

No. 1-11-3665

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VICTORIA MOREIRA (GALVAO),)	Petition for Direct Review of an
)	order of the Illinois Human Rights
Petitioner-Appellant)	Commission.
)	
v.)	
)	
ILLINOIS HUMAN RIGHTS COMMISSION and)	No. 2002 CF 1995
JUAN GOMEZ,)	
)	
Respondents-Appellees.)	

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Appellate court lacked jurisdiction where the petitioner failed to file a timely petition for review.

¶ 2 The petitioner, Victoria Moreira Galvao, appeals an order of the Illinois Human Rights Commission (Commission) denying her damages and awarding only limited attorney's fees relating to her charge against her former employer, Juan Gomez. For the reasons that follow, we conclude that we lack jurisdiction over this appeal, and we dismiss it.

¶ 3 In March 2002, the petitioner filed a charge with the Illinois Department of Human Rights

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(Department) alleging that Gomez had harassed her and then constructively discharged her in retaliation for her complaints. After Gomez failed to timely respond, the Commission entered a default order against him on the issue of liability, and it referred the matter to an administrative law judge (ALJ) for a hearing on damages. That hearing was originally scheduled for March 2005, but it was delayed at the petitioner's request. Later hearings, scheduled for June 2005, August 2007, October 2007, January 2008, March 2008, April 2008, and July 2008 were also delayed at the petitioner's request. When he scheduled a September 2009 hearing, the ALJ warned that no extensions would be granted except for good cause shown. When the petitioner subsequently filed a motion, without any supporting affidavit, to continue the September hearing, the ALJ denied the motion and ruled that the petitioner would receive no damages. The ALJ did, however, invite the petitioner to seek attorney's fees and costs from Gomez.

¶ 4 In October 2009, the petitioner submitted a fee petition seeking almost \$400,000 in fees and costs. In February 2010, the ALJ issued a recommended order and decision recommending that the Commission sustain the default order against Gomez and award just under \$10,000 in fees and costs. The petitioner filed exceptions to the recommended order and decision, but, on April 13, 2011, the Commission declined further review of the matter and allowed the ALJ's decision to become its own. The Commission's statement was sent to the parties by U.S. mail on April 20.

¶ 5 On June 8, 2011, the petitioner filed with the Commission a motion for an extension of time to file a petition for rehearing. The motion stated that her counsel did not receive the Commission's ruling until May 10, 2011. On June 22, the Commission denied the motion for extension as untimely. That order was sent to the parties via U.S. mail on July 25, 2011.

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¶ 6 On August 25, 2011, the petitioner filed with the Commission a motion for extension of time to file a petition for a rehearing of the denial of her June 8 motion for an extension. On September 12, before the Commission ruled on her August 25 motion, the petitioner filed her petition for rehearing.

¶ 7 On November 17, 2011, the Commission denied the petitioner's August 25 motion for an extension of time and struck the September 12 petition for rehearing from the record. On December 20, 2011, the petitioner filed a petition for direct review with this court.

¶ 8 Our first task is to determine whether we have subject matter jurisdiction to review the Commission's April 13, 2011, order. See *Davis v. Human Rights Comm'n*, 286 Ill. App. 3d 508, 512, 676 N.E.2d 315 (1997). As the respondent observes in its brief, the timely filing of a petition for review in this court is a jurisdictional prerequisite to our review of a final order of the Commission. See *Hardee's Food Systems, Inc. v. Illinois Human Rights Comm'n*, 155 Ill. App. 3d 173, 180, 507 N.E.2d 1300 (1987). Section 8-111 of the Illinois Human Rights Act (Act), which sets out the proper timing for a petition for review, provides that "[a]ny complainant or respondent may apply for and obtain judicial review of a final order of the Commission *** by filing a petition for review in the Appellate Court within 35 days from the date that a copy of the decision sought to be reviewed was served ***." 775 ILCS 5/8-111(B)(1) (West 2010). A decision declining to review a recommended order and decision constitutes a final order of the Commission. See 775 ILCS 5/8A-103(E)(1) (West 2010) ("If the panel declines to review the recommended order, it shall become the order of the Commission.") Unless the law specifically provides otherwise, a Commission order may be served either personally or by first-class mail (56 Ill. Adm. Code 5300.30(a)), and service by mail

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is "deemed complete four days after mailing of the document" (56 Ill. Adm. Code 5300.30(c)).

¶ 9 Here, the Commission declined review of the ALJ's recommended order and decision on April 13, 2011. The Commission sent its decision via first-class mail on April 20, 2011. As a result, the decision was deemed served on April 25, 2011, the first business day following the fourth day after April 20. See 5 ILCS 70/1.11 (West 2010). Under the 35-day deadline, then, the petitioner's petition for review was due May 30. The claimant did not file her petition for review until long after this deadline, on December 20.

¶ 10 Although the petitioner submitted several motions to the Commission prior to her December 20 petition for review, none of those submissions tolled her time to file a petition for review. A party may toll or modify the time for review by filing a timely petition for rehearing within 30 days of service of the Commission's order (see 775 ILCS 5/8A-103(F)(1) (West 2010); 56 Ill. Adm. Code 5300.1150(a)), or by obtaining an extension of time before the expiration of the deadline (see 775 ILCS 5/8A-103(H) (West 2008)). However, here, the petitioner filed nothing with the Commission until June 8, well after the expiration of both the 30-day limit for a petition for rehearing and the 35-day limit on a petition for review. Thus, her submissions to the Commission were untimely and could not toll her deadline for seeking review.

¶ 11 To escape this jurisdictional problem, the petitioner argues that the Commission's April 13 decision was never properly served on her, because it was served by first-class mail rather than personally or by certified or registered mail. The petitioner draws this heightened service requirement from the Department's regulations, which states that, after the Commission has accepted a case for review, its order and decision must be served "personally or by registered or certified

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mail." 56 Ill. Adm. Code 5300.1140. However, as the respondent observes in its brief, this heightened service requirement applies only after the Commission has accepted a case for review; here, the Commission declined review of the petitioner's case. The Commission's regulations set forth no special service requirements relating to a decision to decline review, and so its standard service rules apply. As noted, those rules allow service by first-class mail. See 56 Ill. Adm. Code 5300.30(a). Accordingly, we reject the petitioner's contention that she was not properly served with the Commission's final order, and we adhere to our conclusion that she failed to file a timely petition for review from that final order.

¶ 12 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.

¶ 13 Dismissed.