

pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2004)) against employer, Cardinal Building Maintenance, Inc., alleging the same accident date of May 5, 2006. Both cases were dismissed for want of prosecution. Claimant filed a motion to vacate the dismissal and reinstate one of the two claims, asserting an agreement had been reached between the parties to dismiss only one claim and the other claim was dismissed due to a clerical error. While claimant's motion to vacate and reinstate was pending, claimant filed a third application for adjustment of claim against employer regarding the same accident. On employer's motion, the arbitrator dismissed claimant's third claim. Ultimately, claimant's motion to vacate and reinstate one of her initial claims was denied.

¶ 3 The Workers' Compensation Commission (Commission) affirmed the arbitrators' decisions as to all three claims. On judicial review, the circuit court of Cook County confirmed the Commission's decisions. Claimant appeals, arguing the Commission erred in (1) dismissing her third application for adjustment of claim and (2) denying reinstatement of her first application for adjustment of claim. We affirm.

¶ 4 On May 15, 2006, claimant, through her attorney James Geraghty, filed an application for adjustment of claim (case No. 06-WC-21174), seeking benefits from employer under the Act and alleging accidental injuries that arose out of and in the course of her employment on May 5, 2006. On November 20, 2006, claimant, through attorney Peter Wachowski, filed a second application for adjustment of claim (case No. 06-WC-50141), seeking benefits from employer under the Act and alleging the same accident date. On April 13, 2007, Wachowski filed for a substitution of attorney in connection with the first claim for benefits (case

No. 06-WC-21174) and, ultimately, the two claims were consolidated. Employer then moved for a change of venue and to dismiss claimant's second application. On June 27, 2007, arbitrator Maureen Pulia granted the motion to change venue. Employer's motion to dismiss was withdrawn. On October 4, 2007, employer filed an "agreed motion to dismiss application," requesting dismissal of claim No. 06-WC-50141. On December 3, 2007, arbitrator Joann Fratianni dismissed both claims for want of prosecution.

¶ 5 On December 31, 2007, claimant filed a motion to vacate the dismissal of her claims for want of prosecution and to reinstate them. On November 13, 2008, a hearing was conducted before arbitrator Fratianni on claimant's motion. Claimant acknowledged that two claims had been filed on her behalf by two different attorneys regarding the same accident. She argued that she had agreed with employer to the dismissal of only one of those claims but, mistakenly, both claims were dismissed. Employer argued claimant's motion to reinstate was defective and not diligently pursued. Claimant requested the dismissal of case No. 06-WC-21174 be vacated and the case reinstated; however, the parties agreed to the dismissal of case No. 06-WC-50141. The arbitrator took the matter under advisement.

¶ 6 On February 19, 2009, while awaiting the arbitrator's decision on the motion to reinstate case No. 06-WC-21174, claimant filed a third application for adjustment of claim (case No. 09-WC-7220) against employer that alleged the same accident date as her previous two cases. On July 27, 2009, employer filed a motion to dismiss that third claim, noting claimant had filed three applications for adjustment of claim for the same alleged accident and a motion to reinstate case No. 06-WC-21174 was still pending. Following a hearing on August 11, 2009,

arbitrator Robert Lammie granted employer's motion to dismiss case No. 09-WC-7220.

¶ 7 On August 27, 2009, arbitrator Fratianni issued a decision denying claimant's motion to vacate dismissal and reinstate her initial claims. The arbitrator noted as follows:

"The Motion to Vacate DWP and Reinstate for this case was filed on December 31, 2007. A Notice of Motion attached to the Motion to Vacate DWP and Reinstate indicated that the Motion would be heard before this Arbitrator *** on January 7, 2008. [Claimant] did not present the Motion on that date. [Claimant] then filed a Notice of Motion indicating that the Motion would be heard on April 7, 2008[,] before this Arbitrator. [Claimant] did not present the Motion on that date.

[Claimant] finally presented a Notice of Motion indicating that the Motion would be heard before this Arbitrator on November 7, 2008. [Claimant] failed to present the motion on that date. [Employer] was present and this matter was set for hearing on November 13, 2008, with counsel for [employer] instructed to give [claimant] through her attorney Notice of the hearing date. Both parties appeared *** on November 13, 2008."

The arbitrator stated claimant "failed to present a reason as to why nearly a year had elapsed" before she presented her motion to the arbitrator. Ultimately, the arbitrator found claimant was not diligent in prosecuting her claim or attempting reinstatement and, also, failed to meet the

necessary requirements for a petition to reinstate (citing 50 Ill. Adm. Code 7020.90 (1982)).

¶ 8 On February 24, 2010, the Commission affirmed arbitrator Lammie's decision to grant employer's motion to dismiss case No. 09-WC-7220. It found claimant's filing of case No. 09-WC-7220, her third application for adjustment of claim regarding the same accident, violated Commission Rule 7020.20(b) (50 Ill. Adm. Code 7020.20(b) (1991)). On April 6, 2010, the Commission affirmed and adopted arbitrator Fratianni's denial of claimant's motion to reinstate case Nos. 06-WC-21174 and 06-WC-50141.

¶ 9 Claimant sought judicial review of each of the Commission's decisions in the circuit court of Cook County. On March 17, 2011, the court confirmed the Commission's decisions. On April 18, 2011, claimant filed a motion to reconsider but the court ordered her supporting brief to be stricken for failing to comply with local court rules. On May 17, 2011, claimant filed an amended motion to reconsider and supporting brief. On June 3, 2011, employer filed a motion to dismiss claimant's motion to reconsider, arguing the court lacked jurisdiction to hear her postjudgment motion under the Act. It also filed a motion to strike claimant's brief in support of her motion to reconsider, arguing it continued to violate local court rules.

¶ 10 On June 9, 2011, the circuit court denied employer's motion to dismiss. However, it granted employer's motion to strike, striking claimant's brief in support of her motion to reconsider for a second time due to a lack of compliance with local court rules. The court gave claimant a final opportunity to file a brief in compliance with court rules. On June 17, 2011, claimant filed a second amended motion to reconsider and brief in support of her motion. On July 19, 2011, the court denied claimant's motion.

¶ 11 This appeal followed.

¶ 12 Initially, employer challenges this court's jurisdiction to hear claimant's appeal. It argues claimant failed to file a notice of appeal within 30 days of the circuit court's confirmation of the Commission's decisions and her postjudgment motion to reconsider was insufficient to toll that 30-day period. Employer notes claimant's motion to reconsider was filed on the last day of the prescribed 30-day period and she presented pleadings that failed to comply with local court rules.

¶ 13 In workers' compensation cases, "the circuit courts exercise a special statutory jurisdiction and have only the powers that are conferred by statute." *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 158, 601 N.E.2d 720, 727 (1992). Pursuant to the Act, the circuit court may confirm or set aside the Commission's decision, or remand to the Commission for further proceedings. 820 ILCS 305/19(f)(2) (West 2010). Appeals from the circuit court's decision "shall be taken to the Appellate Court in accordance with Supreme Court Rules 22(g) and 303." 820 ILCS 305/19(f)(2) (West 2010). Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008) provides that a notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion ***."

¶ 14 In workers' compensation cases, the circuit court has authority to address postjudgment motions and the 30-day period in which a party may file a notice of appeal does not begin to run until the disposition of the motion. *Brady v. Industrial Commission*, 45 Ill. 2d 469, 472-73, 259 N.E.2d 272, 274 (1970). Additionally, the court has discretion in addressing such

motions. *McDonald v. Health Care Service Corp.*, 2012 IL App (2d) 110779, ¶ 29, 971 N.E.2d 1176, 1183 (2012).

¶ 15 Here, on March 17, 2011, the circuit court confirmed the Commission's decisions. Within 30 days, claimant filed a motion to reconsider. Although her brief failed to comply with local circuit court rules and was twice stricken, the court granted her leave to amend her pleadings to the necessary requirements. Ultimately, claimant filed an amended motion, which the court denied. The filing of postjudgment motions is authorized under the Act and we find no abuse of discretion by the court in addressing and denying claimant's motion. Claimant filed her notice of appeal within 30 days of the court's denial of her postjudgment motion and this court has jurisdiction to address the merits of her appeal.

¶ 16 On appeal, claimant challenges the Commission's dismissal of her third application for adjustment of claim (case No. 09-WC-7220). (Although claimant argues the Commission erred by denying reinstatement of her third application, we note the record reflects her third application was dismissed on employer's motion and was never the subject of a petition for reinstatement). Claimant argues that commission rules do not prohibit the filing of multiple applications regarding the same employer and the same accident and, instead, specifically permit such filings; supreme court jurisprudence supports the filing of multiple applications; and the filing of her third application was permitted under section 13-217 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/13-217 (West 2008)).

¶ 17 First, claimant argues the Commission erred in finding her third application for adjustment of claim violated Commission Rule 7020.20(b) (50 Ill. Adm. Code 7020.20(b)

(1991)). She argues the Commission rules do not prohibit the filing of multiple applications involving the same employer and the same alleged accident and, instead, Commission Rule 7030.10(d) (50 Ill. Adm. Code 7030.10(d) (1996)) specifically provides for such circumstances.

¶ 18 "Although not binding on the courts, the Commission's interpretation of its rules is entitled to deference and will be set aside only if it is clearly erroneous, arbitrary, or unreasonable." *Banks v. Industrial Comm'n*, 345 Ill. App. 3d 1138, 1141, 804 N.E.2d 629, 632 (2004).

"In construing rules and regulations promulgated by an administrative agency, the same rules used to interpret statutes apply." *Mora v. Industrial Comm'n*, 312 Ill. App. 3d 266, 271, 726 N.E.2d 650, 653 (2000). "The fundamental rule of statutory construction is to ascertain the intent of the lawmakers." *Mora*, 312 Ill. App. 3d at 271, 726 N.E.2d at 653. "In ascertaining the legislative intent, we must look at the specific language of the rule or regulation and evaluate the wording in its entirety." *Mora*, 312 Ill. App. 3d at 271, 726 N.E.2d at 653. "If the language of the rule or regulation is clear, it should be given effect without resorting to other aids for construction." *Mora*, 312 Ill. App. 3d at 271, 726 N.E.2d at 653-54.

¶ 19 Commission Rule 7020.20(b) (50 Ill. Adm. Code 7020.20(b) (1991)) provides as follows:

"An application for Adjustment of Claim must be limited to one accident or claim. After an Application has been filed with the Commission, any other Applications for Adjustment of Claim covering that accident, but naming a different employer, shall be assigned the same docket number as the original Application.

Nothing herein shall bar the filing of an Amended Application for Adjustment of Claim."

Additionally, Commission Rule 7030.10(d) (50 Ill. Adm. Code 7030.10(d) (1996)) states the following:

"In the event a Petitioner has an Application for Adjustment of Claim pending and files one or more Applications for Adjustment of Claim against the same Respondent, or against different Respondents alleging accidental injuries to the same part of the body subsequent cases shall on motion of any party be assigned to the case filed first. If a case is dismissed or otherwise closed and the Petitioner files an Application for Adjustment of Claim relating to the same accident, the case will be assigned to the Arbitrator assigned to the first case filed involving that accident. ***."

¶ 20 Rule 7020.20(b), by its plain language, (1) requires that each application for adjustment of claim address a single accident or claim, (2) provides for the assignment of applications involving the same accident but different employers, and (3) permits the filing of amended applications. Although the rule does not expressly prohibit the filing of multiple applications involving the same accident and against the same employer, it also does not permit such action. Moreover, while Rule 7030.10(d) contemplates that multiple applications could be filed, that rule merely provides for the manner in which cases may be assigned to arbitrators. Rule 7030.10(d) does not permit a claimant to pursue multiple claims against the same employer

for the same accident.

¶ 21 Employer argues that allowing claimant to pursue claims from multiple applications would encourage forum shopping, inundate the Commission's dockets with duplicate claims, and decrease the efficiency of resolving claims. We agree. Notably, claimant's first two claims had been dismissed for want of prosecution. The appropriate manner for her to pursue a claim against respondent was to seek reinstatement of her earlier claims as provided for by Commission Rule 7020.90 (50 Ill. Adm. Code 7020.90 (1982)) and a petition for reinstatement of those claims was pending at the time she filed her third application.

¶ 22 Claimant argues the supreme court's decision in *Alvarado v. Industrial Comm'n*, 216 Ill. 2d 547, 837 N.E.2d 909 (2005), supports her position that the Commission erred in dismissing her third application. However, at issue in that case was "the Commission's authority to apportion attorney fees after a settlement award has become a final award" and the supreme court in no way addressed the matters at issue in the present case. *Alvarado*, 216 Ill. 2d at 553, 837 N.E.2d at 914. Additionally, *Alvarado* is factually distinguishable in that, although the claimant in that case filed two applications for adjustment of claim for the same injury, the two claims were consolidated on the claimant's motion and one claim was dismissed. *Alvarado*, 216 Ill. 2d at 550, 837 N.E.2d at 912. *Alvarado* has no application to the present fact situation and fails to support claimant's position on appeal.

¶ 23 Claimant further argues that, because her initial applications were dismissed for want of prosecution, she was entitled under section 13-217 of the Civil Code (735 ILCS 5/13-217 (West 2008)) to refile her action within one year or within the remaining limitations period,

whichever was greater. See *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 497-98, 693 N.E.2d 338, 342 (1998), ("If a plaintiff's action is dismissed for want of prosecution, that plaintiff has the option, pursuant to section 13-217 of the [Civil Code], to refile the action within one year of the entry of the [dismissal for want of prosecution] order or within the remaining period of limitations, whichever is greater"). However, "[t]he Act is a purely statutory remedy" and neither the Civil Code nor the supreme court rules "apply to workers' compensation proceedings where the Act or the Commission's rules regulate the area or topic." *Preston v. Industrial Comm'n*, 332 Ill. App. 3d 708, 712, 773 N.E.2d 1183, 1188 (2002).

¶ 24 As stated, Commission Rule 7020.90 (50 Ill. Adm. Code 7020.90 (1982)) provides for the filing of petitions for reinstatement when a case has been dismissed for want of prosecution. Specifically, it states that "[w]here a cause has been dismissed from the arbitration call for want of prosecution, the parties shall have 60 days from receipt of the dismissal order to file a petition for reinstatement of the cause onto the arbitration call." 50 Ill. Adm. Code 7020.90(a) (1982). The record reflects claimant moved for reinstatement of her initial claims within the relevant 60-day period and the matter was pending when she filed her third application for adjustment of claim. Here, the Commission's rules apply and the Civil Code is inapplicable.

¶ 25 Claimant's contention that she was entitled to pursue multiple claims against employer for the same alleged accident and injury is not supported by the Commission's rules or case law. Nor is it permissible under the Civil Code. Under the circumstances presented, the Commission committed no error in dismissing claimant's third application for adjustment of claim (case No. 09-WC-7220).

¶ 26 On appeal, claimant next argues the Commission erred in denying reinstatement of her first application for adjustment of claim (case No. 06-WC-21174). "On a petition to reinstate before the Commission, the burden is on the claimant to allege and prove facts justifying the relief sought." *Banks*, 345 Ill. App. 3d at 1140, 804 N.E.2d at 631. "Whether to grant or deny a petition to reinstate rests within the sound discretion of the Commission." *Banks*, 345 Ill. App. 3d at 1140, 804 N.E.2d at 631. On review, the Commission's determination will not be disturbed absent an abuse of that discretion. *TTC Illinois, Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 355, 918 N.E.2d 570, 579 (2009).

"Where a cause has been dismissed from the arbitration call for want of prosecution, a party may petition to reinstate it within 60 days of receiving the dismissal order. 50 Ill. Adm. Code § 7020.90(a) (2002). The petition must 'set forth the reason the cause was dismissed and the grounds relied upon for reinstatement. The petition must also set forth the date on which Petitioner will appear before the Arbitrator to present his petition.' 50 Ill. Adm. Code § 7020.90(b) (2002). 'The Arbitrator shall apply standards of fairness and equity in ruling on the Petition to Reinstate and shall consider the grounds relied on by Petitioner, the objections of Respondent and the precedents set forth in Commission decisions.' 50 Ill. Adm. Code § 7020.90(c) (2002)." *Banks*, 345 Ill. App. 3d at 1140-41, 804 N.E.2d 629, 631-32.

¶ 27 Here, claimant argues the Commission erred in denying her motion to reinstate case No. 06-WC-21174. She argues her claim was dismissed due to a clerical error and Commission Rule 7020.90, providing for the filing of petitions to reinstate after dismissal from want of prosecution, is inapplicable. Alternatively, claimant argues she met Rule 7020.90's requirements by scheduling a hearing date and providing grounds for reinstatement.

¶ 28 First, although claimant argues case No. 06-WC-21174 was dismissed due to a clerical error, the Commission's record clearly shows it was dismissed for want of prosecution. We find Commission Rule 7020.90 applied and a petition filed pursuant to that rule was the proper manner for claimant to seek reinstatement of her claim.

¶ 29 Second, we find the Commission did not abuse its discretion in finding claimant failed to diligently pursue reinstatement of her claim or that claimant's motion to vacate and reinstate failed to comply with the requirements of Commission Rule 7020.90. While claimant timely sought reinstatement and filed notices setting the matter for hearing on three occasions, the record indicates claimant failed to appear before the arbitrator on those dates or to present her motion. As a result, her motion was not heard until approximately 11 months after it was filed and, at the hearing on her motion, claimant presented no explanation for the delay. Additionally, in her motion, claimant failed to set forth any grounds for reinstatement. She asserted only that she had "a good and meritorious cause of action against" employer. Claimant points out that she sent a letter to the arbitrator and asserted her claim was dismissed pursuant to a clerical error. Again, however, the proper manner in which to address reinstatement of her claim was through a petition under Rule 7020.90. Claimant's motion to reinstate made no mention of a clerical error.

¶ 30 The Commission affirmed and adopted the arbitrator's decision that claimant was not diligent in attempting reinstatement of her claim and failed to meet the necessary requirements for a petition to reinstate under Commission Rule 7020.90. The Commission did not abuse its discretion.

¶ 31 For the reasons stated, we affirm the circuit court's judgment.

¶ 32 Affirmed.

¶ 33 JUSTICE STEWART, concurring in part and dissenting in part:

¶ 34 I respectfully dissent from the majority's determination that the Commission's denial of the claimant's petition to reinstate case No. 06WC21174, the first claim filed on behalf of the claimant, was not an abuse of discretion. In all other respects, I concur in the majority decision.

¶ 35 First, it is undisputed that the claimant's first application was dismissed as a result of a clerical error. After the claimant's counsel discovered that her previous attorney had filed an earlier application, the parties agreed to dismiss the second application. Accordingly, the employer's attorney presented an agreed motion to dismiss the application designated as case No. 06WC50141. That motion clearly set forth that the claimant had filed two applications for the same accident and only requested that case No. 06WC50141 be dismissed. The parties agreed that they would proceed with case No. 06WC21174 and were simply trying to correct the problem of having two applications filed for the same accident. However, orders were entered dismissing both applications. The order dismissing case No. 06WC21174 recited that "petitioner having failed to appear, it is ordered that such cause be and the same is hereby dismissed for want of prosecution." There was no reason for this claim to be dismissed for want of prosecution, and the employer has conceded at every stage of these proceedings that the dismissal was the result of an error.

¶ 36 Second, the claim could not have been dismissed for want of prosecution in

compliance with Commission Rules. Rule 7020.60 governs the procedure for monthly status calls before the arbitrator. 50 Ill. Adm. Code 7020.60 (1996). Pursuant to Rule 7020.60(a) and (b)(2)(B), cases which have been on file with the Commission for less than three years are automatically continued for three month intervals. 50 Ill. Adm. Code 7020.60(a) and (b)(2)(B) (1996). Under Rule 7020.60(b)(2)(C)(i), once a case has been pending for more than three years, it is automatically set for trial at the monthly status call unless a written request has been made for continuance for good cause. 50 Ill. Adm. Code 7020.60(b)(2)(C)(i) (1996). Rule 7020.60(b)(2)(C)(ii) provides that if a claimant fails to appear or request a continuance on a claim that has been pending for more than three years, it will be dismissed for want of prosecution. 50 Ill. Adm. Code 7020.60(b)(2)(C)(ii) (1996). Here, at the time the claim was dismissed, it had been pending for approximately 18 months. Consequently, the claimant was not required to appear at the monthly status call, the case should have been automatically continued for three months, and there was no basis for it to be dismissed for want of prosecution.

¶ 37 Upon discovering that case No. 06WC21174 had been dismissed in error, the claimant promptly filed a petition to reinstate. Commission Rule 7020.90 governs the procedure for petitions to reinstate, and provides that when a case "has been dismissed from the arbitration call for want of prosecution" the petitioner shall have 60 days to file a petition to reinstate the case "which shall set forth the reason the cause was dismissed and the

grounds relied upon for reinstatement." 50 Ill. Adm. Code 7020.90 (1982). While this is the only rule pertaining to petitions to reinstate, it could not have been intended to apply to this situation since, as indicated above, the only provision for dismissal of a case for want of prosecution applies to cases that have been pending for more than three years.

¶ 38 It is clear that this claim was dismissed in error, and not as a result of any failure on the part of the claimant or her counsel. In denying the petition to reinstate, the arbitrator never asserted that it was the claimant's fault that the case was dismissed. Rather, the arbitrator denied the petition asserting that the claimant had failed to exercise due diligence in presenting the petition because it was not presented for over ten months after it was filed¹ and because the claimant did not strictly comply with Rule 7020.90 in that she failed to set forth the grounds relied upon for reinstatement in the petition. The arbitrator's decision was adopted by the Commission without further comment, confirmed by the circuit court and now is affirmed by a majority of this court.

¶ 39 In my view, the denial of the claimant's request to reinstate this claim is a clear abuse of discretion. While the claimant certainly could have called the petition for hearing at an earlier date, the case was still less than three years old when the petition was heard. In other words, the claimant presented the petition to reinstate her claim which had been dismissed for want of prosecution before the case was subject to dismissal on that ground

¹ Ironically, the arbitrator held the petition for reinstatement under advisement for over nine months after the hearing before entering an order denying it.

under the Commission rules. Further, in my view, the claimant should not have been held to strict compliance with a Commission Rule which could not have been intended to apply to this situation. Although the petition filed did not set forth the grounds for reinstatement, the transcript of the hearing reveals that the arbitrator was clearly informed that the claimant was seeking reinstatement of a case that had been dismissed as a result of a Commission error. Likewise, the circumstances surrounding the dismissal were fully briefed and documented before the Commission.

¶ 40 This case was dismissed as a result of a Commission error. The claimant filed a petition to reinstate for the purpose of correcting that error. The Commission, in effect, told the claimant: "Your petition is denied because you were not diligent enough in correcting our error." Even Commission Rule 7020.90, which the majority holds applies to the facts of this case, states that "standards of fairness and equity" shall be applied in ruling on a petition to reinstate. In my view, the Commission decision is neither fair nor equitable. It leaves the claimant with no opportunity to pursue a claim which was dismissed through no fault of her own.

¶ 41 I would hold that the decision of the Commission to deny the claimant's petition to reinstate case No. 06WC21174 was an abuse of discretion and remand that claim for further proceedings.