

SIXTH DIVISION
June 26, 2015

No. 1-13-2570

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

JOSE SANCHEZ,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 L 010446
)	
PACTIV, LLC,)	Honorable
)	Robert Lopez Cepero,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice P. Scott Neville and Justice Cynthia Y. Cobbs concurred in the judgment.

ORDER

HELD: It was not against the manifest weight of the evidence for the circuit court to find there was no stipulation that defendant-appellant Pactiv, LLC (Pactiv), was entitled to a credit under section 8(j) of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/8(j) (West 2008))¹ for medical expenses purportedly paid by group insurance.

¹ Section 8(j) of the Act provides in relevant part:

¶ 1 This appeal arises out of the circuit court's entry of judgment against Pactiv pursuant to section 19(g) of the Act (820 ILCS 305/19(g) (West 2002)). Section 19(g) of the Act gives circuit courts the authority to enter judgments in accordance with a certified copy of an arbitrator's award or a final decision of the Illinois Workers' Compensation Commission (Commission). See *Patel v. Home Depot USA, Inc.*, 2012 IL App (1st) 103217, ¶ 13 ("Section 19(g) provides that a party may present a certified copy of the arbitrator's award or the decision of the Commission to the circuit court and 'the court shall enter a judgment in accordance therewith.' 820 ILCS 305/19(g) (West 2008)").

"In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act. In such event, the period of time for giving notice of accidental injury and filing application for adjustment of claim does not commence to run until the termination of such payments. This paragraph does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act." 820 ILCS 305/8(j) (West 2012).

¶ 2 On July 23, 2003, plaintiff-Appellee Jose Sanchez filed an application for adjustment of claim (No. 03WC36518) pursuant to the Act (820 ILCS 305/1 to 30 (West 2002)), seeking benefits from his employer Pactiv. Plaintiff alleged that on April 29, 2003, he sustained repetitive-trauma injuries to his right shoulder while working for Pactiv. He subsequently received an award of benefits from the Commission. In awarding the benefits, the Commission reversed an arbitrator's finding that Sanchez had failed to prove his injuries arose out of and in the course of his employment with Pactiv.

¶ 3 Pactiv filed a petition for judicial review of the Commission's decision in the circuit court of Cook County. On September 28, 2010, the circuit court confirmed the decision. On December 30, 2011, our court issued an order affirming the judgment of the circuit court. *Pactiv Corp. v. The Illinois Workers' Compensation Commission*, 2011 IL App (1st) 102968WC-U (unpublished order under Supreme Court Rule 23).

¶ 4 On September 14, 2012, Sanchez filed an application for entry of judgment in the circuit court pursuant to section 19(g) of the Act, claiming that Pactiv had failed and refused to make payment of sums still due under the Commission's award. Pactiv filed a motion to dismiss the application pursuant to section 2-619 or, in the alternative, section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2619, 2-615 (West 2008)).

¶ 5 On July 23, 2013, following oral argument, the circuit court denied Pactiv's motion to dismiss and entered judgement in favor of Sanchez for unpaid awarded medical expenses of \$97,620.64, plus accrued interest of \$12,664.75, and costs of \$397.00, totaling \$110,682.39. The court's order also stated there was no just reason to delay the enforcement or appeal of its order. Pactiv timely appealed. For the reasons that follow, we affirm.

¶ 6

ANALYSIS

¶ 7 Pactiv argues that the circuit court's judgment confirming the Commission's decision should be reversed because the court's decision is against the manifest weight of the evidence. Pactiv claims the parties stipulated that pursuant to section 8(j) of the Act, Pactiv would be entitled to a credit for medical bills paid through a group insurance carrier which credit thereby reduced the total amount of the award to \$77,263.89. Pactiv maintains that on February 15, 2012, it tendered payment of \$77,496.91, and therefore it overpaid the award by \$233.02, and as a result, Sanchez's application for entry of judgment should have been dismissed. Pactiv contends it was against the manifest weight of the evidence for the circuit court to find that there was "no stipulation for a credit for medical expenses purportedly paid by group insurance pursuant to Section 8(j) of the Worker's Compensation Act." We must disagree.

¶ 8 The issue of whether an employer has refused to pay an award is a question of fact to be resolved by the circuit court and its decision on the matter will not be disturbed on review unless it is against the manifest weight of the evidence. *Radosevich v. The Industrial Commission*, 367 Ill. App. 3d 769, 774 (2006). A circuit court's finding is against the manifest weight of the evidence only when an opposite conclusion is apparent or when it appears to be unreasonable, arbitrary, or not based on the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002).

¶ 9 Pactiv points to the following comment made by the arbitrator during the arbitration proceedings as evidence to support its contention that the parties stipulated that Pactiv was entitled to a section 8(j) credit: "I think it has already been stipulated that Respondent will get credit for all the amounts paid under 8(j)." The record shows that neither party responded to this comment.

¶ 10 "A stipulation is an agreement between the parties or their attorneys with respect to business before the court." *Material Service Corporation v. Department of Revenue*, 105 Ill. App. 3d 74, 79 (1982). "While a stipulation need not follow any particular form, it must be clear, certain, and definite in its material provisions, and it is essential that it be assented to by the parties or those representing them." *In re Marriage of Galen*, 157 Ill. App. 3d 341, 344 (1987). In this case, the only evidence of intent to stipulate that Pactiv can point to is Sanchez's counsel's silence in response to the arbitrator's comment that he thought there was a stipulation that Pactiv would receive an 8(j) credit. Without more, we cannot infer that counsel's silence in response to the arbitrator's comment amounted to a stipulation that Pactiv was entitled to a credit under section 8(j) of the Act.

¶ 11 A review of the record shows that Pactiv left blank the space on the "Request for Hearing form" for listing the dollar amount of its asserted section 8(j) credit. A Request for Hearing form or "stipulation sheet" contains the parties' stipulations. *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1087-88 (2004). Pursuant to section 7030.40 of title 50 of the Illinois Administrative Code (50 Ill. Adm. Code § 7030.40 (1996)) a stipulation contained in a Request for Hearing form becomes binding on the parties at the time they or their counsel sign the form. *Id.* at 1088. Here, Pactiv, through its counsel did not assert an 8(j) credit on the Request for Hearing form signed by its attorney.

¶ 12 Pactiv contends it was not required to list an exact dollar amount for the 8(j) credit since the Act gives it a statutory right to a credit for medical bills paid through a group carrier. Pactiv further argues it would have been impossible for it to accurately state its 8(j) credit on the Request for Hearing form because plaintiff failed to provide it with copies of certain medical bills prior to the arbitration hearing. These arguments are unpersuasive.

¶ 13 Pactiv presented no evidence of entitlement to an 8(j) credit during its case before the arbitrator. After no 8(j) credit was provided for in the Commission's decision, Pactiv sought judicial review in the circuit court. However, neither on review before the circuit court or in the prior appeal before this court did Pactiv argue that the Commission erred in not providing an 8(j) credit it now contends exists either by stipulation or by a finding of the arbitrator. Pactiv's failure to assert that it was entitled to a section 8(j) credit before the arbitrator or the Commission resulted in a waiver of its claims. See *Board of Education v. Chicago Teachers Union, Local No. 1*, 86 Ill. 2d 469, 476 (1981) (employer's failure to claim and show it was entitled to section 8(j) credit in proceedings before an arbitrator and the Commission resulted in waiver of claim).

¶ 14 The theories Pactiv now asserts regarding the 8(j) credit are asserted for the first time as a defense to this section 19(g) proceeding. However, Pactiv's claims are a collateral attack on the prior decision of the Commission that was subsequently affirmed by the circuit court and our court and is therefore not appropriately raised in this section 19(g) proceeding. See *Bettis v. Oscar Mayer Foods Corp.*, 242 Ill. App. 3d 689, 691 (1993) (citing *Ahlers v. Sears, Roebuck Co.*, 73 Ill. 2d 259, 268 (1978) for the proposition that a "[c]ollateral attack is not possible under section 19(g) of the Act"); see also *Franz v. McHenry County College*, 222 Ill. App. 3d 1002, 1006 (1991) ("absent fraud or lack of jurisdiction, a party may not obtain review of the Commission's award in the course of a section 19(g) proceeding"). In sum, it was not against the manifest weight of the evidence for the circuit court to find there was no stipulation that Pactiv was entitled to a section 8(j) credit for medical expenses purportedly paid by group insurance.

¶ 15 Accordingly, for the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.