, 2003.

**BY THE COURT:**



Bruce E. Bohlman, District Judge

Copies to: Dudley Benson  
Jacqueline S. Anderson

Reference #18-03-C-00029

March 19, 2003

District Court of Grand Forks  
Grand Forks, N.D. 58206

Honorable Judge Bruce Bohlman:

Responding to your order received by mail on March 19th. I am requesting an extension to be granted for North Dakota Workers Compensation Bureau to respond to my timely filed appeal on January 10, 2003.

I was not presented with any instructions when I filed my appeal on January 10th by the clerk of District Court, only presented with a receipt for my filing fees.

I was giving the impression that the Court would notify the Bureau that I had filed a timely appeal to the Findings of Fact received from the Bureau on this day.

I inquired with the District Court on the afternoon of March 14th and was informed at that time that it was my duty to inform the Bureau that I had filed an appeal.

Upon returning home I immediately sent a letter to Ms. Jacqueline Anderson, representing North Dakota Workers Compensation Bureau, copy enclosed for your review, of this timely appeal filed in reference to the Findings of Fact from the Bureau.

I am begging for forbearance to be granted by the District Court and be granted an extension for the Bureau to respond to my appeal.

Again, because of not receiving the proper instructions from the clerk of District Court when I filed my appeal, I am requesting that reconsideration be granted for an extension for a response from the Bureau to my appeal.

Upon review of the ND Century Code 28-32-42 at the UND Law Library, I did not review any reference to listed 28-32-42-6 as outlined in your order dated March 18, 2003.

Thank you for your needed assistance and reconsideration.

Dudley Benson  
1609 2nd Ave No  
Grand Forks, N.D. 58203

IN THE DISTRICT COURT, GRAND FORKS COUNTY, NORTH DAKOTA

APR - 3 2003  
REBECCA ASSEY, CLERK  
Deputy

Dudley Benson, )  
)  
)  
Plaintiff/Appellant, )  
)  
vs. )  
ND Workers Compensation )  
Bureau, )  
)  
Defendant/Appellee )

Civil No. 03-C-00029  
ORDER DENYING REQUEST FOR  
RECONSIDERATION

The plaintiff/appellant requests the Court to reconsider its Order of March 18, 2003 on the grounds that he was not represented by counsel in this matter and that the Clerk of the District Court did not provide him with instructions concerning the filing and perfection of an appeal from a final order of the defendant/appellee.

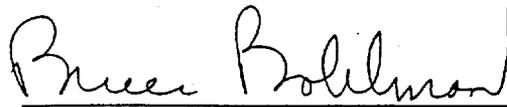
The fact remains that the Notice of Appeal was not properly served and was ineffective to perfect the appeal with the District Court, under NDCC §28-32-42 (1) and (4), within thirty (30) days after the notice of the final order has been given. The plaintiff/appellant indicates in his papers that he received the final order and other documents from the Sheriff's office on December 17, 2002. The Notice of Appeal was not properly served within the thirty (30) day period and the Court has no jurisdiction or ability to extend the time for proper filing of the Notice of Appeal. In effect, if the Notice of Appeal is not properly served and filed within the thirty (30) days allowed for that purpose, the Court is not able to take any action on the appeal and it must be dismissed for lack of subject matter jurisdiction. *Basin Electric Power Cooperative v. North Dakota Workers Compensation Bureau*, 541 NW2d 685 (ND 1996). This is true regardless of the fact that the Appellant was not represented by counsel. The Clerk of District Court cannot give legal advice to litigants and the Appellant in this case was responsible for taking the necessary steps to perfect the appeal. It is therefore

**ORDERED** that the motion to reconsider the Court's Order of March 18, 2003 is **DENIED** and the Judgment of Dismissal attached hereto shall be entered by the Clerk of the District Court.

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Dated this 2<sup>nd</sup> day of April, 2003.

**BY THE COURT:**



Bruce E. Bohlman, District Judge

Copies to: Dudley Benson  
Jacqueline S. Anderson

**Rule 4. Appeal — When taken.**

(a) **Appeals in civil cases.** In a civil case the notice of appeal required by Rule 3 must be filed with the clerk of the trial court within 60 days of service of notice of entry of the judgment or order appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the trial court by any party under the North Dakota Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision commences to run and is to be computed from service of notice of the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under N.D.R.Civ.P. 50(b); (2) granting or denying a motion under N.D.R.Civ.P. 52(b), to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under N.D.R.Civ.P. 54, for attorneys' fees; (4) granting or denying a motion under N.D.R.Civ.P. 59, to alter or amend the judgment; (5) denying a motion for a new trial under N.D.R.Civ.P. 59; or (6) granting or denying a motion for relief under N.D.R.Civ.P. 60, if the motion is served and filed no later than 15 days after notice of entry of judgment.

Upon a showing of excusable neglect, the trial court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the time otherwise prescribed for appeal by this subdivision, other rule, or statute. Such an extension may be granted before or after the time otherwise prescribed by this subdivision has expired; but if a request for an extension is made after such time has expired, it must be made by motion with such notice as the trial court deems appropriate.

**(b) Appeals in criminal cases.**

(1) In a criminal case the notice of appeal by a defendant must be filed with the clerk of the trial court within 10 days after the entry of the judgment or order appealed from. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment.

(2) If an appeal by the state is authorized by statute, the notice of appeal must be filed with the clerk of the trial court within 30 days after the entry of the judgment or order appealed from.

(3) A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket. A notice of appeal filed after the announcement of a decision, sentence, or order but before entry of the judgment or order must be treated as filed after the entry and on the day thereof. Upon a showing of excusable neglect the trial court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

(c) **Appeals in Contempt Cases.** A notice of appeal shall be filed with the clerk of the trial court within 60 days after entry of judgment or order appealed from. Upon a showing of excusable neglect the trial court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

(d) **Appeal in Post-Conviction Proceeding.** A notice of appeal must be filed with the clerk of the trial court within 60 days of service of notice of entry

**Notice of Judgment or Order.**

Where wife had actual notice of entry of judgment of divorce, as evidenced by her first notice of motion to vacate original judgment, purpose of this section was fulfilled, and accordingly, time within which she could appeal began to run from date she served her notice, notwithstanding that record did not disclose that written notice of entry of judgment was served upon her by husband. *Klaudt v. Klaudt*, 156 N.W.2d 72 (N.D. 1968).

An appealing party may waive the service of a written notice of the entry of a district court order and may appeal from such an order before it is filed with the district court clerk. *Skinner v. American State Bank*, 189 N.W.2d 665 (N.D. 1971).

It is the intent of this section to prevent the lapse of a party's right to appeal by tolling the statutory period within which an appeal can be taken until the party has received written notice of the entry of judgment or written notice of the adverse order. *Dobler v. Malloy*, 190 N.W.2d 46 (N.D. 1971).

**Rule 5.**

[Reserved for future use.]

**Rule 6.**

[Reserved for future use.]

**Rule 7. Bond for costs on appeal in civil cases.**

Unless (1) an appellant is exempted by law, (2) an appellant has filed a supersedeas bond or other undertaking which includes security for the payment of costs on appeal, or (3) the appellee waives in writing the requirement, in civil cases a bond for costs on appeal or equivalent security shall be filed by the appellant with the clerk of the trial court with the notice of appeal; but security shall not be required of an appellant who is not subject to costs. The bond or equivalent security shall be in the sum or value of \$250 unless the trial court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the supreme court may direct if the judgment is modified. The bond must show the place of residence of each surety. If a bond or equivalent security in the sum or value of \$250 is given, no approval thereof is necessary. After a bond for costs on appeal is filed, an appellee may raise for determination by the clerk of the trial court objections to the form of the bond or to the sufficiency of the surety. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

**EXPLANATORY NOTE**

This rule incorporates the bond for costs into the Appellate Rules rather than the statutes. The amount of the bond is the same under this adaptation of Fed.R.App.P. 7, as under former N.D.C.C. § 28-27-09.

Unless the appellant falls within one of the listed exceptions, Rule 7 requires that a bond for costs or equivalent security be filed with the notice of appeal in civil cases. The rule does not preclude the filing of a supersedeas bond and a bond for costs in the same bond. (See Rule 8.)

Rule 10(b) requires that proof of service of the order for transcript and a copy of the stipulation of excluded portions, if any, be filed with the clerk of the trial court with the notice of appeal. Rule 12(a) requires that the docket fee accompany the filing of the notice of appeal. Thus in most civil cases the filing of the notice of appeal, the bond for costs or equivalent security, proof of service of the order for transcript, the stipulation of excluded transcript portions, if any, and payment of the docket fee must occur at the same time.

Although filing the bond for costs or equivalent security is not required to invoke the jurisdiction of the Supreme Court and does not affect the validity of the appeal, Rule 3(a) provides that failure

**Suspension of Time.**

Where court vacated and subsequently reinstated its judgment, time for taking appeal was suspended until after date of service of order reinstating judgment. *Huso v. Bismarck Pub. Sch. Bd.*, 219 N.W.2d 100 (N.D. 1974).

**Timeliness.**

Issue of timeliness of appeal was jurisdictional and supreme court was required to consider it on its own motion regardless of whether a motion for dismissal had been made. *Huso v. Bismarck Pub. Sch. Bd.*, 219 N.W.2d 100 (N.D. 1974).

**Collateral References.**

4 C.J.S. Appeal and Error, §§ 264-297; 24 C.J.S. Criminal Law, § 1686.

Bankruptcy, right of creditor who has not filed timely petition for review of referee's order to participate in appeal secured by another creditor, 22 A.L.R.3d 914.

of the appellant to take this step is grounds for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. (See, e.g., *Community Hospital v. Olson*, 246 N.W.2d 91 (N.D. 1976).)

**Sources:** Joint Procedure Committee Minutes of May 25-26, 1978, pages 3-5; March 16-17, 1978, page 1; January 12-13, 1978, pages 3-4; October 27-28, 1977, pages 12-13. Fed.R.App.P. 7.

**Statutes Affected:**

Superseded: N.D.C.C. §§ 28-27-09, 28-27-10, 28-27-20, 28-27-21, 28-27-22, and 28-27-23.

**Cross Reference:** N.D.R.App.P. 3. — Appeal as of Right — How Taken; N.D.R.App.P. 7. — Bond for Costs on Appeal in Civil Cases; N.D.R.App.P. 10. — The Record on Appeal; N.D.R.App.P. 12. — Docketing the Appeal.

**Cross-References.**

Undertaking on part of appellant, see §§ 28-27-09.1, 28-27-10, 28-27-24 and 28-27-25.

**Failure to Comply with Rule.**

Failure to timely secure a cost or supersedeas bond is not jurisdictional and does not mandate dismissal of the appeal; dismissal in such case rests within the discretion of the court on appeal. *Latendresse v. Latendresse*, 253 N.W.2d 70 (N.D. 1979).

The fact that bond may not have been conditioned in an entirely appropriate form as required by this rule is not automatic ground for dismissal. *Farmers State Bank v. Thompson*, 372 N.W.2d 862 (N.D. 1985).

The failure to file a cost bond is not an automatic ground for dismissal. In exercising discretion to determine whether to dismiss an appeal, the Supreme Court inquires into such matters as the prejudice to the other party by appellant's failure to comply with the rules; the demonstrated justification for the appellant's failure to comply with the rules; the curing of the defect prior to oral argument so that the merits may be evaluated; and the merits of the underlying appeal. *Federal Land Bank v. Overboe*, 426 N.W.2d 1 (N.D. 1988).

Appeal in mortgage foreclosure action was dismissed, where appellant failed to demonstrate sufficient justification for his failure to comply with a court order to file a cost bond, thereby prejudicing appellee bank since there was no security for any eventual payment of

costs that could be awarded the bank. *Federal Land Bank v. Overboe*, 426 N.W.2d 1 (N.D. 1988).

Appeal was dismissed, where appellant had not given security for payment of any costs awarded to appellee and made no effort to cure this defect or to justify its failure. *United Accounts, Inc. v. Teladvantage, Inc.*, 524 N.W.2d 605 (N.D. 1994).

**Waiver.**

Unlike section 27-01-07, which allows any court in the judicial system to waive, at its discretion, filing fees for indigents in a civil action, the language of this rule indicates that a request concerning the bond for costs on appeal must be made to the trial court. *Federal Land Bank v. Overboe*, 426 N.W.2d 1 (N.D. 1988).

Where a party did not follow the correct procedure for attempting to secure a waiver of the cost bond under this rule, the supreme court would not consider his allegation that a refusal to waive the bond would violate Const. art. 1, § 9. *Federal Land Bank v. Overboe*, 426 N.W.2d 1 (N.D. 1988).

**Collateral References.**

See generally, 5 Am. Jur. 2d, Appellate Review, §§ 358-361.

4 C.J.S. Appeal and Error, § 325 et seq.

Measure and amount of damages recoverable under supersedeas bond in action involving recovery or possession of real estate, 9 A.L.R.3d 330.

**Rule 8. Stay or injunction pending appeal.**

(a) **Stay must ordinarily be sought in the first instance in trial court; motion for stay in supreme court.** Application for a stay of the judgment or order of a trial court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the trial court. A motion for such relief may be made to the supreme court or to a justice thereof, but the motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally would be considered by the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single justice of the court.

SCHOOL OF LAW - ROOM 161  
 UNIVERSITY OF NORTH DAKOTA

the docket fee to accompany the filing of the notice of appeal, and Rule 7 requires a bond for costs or equivalent security be filed with the notice of appeal in civil cases.

Subdivision (a) provides failure to follow any Rule may result in dismissal of the appeal, and award of costs, or other appropriate action.

Subdivision (d) was amended, effective March 1, 1999, to allow copies to be sent via a carrier as an alternative to mail.

**Sources:** Joint Procedure Committee Minutes of January 29-30, 1998, page 21; February 19-20, 1987, pages 4-5; September 18-19, 1986, pages 12-13; May 25-26, 1978, page 3; March 16-17, 1978, page 1; January 12-13, 1978, pages 2-3; September 15-16, 1977, pages 4-5. Rule 3, Fed.R.App.P.; § 3.13(b) ABA Standards Relating to Appellate Courts (Approved Draft, 1977).

**Statutes Affected:**

Superseded: N.D.C.C. § 28-18-09, 28-27-05, 28-27-26, 29-28-05, 29-28-20, 29-28-21.

**Cross Reference:** N.D.R.App.P. 7 (Bond for Costs on Appeal in Civil Cases), N.D.R.App.P. 10 (The Record on Appeal), N.D.R.App.P. 11 (Transmission and Filing of the Record), N.D.R.App.P. 12 (Docketing the Appeal), and N.D.R.App.P. 31 (Filing and Service of Briefs), N.D.R.Civ.P. 54(b) (Judgment Upon Multiple Claims or Involving Multiple Parties).

**Cross-References.**

Bond for costs on appeal in civil cases, see N.D.R.App.P. 7.

Briefs, filing and service, see N.D.R.App.P. 31.

Criminal cases, appeal by state, see §§ 29-28-02, 29-28-07, 29-28-12, 29-28-35.

Criminal cases, review by appeal, see N.D.R.App.P. 1.

Criminal cases, who may appeal, see § 29-28-02.

Docketing the appeal, see N.D.R.App.P. 12.

Intermediate orders reviewable, see N.D.R.App.P. 35.

Judgment upon multiple claims or involving multiple parties, see N.D.R.Civ.P. 54(b).

Motion for new trial, see N.D.R.Civ.P. 59.

Record on appeal, transmission and filing of record, see N.D.R.App.P. 10, 11.

**Appeal in Quick-take Proceeding.**

Although the Constitution and statutes use the term "appeal" to describe this procedure in quick-take proceedings, the court recognizes that it is not, in fact, an appeal from a lower court to a higher court; the "appeal" envisioned by these proceedings is, rather, the first step in a judicial proceeding; therefore, Subdivision (c) specifying the contents of a notice of appeal in appellate proceedings, does not apply. *Aalund v. Williams County*, 442 N.W.2d 900 (N.D. 1989).

**Bond.**

The fact that bond may not have been conditioned in an entirely appropriate form as required by Rule 7 is not automatic ground for dismissal. *Farmers State Bank v. Thompson*, 372 N.W.2d 862 (N.D. 1985).

**Comparison with Federal Law.**

As rule N.D.R.App.P. 3 is substantially adopted from Fed.R.App.P. 3, the state court properly looks to interpretative federal law for guidance in applying the rule. *Mees v. Erath*, 462 N.W.2d 161 (N.D. 1990), rev'd on other grounds, 466 N.W.2d 135 (N.D. 1991).

**Cross Appeals.**

Appellee may raise an issue on cross appeal that is not raised by appellant's appeal if appellee complies with the statutory requirements for taking and perfecting the issue for

appeal. *Kolling v. Goodyear Tire & Rubber Co.*, 272 N.W.2d 54 (N.D. 1978).

Litigant who did not file a cross-appeal concerning the dismissal of her cross-claim could not be awarded costs and attorney's fees on her appeal. *Hovet v. Hebron Pub. Sch. Dist.*, 419 N.W.2d 189 (N.D. 1988).

**Dismissal of Appeal.**

Where appellant failed to take any steps other than timely filing of notice of appeal, there were sufficient grounds for court to dismiss appeal. *City of Jamestown v. Rolfzen*, 238 N.W.2d 661 (N.D. 1976).

Where party filed notice of appeal and "Specifications of Error" with the clerk of the district court on April 26, 1976, then took no further action whatsoever, the supreme court dismissed the appeal under this rule on September 29, 1976. *Community Mem. Hosp. v. Olson*, 246 N.W.2d 91 (N.D. 1976).

Dismissal of appeal was warranted where appellant failed to take any steps to pursue the appeal other than to file a notice of appeal and bond for costs, and no attempt was made to show the reason for the delay, to present any justifiable reasons why the motion to dismiss should not be granted, or to show good cause for relief of any kind. *Dossenko v. Dossenko*, 294 N.W.2d 909 (N.D. 1980).

Failure to comply with the Rules of Appellate Procedure may be grounds for dismissal of the appeal. The determination of whether or not to dismiss an appeal for failure to comply with the Rules of Appellate Procedure rests wholly within the discretion of the supreme court. *Bye v. Federal Land Bank Ass'n*, 422 N.W.2d 397 (N.D. 1988).

Appeal in mortgage foreclosure action was dismissed, where appellant failed to demonstrate sufficient justification for his failure to comply with a court order to file a cost bond, thereby prejudicing appellee bank since there was no security for any eventual payment of costs that could be awarded the bank. *Federal Land Bank v. Overboe*, 426 N.W.2d 1 (N.D. 1988).

Although a notice of appeal failed to designate the document from which the party was appealing, and thus, failed to comply with this rule, the court did not dismiss the appeal. *Sabot v. Fargo Women's Health Org., Inc.*, 500 N.W.2d 889 (N.D. 1993).

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April 7, 2003

Rebecca Absey  
Clerk of District Court  
Grand Forks County District Court  
P.O. Box 5979  
Grand Forks, ND 58206-5979

**RE: Dudley Benson v. North Dakota Workers Compensation Bureau**  
**Civil No. 03-C-00029**  
**Claim No.: 1992 392,674**  
**Our File No.: 95214.570**

Dear Ms. Absey:

I enclose herewith for filing is Notice of Entry of Judgment.

Sincerely yours,



Jacqueline S. Anderson  
Special Assistant Attorney General for the  
North Dakota Workers Compensation Bureau

/jw

Enclosure

cc: Dudley Benson  
Susan Schafer

STATE OF NORTH DAKOTA )  
 )  
COUNTY OF CASS )

**AFFIDAVIT OF SERVICE**

**RE: North Dakota Workers Compensation Bureau re: Dudley Benson  
Claim No. 1992 386,631**

Jennifer R. Werhan, being first duly sworn on oath, deposes and says that she is of legal age and is a resident of Moorhead, Minnesota, not a party to nor interested in the action; that she served the attached:

**NOTICE OF ENTRY OF JUDGMENT**

on the following persons:

Dudley Benson  
1609 2nd Avenue North  
Grand Forks, ND 58203

by depositing in the United States Post Office at Fargo, North Dakota, on April 7, 2003, at 5:00 P.M. a true and correct copy thereof, enclosed in a separate sealed envelope, with postage thereon fully prepaid for First Class Mail addressed to each person above named at the above address.

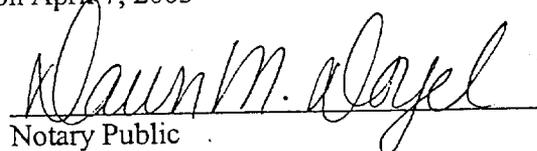
That the undersigned knows the person served to be the person named in the papers served and the person intended to be served.

  
Jennifer R. Werhan

SUBSCRIBED AND SWORN TO Before me on April 7, 2003

(SEAL)

DAWN M. DOYEL  
Notary Public, STATE OF NORTH DAKOTA  
My Commission Expires APR. 29, 2004

  
Notary Public

**Source:** S.L. 2001, ch. 293, § 12; 2001, ch. 296, § 2.

**Effective Date.**

The 2001 amendment of this section by section 2 of chapter 296, S.L. 2001 became effective August 1, 2001.

**Note.**

Section 28-32-44 was created and amended by the 2001 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 12 of chapter 293, S.L. 2001, and section 2 of chapter 296, S.L. 2001.

**Record of Proceedings.**

The "record of proceedings before the agency" consists of a wide range of documents, and is not limited to documents presented as a

result of a formal hearing; rather, the "agency record of proceedings" may include information not presented at a formal hearing. *Bashus v. North Dakota Dep't of Human Servs.*, 519 N.W.2d 296 (N.D. 1994).

**Remedy for Ex-parte Communications.**

Ex-parte communications between Worker's Compensation Bureau's outside counsel and the Bureau's Director of Claims and Rehabilitation in which the outside counsel advised the Director of Claims to reject worker's claim and drafted several versions of findings, conclusions and orders for the Director of Claims to review required reversal of the Bureau's order terminating benefits and reinstatement of the Administrative Law Judge's recommended findings, conclusions and order. *Scott v. North Dakota Workers Comp. Bureau*, 1998 ND 221, 587 N.W.2d 153 (1998).

**28-32-45. Consideration of additional or excluded evidence.** If an application for leave to offer additional testimony, written statements, documents, exhibits, or other evidence is made to the court in which an appeal from a determination of an administrative agency is pending, and it is shown to the satisfaction of the court that the additional evidence is relevant and material and that there were reasonable grounds for the failure to offer the evidence in the hearing or proceeding, or that the evidence is relevant and material to the issues involved and was rejected or excluded by the agency, the court may order that the additional evidence be taken, heard, and considered by the agency on terms and conditions as the court may deem proper. After considering the additional evidence, the administrative agency may amend or reject its findings of fact, conclusions of law, and order and shall file with the court a transcript of the additional evidence with its new or amended findings of fact, conclusions of law, and order, if any, which constitute a part of the record with the court.

**Source:** S.L. 2001, ch. 293, § 12.

**Basis for Adducing Additional Evidence.**

A party may apply to the court in which an appeal is pending for leave to offer additional evidence; if the court finds the additional evidence is material and there were reasonable grounds for the failure to adduce the evidence at the administrative hearing, the court may order the additional evidence be taken, heard and considered on terms and conditions as it deems proper. *Otto v. North Dakota Workers Comp. Bureau*, 533 N.W.2d 703 (N.D. 1995).

Where physician and his counsel chose not to attend administrative hearing and did not present any evidence at the hearing, the physician failed to prove reasonable grounds for the failure to adduce evidence and, therefore, district court properly denied physician's motion for leave to offer additional evidence

while his appeal of license revocation was pending. *Larsen v. Commission on Medical Competency*, 1998 ND 193, 585 N.W.2d 801 (1998).

**Failure to Augment Record.**

Where appellant fails to augment the record under procedures set out in this section, that evidence is not included in the record on appeal and will not be considered by the reviewing court. *Sprunk v. North Dakota Workers Comp. Bureau*, 1998 ND 93, 576 N.W.2d 861 (1998).

**Jurisdiction.**

The language of this section evinces a clear legislative intent that the district court retain jurisdiction when the matter is remanded for the limited purpose of considering additional, rejected, or excluded evidence. *Luthle v. Burleigh County Social Servs.*, 474 N.W.2d 497 (N.D. 1991).

SUMMARY

1 Appellant again wishes to empathize discrepancy noted in order  
2 issued by District Court by Judge Bohlman on March 19, 2003  
3 and April 3, 2003, as Judge Bohlman added to this order 28-32-  
4 42 (1), that was not previously listed in prior order.

5 Plaintiff admits possible negligence to 28-32-42 (4) following  
6 filing of appeal to District Court on January 10, 2003.

7 Appellant did not have any prior knowledge of these Century  
8 Codes as listed by Judge Bohlman until receiving order from  
9 Judge Bohlman and had to research these codes at the UND Law  
10 Library to fully understand there context, court order dated  
11 March 19, 2003.

12 Appellant argues in his behalf that a timely appeal was filed  
13 within the 30-day time frame. I received the Findings of Fact  
14 on the evening of December 17, 2002 and filed his appeal with  
15 District Court on January 10, 2003. and therefore the ruling  
16 based on NDCC 28-32-42 (4) by District Court, Grand Forks, by  
17 Judge Bohlman, be unfounded and argued by the Supreme Court in  
18 behalf of Appellant.

19 Ruling dated March 19, 2003, from District Court, in order  
20 dismissing appeal, Judge Bohlman cites NDCC 28-32-42 (6), that  
21 Appellant failed to comply with requirement of posting bond,  
22 following filing of appeal with District Court on January 10,  
23 2003.

24 Appellant cites Rule 7, North Dakota Rule of Appellate Procedure,  
25 states that failure to secure a cost or supersedeas bond is not  
26 jurisdictional and does not mandate dismissal of the appeal,

1 Latendresse v. Latendess, 283 N.W. 2d 70 (N.D. 1979). Also  
2 cited by Appellant is on merits of requirements of securing  
3 needed bond in appeal is in ruling of Federal Land Bank v.  
4 Overboe, 426 N.W. 2d. 1 (N.D. 1988). Also stated under Rule 3,  
5 is as noted: The fact that bond may not have been conditioned  
6 in an entirely appropriate form as required by Rule 7 is not  
7 automatic ground for dismissal. (Farmers State Bank v. Thompson,  
8 372 N.W. 2d 862 N.D. 1985).

9 Again, Appellant admits to possible negligent to only NDCC 28  
10 32-42 (4) and strongly agues that I an not in violation of NDCC  
11 28-32-42 (6) as previously noted and outlined by the North Dakota  
12 Rules of Appellant Procedure.

13 Appellant also argues that due process was not granted as noted  
14 and listed in NDCC-32-21. Plaintiff was not provided with any  
15 questions prior to my administrative hearing on October 10, 2002,  
16 by legal representative of North Dakota Workers Compensation  
17 Bureau and was not provided with a written specification of  
18 issues or questions prior to his administrative hearing claim-  
19 citing Saakian v. North Dakota Workers Compensation Bureau, 1998  
20 N.D. 227, 587 N.W.2d 166 (1998).

21 Appellant also cites NDCC 28-32-45- Additional exhibits received  
22 following Administrative Hearing were relevant to documents  
23 submitted in support of Appellant's application for benefits.  
24 Requested medical files from North Dakota Workers Compensation  
25 Bureau were received following the October 10, 2002, hearing from  
26 from Bismarck, dated October 9, and unable to review and present  
27 at my hearing in a timely time frame.

1 In conclusion, Appellant argues that if requested medical  
2 records were received from North Dakota Workers Compensation  
3 Bureau in a proper time frame prior to my Administrative  
4 Hearing on October 10, 2002, rather than a day after, all  
5 additional hours of legal research, filing appeal with District  
6 Court, filing appeal with the Supreme Court of North Dakota  
7 and now attempting a legal brief to substantiate substance in  
8 my behalf, would not have had to occur.

9 Upon review of all documents and North Dakota Century Codes  
10 noted in my brief by the Supreme Court of North Dakota, Appellant  
11 is requesting the Court to review and order agency (North Dakota  
12 Workers Compensation Bureau) to present additional evidence and  
13 medical documents before a Administrative Law Judge as outlined  
14 in NDCC 28-32-49.

20030155

CERTIFICATE OF SERVICE

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

AUG 1 2003

STATE OF NORTH DAKOTA

Copies also sent to  
Ms. Jacqueline Anderson  
this same day  
Monday