

**ILLINOIS OFFICIAL REPORTS**  
**Appellate Court**

***Supreme Catering v. Illinois Workers' Compensation Comm'n,***  
**2012 IL App (1st) 111220WC**

Appellate Court Caption	SUPREME CATERING, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION <i>et al.</i> (Rene Diaz, Appellee).
District & No.	First District, Workers' Compensation Comm'n Division Docket No. 1-11-1220WC
Filed	August 20, 2012
Held <i>(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)</i>	The Workers' Compensation Commission's order awarding temporary total disability and medical benefits, but also remanding defendant's claim to the arbitrator for a determination of the need for vocational rehabilitation, was an interlocutory order that was not appealable and further administrative proceedings were required, and therefore, the subsequent orders of the trial court and the Commission were vacated and the cause was remanded to the arbitrator as originally ordered.
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 09-L-50665; the Hon. James C. Murray, Jr., Judge, presiding.
Judgment	Vacated and remanded.

Counsel on Appeal Richard S. Zenz, of Roddy, Leahy, Guill & Zima, Ltd., of Chicago, for appellant.

Stewart C. Orzoff, of Orzoff Law Offices, of Northbrook, for appellee.

Panel JUSTICE STEWART delivered the judgment of the court, with opinion. Presiding Justice McCullough and Justices Hoffman, Hudson, and Holdridge concurred in the judgment and opinion.

### OPINION

¶ 1 The sole issue raised by the parties in this appeal is whether the claimant, Rene Diaz, was an employee of Supreme Catering (Supreme), or an independent contractor, at the time of his injury. However, this case requires that we again consider whether a decision of the Illinois Workers' Compensation Commission (Commission) remanding to the arbitrator for further proceedings on the issue of vocational rehabilitation is final and appealable or interlocutory in nature. Accordingly, we entered an order, *sua sponte*, requiring the parties to address the issue of jurisdiction of the circuit court at oral argument. Since we have determined that the order of the Commission was interlocutory, we are unable to reach the merits of this appeal.

### ¶ 2 BACKGROUND

¶ 3 The claimant filed an application for adjustment of claim against Supreme seeking workers' compensation benefits for injuries sustained in a motor vehicle accident on May 16, 2005, while he was operating a catering truck for Supreme. On February 20, 2008, the claim proceeded to an arbitration hearing under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2006)). All issues were presented for determination, including the nature and extent of any permanent disability suffered by the claimant. The claimant presented medical bills in the amount of \$141,917.72 and claimed temporary total disability (TTD) benefits of \$200 per week for 52 5/7 weeks. Supreme did not dispute the fact of the claimant's injury. Its sole defense to the payment of compensation was based upon its position that the claimant was an independent contractor rather than an employee of Supreme. Since we are unable to reach the merits of this issue, it is not necessary that we recite the evidence presented at the hearing. The arbitrator found that the claimant failed to prove that an employer-employee relationship existed and denied his claim for compensation. Since compensation was denied on that basis, the arbitrator did not reach any of the other issues.

¶ 4 The claimant sought review of the arbitrator's decision. On May 11, 2009, the Commission filed its decision and opinion on review. The Commission reversed the decision

of the arbitrator and found that an employer-employee relationship did exist between Supreme and the claimant. The Commission ordered Supreme to pay the claimant TTD benefits in the amount of \$200 per week for 52 5/7 weeks. The Commission further ordered Supreme to pay \$141,917.72 for necessary medical expenses. Although the Commission recited that it considered “the nature and extent of the injury,” it reached no decision on that issue. It noted that the claimant’s treating physician had recommended a functional capacity evaluation and that Supreme’s independent medical examiner “indicated the likelihood that (the claimant) would need to undergo rehabilitation” and that after such rehabilitation he “may be able to return to work.” Accordingly, the Commission remanded the case to the arbitrator for a determination of the claimant’s “need for vocational rehabilitation and/or maintenance,” as well as any need for further treatment, and a determination of the nature and extent of his disability pursuant to *Thomas v. Industrial Comm’n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). One commissioner dissented, agreeing with the arbitrator’s decision on the issue of the employer-employee relationship.

¶ 5 Supreme appealed the Commission’s decision to the circuit court. On April 19, 2010, the circuit court determined that the Commission’s reversal on credibility grounds was not sufficiently explained and remanded the case to the Commission to explain the basis for its credibility findings. On February 9, 2011, the Commission entered its decision on remand, explaining the basis for its ruling. Upon further review, on March 31, 2011, the circuit court entered an order confirming the Commission’s decision. Supreme filed a timely notice of appeal.

¶ 6 ANALYSIS

¶ 7 Although the parties did not raise the issue of the circuit court’s jurisdiction in this appeal, this court is required to do so *sua sponte*, for if the circuit court lacked subject matter jurisdiction, then its orders are void and of no effect. *Rojas v. Illinois Workers’ Compensation Comm’n*, 406 Ill. App. 3d 965, 970, 942 N.E.2d 668, 672 (2010). The failure of a party to object to the lack of subject matter jurisdiction cannot confer jurisdiction upon the court. *Taylor v. Industrial Comm’n*, 221 Ill. App. 3d 701, 703, 583 N.E.2d 4, 6 (1991). Subject matter jurisdiction either exists or it does not, and it cannot be waived, stipulated to, or consented to by the parties. *Jones v. Industrial Comm’n*, 335 Ill. App. 3d 340, 343, 780 N.E.2d 697, 700 (2002).

¶ 8 “Only final determinations of the Commission are appealable.” *Bechtel Group, Inc. v. Industrial Comm’n*, 305 Ill. App. 3d 769, 772, 713 N.E.2d 220, 221 (1999). A judgment is final if it determines the litigation on the merits, and it is not final if the order leaves a case pending and undecided. *Honda of Lisle v. Industrial Comm’n*, 269 Ill. App. 3d 412, 414, 646 N.E.2d 318, 320 (1995). In determining whether a decision of the Commission is final, the question to be decided is whether administrative involvement in the case has been terminated or the Commission has ordered further administrative proceedings. *International Paper Co. v. Industrial Comm’n*, 99 Ill. 2d 458, 465-66, 459 N.E.2d 1353, 1357 (1984).

¶ 9 In the instant case, the Commission reversed the arbitrator’s award, determined an award of TTD benefits and medical expenses, and remanded to the arbitrator for a determination

of the claimant's need for vocational rehabilitation, his need for maintenance, and his need for further treatment, as well as the nature and extent of his permanent disability, purportedly pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). The Commission decision also provided that the remand would take place "only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed." Since the Commission did not determine the nature and extent of the claimant's disability, it implicitly decided that the claimant's condition had not yet reached permanency. The Commission awarded only temporary benefits, and remanded for further proceedings, including a determination of whether the claimant was entitled to vocational rehabilitation.

¶ 10 In *Thomas*, the supreme court held that the arbitrator need not rule prematurely on the issue of permanency, but may determine the claimant's temporary disability, and the fact that permanent disability will be determined later, upon remand, does not divest the Commission or the courts of jurisdiction to consider the temporary award, since that has been finally determined. *Bechtel Group, Inc.*, 305 Ill. App. 3d at 771-72, 713 N.E.2d at 221. Likewise, section 19(b) of the Act provides as follows:

"The Arbitrator may find that the disabling condition is temporary and has not yet reached a permanent condition and may order the payment of compensation up to the date of the hearing, which award shall be reviewable and enforceable in the same manner as other awards, and in no instance be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, but shall be conclusive as to all other questions except the nature and extent of said disability." 820 ILCS 305/19(b) (West 2006).

The Commission's reference to *Thomas*, and its recitation that its remand order would be effective only after judicial review, creates the appearance that its decision is appealable. However, neither *Thomas*, nor section 19(b) of the Act, permits "*carte blanche* judicial review of nonfinal decisions." *Bechtel Group, Inc.*, 305 Ill. App. 3d at 772, 713 N.E.2d at 221. Further, the Commission cannot, by the terms of its order, "declare a nonfinal order to be reviewable." *Id.*

¶ 11 Here, the Commission, having determined that the claim is compensable, not only awarded TTD and medical benefits, but also remanded to the arbitrator for a determination of vocational rehabilitation benefits. It has long been held that a remand for a determination of vocational rehabilitation benefits renders the remand order interlocutory and not appealable.

¶ 12 In *International Paper*, the supreme court determined that a decision of the Commission remanding the case to the arbitrator for further proceedings was not a final order. In that case, the arbitrator awarded the claimant compensation for TTD for a period of 45 4/7 weeks and permanent partial disability (PPD) to the extent of 15% of the use of her right arm. *International Paper*, 99 Ill. 2d at 459, 459 N.E.2d at 1353. On review, the Commission found that the claimant's condition had not reached a state of permanency, reversed the arbitrator's award for PPD, extended the TTD award to 90 weeks, found that the claimant

was entitled to additional medical expenses, and remanded the cause to the arbitrator for rehearing on the question of a vocational rehabilitation award. *Id.* The court determined that the decision of the Commission, remanding for further proceedings on the issue of vocational rehabilitation, by its own terms, mandated further administrative proceedings. *International Paper*, 99 Ill. 2d at 466, 459 N.E.2d at 1357. The court found that the circuit court did not have jurisdiction to review the Commission's decision because the case reached the circuit court before administrative involvement had been terminated. *International Paper*, 99 Ill. 2d at 465-66, 459 N.E.2d at 1357. Thus, the decision of the Commission was not a final and appealable order. *International Paper*, 99 Ill. 2d at 466, 459 N.E.2d at 1357.

¶ 13 Although *International Paper* was not an expedited proceeding under section 19(b) of the Act, the decision of the Commission that the claimant's disability had not yet reached permanency placed that case in the same status as a section 19(b) proceeding. In other words, if the Commission had determined all issues regarding the payment of compensation "up to the date of the hearing," such that the decision would be "conclusive as to all other questions except the nature and extent of said disability," under section 19(b) the Commission's decision would have been reviewable. However, the Commission also remanded to the arbitrator for a determination of a vocational rehabilitation plan. Prior to the decision in *International Paper*, the supreme court had ruled that "[u]ntil the claimant has completed a prescribed rehabilitation program, the issue of the extent of permanent disability cannot be determined." *Hunter Corp. v. Industrial Comm'n*, 86 Ill. 2d 489, 501, 427 N.E.2d 1247, 1252 (1981). Thus, it was the Commission's remand for a determination of a vocational rehabilitation plan that rendered the decision interlocutory rather than final and appealable. As the supreme court stated: "If judicial review is allowed before this determination is made, the courts will invariably be faced with piecemeal review of such cases, as litigants dissatisfied with the individualized rehabilitation program repeat the entire administrative and judicial review process." *International Paper*, 99 Ill. 2d at 466, 459 N.E.2d at 1357. Accordingly, in subsequent cases, where the Commission determined that the claimant's injuries had not reached permanency or which were heard pursuant to section 19(b), and where the Commission has remanded to the arbitrator for a determination of vocational rehabilitation, our courts have consistently held that the remand order is not final.

¶ 14 For example, in *Maywood Industries v. Industrial Comm'n*, 127 Ill. App. 3d 138, 468 N.E.2d 452 (1984), the arbitrator entered awards for temporary and permanent disability benefits. *Maywood Industries*, 127 Ill. App. 3d at 139, 468 N.E.2d at 453. The Commission found that the claimant's injuries had not yet reached permanency, reversed the PPD award and remanded the cause to the arbitrator for a determination of a plan for vocational rehabilitation. *Id.* The circuit court confirmed the Commission's decision. *Id.* On appeal, the court, finding *International Paper* dispositive, determined that the decision of the Commission was not final, vacated the decision of the circuit court, and remanded to the arbitrator for further proceedings. *Maywood Industries*, 127 Ill. App. 3d at 140, 468 N.E.2d at 453.

¶ 15 The same principles were applied when the arbitration hearing proceeded upon the claimant's petition for immediate hearing pursuant to section 19(b-1) of the Act. *Cardox Corp. v. Industrial Comm'n*, 186 Ill. App. 3d 946, 542 N.E.2d 1242 (1989). In *Cardox*, the

arbitrator entered an award for TTD benefits, but the Commission extended the TTD award, found that the claimant was entitled to vocational rehabilitation, and remanded to the arbitrator “for further proceedings pursuant to *Thomas*.” (Internal quotation marks omitted.) *Cardox*, 186 Ill. App. 3d at 947, 542 N.E.2d at 1242. There, as here, the Commission’s decision on review also recited that the remand would take place “only after the later of expiration of the time for filing of a Petition for Summons to the Circuit Court has expired without the filing of such a Petition, or after the time of completion of any judicial proceedings, if such a petition has been filed.” (Internal quotation marks omitted.) *Cardox*, 186 Ill. App. 3d at 948, 542 N.E.2d at 1243. The circuit court dismissed the employer’s appeal for lack of jurisdiction, finding that the remand to the arbitrator for further proceedings on the issue of vocational rehabilitation rendered the Commission’s decision interlocutory. *Id.* The appellate court affirmed, holding that since the Commission had entered a generalized order of vocational rehabilitation and remanded to the arbitrator for the development of a specific plan, the decision of the Commission was not final because administrative involvement in the case had not been completed. *Cardox*, 186 Ill. App. 3d at 950-51, 542 N.E.2d at 1244.

¶ 16 Our courts have reached the same result in expedited proceedings brought pursuant to section 19(b) of the Act. In *American Insulated Structures v. Industrial Comm’n*, 256 Ill. App. 3d 171, 627 N.E.2d 1292 (1994), the arbitrator’s award of TTD and vocational rehabilitation in a section 19(b) proceeding was affirmed by the Commission, and the case was remanded to the arbitrator for further proceedings. *American Insulated Structures*, 256 Ill. App. 3d at 173-74, 627 N.E.2d at 1294. The circuit court dismissed the employer’s appeal, finding that since the vocational rehabilitation award was stated in general terms and the arbitrator would be required to determine a specific plan on remand, the decision of the Commission was not final. *American Insulated Structures*, 256 Ill. App. 3d at 175, 627 N.E.2d at 1295. Again, the appellate court affirmed, holding that the remand for further proceedings on the issue of vocational rehabilitation rendered the Commission’s decision interlocutory. *American Insulated Structures*, 256 Ill. App. 3d at 178, 627 N.E.2d at 1297.

¶ 17 Similarly, in *Consolidated Freightways v. Illinois Workers’ Compensation Comm’n*, 373 Ill. App. 3d 1077, 870 N.E.2d 839 (2007), the Commission reversed the arbitrator’s denial of vocational rehabilitation in a section 19(b) proceeding and remanded to the arbitrator for “meaningful vocational rehabilitation.” (Internal quotation marks omitted.) *Consolidated Freightways*, 373 Ill. App. 3d at 1078, 870 N.E.2d at 840. The circuit court confirmed the Commission. *Consolidated Freightways*, 373 Ill. App. 3d at 1079, 870 N.E.2d at 840. On appeal, the court, *sua sponte*, considered whether the circuit court had jurisdiction to review the Commission’s decision. *Id.* Since the Commission entered a generalized order for vocational rehabilitation which required that a specific plan be determined on remand, the court held that the decision of the Commission was not final and appealable. *Consolidated Freightways*, 373 Ill. App. 3d at 1079, 870 N.E.2d at 841.

¶ 18 An analysis of the foregoing cases reveals that a decision of the Commission which remands the case to the arbitrator for further proceedings on the issue of vocational rehabilitation is not a final order. In such cases, it does not matter whether the remand is for the purpose of providing the specifics of a generalized plan ordered by the Commission or

for a determination of whether vocational rehabilitation should be ordered. In either case, further proceedings are required before an administrative decision is final. Likewise, it does not matter whether the remand arises in an expedited hearing where the nature and extent of permanent disability is not an issue, or in a proceeding where the Commission determines that the claimant's condition has not yet reached permanency and vacates an arbitrator's permanency award. In either type of proceeding, a remand for further hearing on the issue of vocational rehabilitation requires further administrative involvement, and the decision of the Commission is not final.

¶ 19 It is apparent in this case that the Commission's decision, remanding for a determination of the need for vocational rehabilitation, requires further administrative proceedings. Thus, its decision was not a final, appealable order, and the circuit court lacked jurisdiction on review. Consequently, the decision of the circuit court requiring the Commission to explain its credibility findings, the Commission decision on remand, and the circuit court's judgment confirming the Commission should each be vacated and this cause remanded to the arbitrator, as the Commission originally ordered, for further proceedings.

¶ 20 CONCLUSION

¶ 21 The circuit court order entered on April 19, 2010, the Commission's decision on remand entered on February 9, 2011, and the judgment of the circuit court confirming the Commission entered on March 31, 2011, are each hereby vacated for lack of jurisdiction, and this cause is remanded to the arbitrator for further proceedings.

¶ 22 Vacated and remanded.