V. J. asks the Utah Labor Commission to review Administrative Law Judge Hann's dismissal of Mrs. J.'s claim for death benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

Henning J. died on January 26, 2002. On May 5, 2003, Mrs. J., his widow, filed an Application For Hearing with the Commission to compel Diamond Express and its insurance carrier, Truck Insurance Exchange, to pay death benefits to Mrs. J. for Mr. J.'s death. On October 2, 2003, Judge Hann dismissed Mrs. J.'s Application because it was not filed within one year of Mr. J.'s death, as required by §34A-2-417(3) of the Act.

In requesting Commission review of Judge Hann's dismissal of her claim, Mrs. J. contends that, under the facts of this case, the Commission should recognize an exception to the one-year limitation of §34A-2-417(3). Alternatively, Mrs. J.. contends that application of §34A-2-417(3)'s one-year limitation period would be unconstitutional under the facts of her claim.

FINDINGS OF FACT

Henning J. died on January 26, 2002, while employed as a truck driver for Diamond. At the time of his death, Mr. J. was married to Vivian J.. In a letter dated March 8, 2002, Truck Insurance Exchange notified Mrs. J. that it would not pay her any workers' compensation death benefits for her husband's death. Other than the summary information contained in the letter itself, Truck Insurance Exchange provided no other information to Mrs. J..

Immediately after receiving Truck Insurance Exchange's letter, Mrs. J. engaged the services of attorneys in Missouri to pursue her claim. However, on October 31, 2002, the Missouri attorneys withdrew, leaving Mrs. J. with the understanding that she had two years from the date of her husband's death to file an Application For Hearing. Several months later, Mrs. J. obtained the services of her current attorney, who filed an Application on her behalf on May 5, 2003.

DISCUSSION AND CONCLUSION OF LAW

Sections 34A-2-401 and 34A-2-414 of the Act provide benefits to the dependants of workers who die from work-related accidental injuries. However, §34A-2-417(3) of the Act bars a claim for death benefits if an application for hearing is not filed within one year of the date of the worker's death.

It is undisputed that Mrs. J. did not file her Application for death benefits until more than one year had elapsed from the date of her husband's death. However, she justifies the untimely filing of

her Application on the grounds that Truck Insurance Exchange failed to use the proper form (Industrial Accidents Form 89, "Notice of Denial of Claim,") to notify her that her claim was denied. Instead, Truck Insurance Exchange used a simple letter for that purpose. The Commission has carefully reviewed Rule R612-1-3.E, which defines Form 89 and explains its use. The rule is not a model of clarity, but it does not mandate use of Form 89. It also allows other written forms of notice of denial. Furthermore, the Industrial Accidents Division has permitted use of other written forms of denial in the past. The Commission therefore concludes it was permissible for Truck Insurance Exchange to use a letter, rather than Form 89, to deny Mrs. J.'s claim.

Mrs. J. also points out that Truck Insurance Exchange failed to comply with §34A-2-407(5) of the Act by providing her with copies of the "Employer's First Report of Accident" and "Employees' Guide to Workers' Compensation." As a preliminary matter, the Commission notes that §34A-2-407(5) requires the referenced documents be provided to "employees." Arguably, the statute's directive does not extend to "dependents" such as Mrs. J.. But apart from this question of semantics, it is undisputed that Mrs. J. was aware by March 8, 2002, that Truck Insurance Exchange had denied her claim. She then immediately obtained legal representation to challenge that denial. Her legal counsel later withdrew and, unfortunately, gave her incorrect advice regarding the filing deadline. Under these circumstances, the Commission cannot attribute Mrs. J.'s failure to timely file her Application to Truck Insurance Exchange.

Mrs. J. also contends that §34A-2-417(3)'s one-year limitation is unconstitutional as it applies to this case. The Commission does not agree with that argument, but in any event lacks authority to consider such constitutional issues.

In summary, the Commission is sympathetic to Mrs. J.'s unfortunate situation, but believes it must apply §34A-2-417(3)'s one-year limitation as a bar to Mrs. J.'s claim.

ORDER

The Commission affirms Judge Hann's dismissal of Mrs. J.'s Application For Hearing and denies Mrs. J.'s motion for review. It is so ordered.

Dated this 20th day of April, 2004.

R. Lee Ellertson, Commissioner