

Support Systems. Following a hearing, an arbitrator issued a decision awarding claimant a permanent partial disability (PPD) benefit equal to 2% loss of the person as whole as a result of a work-related injury sustained on March 5, 2001. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Richland County. The court reversed the Commission's award of 2% of the person as a whole and remanded the matter back to the Commission "for further hearing on damages, including the nature and extent of injuries, disability and payment for related medical expenses." Following remand, the Commission issued its decision and order on remand, again affirming and adopting the arbitrator's original decision, including an award of PPD benefits equal to 2% loss of the person as a whole. The Commission's decision was issued on August 23, 2010.

¶ 3 On September 9, 2010, the claimant filed in the circuit court of Richland County a pleading entitled "Petition Regarding the Order Regarding Petitioner's Request for Review." The claimant did not file a request for summons with the circuit court or an affidavit regarding proof of payment to the Commission for the estimated cost of the record as required under section 19(f)(1) of the Act. 820 ILCS 305/19(f)(1) (West 2008). On November 29, 2010, the employer filed a motion to dismiss for lack of subject matter jurisdiction, along with a supporting memorandum of law.

¶ 4 On January 19, 2011, the circuit court granted the employer's motion to dismiss and dismissed the matter for lack of subject matter jurisdiction. The court held that because the claimant did not file a written request of summons as required under section 19(f)(1) of the Act

(820 ILCS 305/19(f)(1) (West 2008)), the Commission's decision and order dated August 23, 2010, became final on September 13, 2010, and was not subject to review by the circuit court. The circuit court cited *Fisher v. Industrial Comm'n*, 231 Ill. App. 3d 1061 (1992); *Eschbaugh v. Industrial Comm'n*, 286 Ill. App. 3d 963 (1996); *Dunavan v. Industrial Comm'n*, 355 Ill. 444 (1934); and *Kudla v. Industrial Comm'n*, 336 Ill. 279 (1929). The claimant now appeals from the circuit court's order dismissing his petition for lack of subject matter jurisdiction.

¶ 5 The only issue before this court is whether the circuit court correctly determined that it lacked subject matter jurisdiction to review the decision of the Commission due to the claimant's failure to file with the circuit court a written request for the issuance of a summons within 20 days of the Commission's decision pursuant to section 19(f)(1) of the Act.

¶ 6 Orders of dismissal for lack of subject matter jurisdiction are reviewed *de novo*. *People ex rel. Madigan v. Excavating & Lowboy Services, Inc.*, 388 Ill. App. 3d 554, 557 (2009).

Although the circuit courts are courts of general jurisdiction and enjoy a presumption of subject matter jurisdiction, that presumption does not apply in workers' compensation proceedings where the court exercises only special statutory jurisdiction. *Rojas v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 965, 971 (2010). In an appeal from a decision of the Commission, the circuit court obtains subject matter jurisdiction only if the party seeking judicial review of the Commission's decision complies with the statutorily mandated procedures set forth in the Act. *Esquivel v. Illinois Workers' Compensation Comm'n*, 402 Ill. App. 3d 156, 159 (2010). Section 19(f) of the Act provides, in pertinent part, as follows:

"The decision of the Commission *** shall, in the absence of fraud, be conclusive unless reviewed as in this paragraph hereinafter provided. ***

(1) *** [T]he Circuit Court *** shall by summons to the Commission have power to review all questions of law and fact presented by such record.

A proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission. The summons shall be issued by the clerk of such court upon written request ***. ***

The Commission shall not be required to certify the record of their proceedings to the Circuit Court, unless the party commencing the proceeding for review in the Circuit Court [shall pay the proper amount for the cost of the preparation of the record].

In its decision on review the Commission shall determine *** the probable cost of the record to be filed as part of the summons in that case and *no request for a summons may be filed and no summons shall issue unless the party seeking to review the decision of the Commission shall exhibit to the clerk of the Circuit Court proof of payment by filing a receipt showing payment or an affidavit of the attorney setting forth that payment has been made of the sums so determined ***.* (Emphasis added.)

820 ILCS 305/19(f) (West 2008).

¶ 7 We note that every provision of section 19(f)(1) traces back to the 20-day statutory period. *Beasley v. Industrial Comm'n*, 198 Ill. App. 3d 460, 464 (1990) (failure of the appellant to comply with the requirements of section 19(f)(1) within the 20-day period after receipt of the Commission's decision deprived the circuit court of jurisdiction). Moreover, in *Esquivel*, the

court ruled that "in order to perfect jurisdiction in the circuit court, the appellant must not only file a written request for summons within 20 days after receiving the Commission's decision, but he or she must also exhibit to the clerk of the circuit court within the same time frame either a receipt showing payment of the probable cost of the record on appeal or an affidavit of an attorney setting forth such payment has been made to the Commission." *Esquivel*, 402 Ill. App. 3d at 159-60. Here, the record is undisputed that the claimant neither filed a written request for summons nor exhibited proof of payment of the probable cost of the record or a sufficient affidavit regarding such payment.

¶ 8 It is well settled that failure of the appealing party to file a written request for summons within 20 days of the issuance of the Commission's decision results in loss of jurisdiction by both the Commission and the circuit court. *Kudla v. Industrial Comm'n*, 336 Ill. 279, 298 (1929); see also *Bracy v. Industrial Comm'n*, 338 Ill. App. 3d 285, 286 (2003) (request for summons is a jurisdictional requirement and failure to file a written request for issuance of a summons deprives the circuit court of jurisdiction); *Fisher*, 231 Ill. App. 3d at 1065 (failure to properly request issuance of summons voids all subsequent actions); *Eschbaugh*, 286 Ill. App. 3d at 966 ("The cases are legion that hold that failure to strictly comply with sections 19(b) and 19(f) of the Act deprives the Commission and the courts of subject matter jurisdiction.").

¶ 9 An argument could be made that the circuit court retained jurisdiction of the case pending the Commission's ruling on remand based upon the original issuance of summons prior to the matter being remanded by the circuit court to the Commission. In the typical administrative review proceeding, the circuit court retains jurisdiction over a case following remand to the administrative agency. In such cases, remand does not divest the circuit court of jurisdiction and

it is not necessary for an appealing party to file a subsequent summons to re-vest the circuit court with jurisdiction. See *Grames v. Illinois State Police*, 254 Ill. App. 3d 191 (1993); *Seelhofer v. Regional Board of School Trustees of Clinton & Washington Counties*, 266 Ill. App. 3d 516 (1994); *Creamer v. Police Pension Fund Board of Mount Prospect*, 69 Ill. App. 3d 792 (1978). However, appeals from administrative agencies are governed by section 3-104 of the Administrative Review Law (735 ILCS 5/3-104 (West 2008)) which provides that "[t]he court first acquiring jurisdiction of any action to review a final administrative decision shall have and retain jurisdiction of the action until final disposition of the action." The Workers' Compensation Act does not contain such language. In fact, the court's holding in *Kudla* clearly requires a new written request for summons following a remand from the circuit court. In *Kudla*, our supreme court held that the circuit court lost jurisdiction over the matter upon remand to the Commission notwithstanding the circuit court's attempt to retain jurisdiction by including in the remand order the statement that "[t]his court retains jurisdiction of the case until further order of [the] court." *Kudla*, 336 Ill. at 280. Our supreme court held that the attempt by the circuit court to retain jurisdiction while the matter was remanded to the Commission was "void." *Kudla*, 336 Ill. at 282.

¶ 10 In the instant matter, since no written application for issuance of a summons was filed with the circuit court following the issuance of the Commission's decision upon remand, the circuit court correctly held that it had no subject matter jurisdiction due to the claimant's failure to comply with section 19(f)(1) of the Act.

¶ 11 For the foregoing reasons, the judgment of the Richland County circuit court, which dismissed the petition for review based upon a lack of subject matter jurisdiction, is affirmed.

¶ 12 Affirmed.