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2012 IL App (4th) 110618WC-U

Order filed September 20, 2012

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

WILLIAM RICHTER,)	Appeal from the Circuit Court
)	of the 3rd Judicial Circuit,
Appellant,)	Macon County, Illinois
)	
v.)	Appeal No. 4-11-0618WC
)	Circuit No. 09-MR-732
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Archer Daniel Midland)	James R. Coryell,
Company a/k/a ADM, Inc., Appellee).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Turner, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The Commission did not apply an improper standard by requiring the claimant to show "good cause" for reinstating his claim; (2) the circuit court properly reviewed the Commission's denial of the claimant's petition to reinstate for abuse of discretion, rather than *de novo*; (3) the Commission did not abuse its discretion in denying the claimant's petition.

¶ 2 The claimant, William Richter, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2000)) in 2000 seeking

benefits for injuries he allegedly sustained while working for the respondent, Archer Daniel Midland Co. a/k/a/ ADM (employer). On June 23, 2008, an arbitrator dismissed the claimant's claim for want of prosecution. The claimant filed a timely petition to reinstate the claim. Following a hearing, the arbitrator denied the claimant's petition. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Macon County, which confirmed the Commission's ruling. This appeal followed.

¶ 3

FACTS

¶ 4 On September 14, 2000, the claimant filed an application for adjustment of claim seeking benefits for injuries to his lower back, leg, and shoulder. He claimed that he sustained these injuries when he slipped and fell at work on June 6, 2000.

¶ 5 After being continued several times, the claimant's case was set for a status call before Arbitrator White on June 23, 2008. The claimant's counsel did not attend the status call. Nor did the claimant's counsel file a timely written request for a continuance. Accordingly, the arbitrator dismissed the claimant's claim for want of prosecution.

¶ 6 The claimant timely filed a petition to reinstate his claim. The claimant's petition stated no grounds for reinstatement. The arbitrator granted the claimant's counsel a continuance to supplement the petition by adding grounds for reinstatement. Thereafter, claimant's counsel filed a supplement to his petition arguing that the claim should be reinstated because: (1) the claimant was currently incarcerated; (2) the claimant's counsel needed more information regarding medical treatment for the claimant, and it was difficult to obtain this information because the claimant

was incarcerated; and (3) the claim needed to proceed to trial because it involved disputed issues.¹

¶ 7 The arbitrator conducted a hearing on the claimant's petition. During the hearing, the arbitrator attempted to determine what specific information the claimant's counsel needed regarding the claimant's medical treatment. On that subject, the following exchange took place between the arbitrator and claimant's counsel:

"[Arbitrator]: What information is it you need regarding treatment for [the claimant]?"

[Claimant's counsel]: General information regarding whether or not he's finished his treatment or not.

[Arbitrator]: From whom? I mean what steps have you taken to procure this information?

[Claimant's counsel]: Unfortunately, my involvement with this case is isolated to the petition for reinstatement. Mr. Davis has been working on the case as a whole; and I do not have that information for you."

¶ 8 After hearing arguments from both parties, the arbitrator issued a written decision denying the claimant's petition. The arbitrator rejected the claimant's argument that his incarceration was a ground for reinstatement, noting that the claimant was not incarcerated when the case was

¹ The written supplement to the claimant's petition to reinstate is not included in the record on appeal. However, the grounds asserted in the supplement are undisputed and are described in the transcript of the arbitrator's hearing on the claimant's petition and in the parties' briefs on appeal.

dismissed for want of prosecution and that there was "no showing that he was incarcerated and unable to prosecute this claim at any other time during the 8 years this case has been pending." The arbitrator also rejected the argument that the claimant's counsel needed more information regarding treatment for the claimant, noting that the claimant's attorney was "unable to describe any attempts by himself or his office to identify or procure this information." Finally, the arbitrator concluded that the disputed nature of the claimant's case was not a good cause for continuance. On the contrary, the arbitrator found that it was "a good reason to get the case tried and resolve the disputed issues as soon as possible." For all these reasons, the arbitrator found that the claimant's supplement to his petition to reinstate "fail[ed] to state a good cause for returning this case to the active docket."

¶ 9 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision. The claimant sought judicial review of the Commission's decision in the circuit court of Macon County. The circuit court confirmed the Commission's decision. In its written Order, the circuit court found that the arbitrator and the Commission had "applied a balancing test and used the standard of fairness and equity to reach its [*sic*] decision," and ruled the Commission did not abuse its discretion in denying the claimant's petition. This appeal followed.

¶ 10

ANALYSIS

¶ 11 The claimant argues that the Commission applied an improper standard by requiring him to show "good cause" for reinstating his claim. He notes that the Commission's rule governing petitions for reinstatement requires the Commission to "apply standards of fairness and equity" in ruling on such petitions and do not require the petitioner to show "good cause" for reinstatement.

He contends that, when the proper standard is applied, it is clear that his petition for reinstatement should have been granted. We disagree.

¶ 12 On a petition to reinstate before the Commission, the burden is on the claimant to allege and prove facts justifying the relief sought. *Bromberg v. Industrial Comm'n*, 97 Ill. 2d 395, 401 (1983); *Banks v. Industrial Comm'n*, 345 Ill. App. 3d 1138, 1140 (2004). Whether to grant or deny a petition to reinstate rests within the sound discretion of the Commission. *Banks*, 345 Ill. App. 3d at 1140; *Conley v. Industrial Comm'n*, 229 Ill. App. 3d 925, 930 (1992).

¶ 13 The Commission's rules provide that written notices will be sent to the parties only for the initial status call setting on arbitration. 50 Ill. Adm. Code 7020.60(a) (1996). Thereafter, the cases are continued at three-month intervals until the case has been on file with the Commission for three years, set for trial, or otherwise disposed of. *Id.* When a case has been on file with the Commission for three years or more, the parties or their attorneys must be present at each status call on which the case appears. 50 Ill. Adm. Code 7020.60(b)(2)(C)(I) (1996). If the claimant or the claimant's attorney fails to appear at a status call upon which the case appears, then the case shall be dismissed for want of prosecution "except upon a showing of good cause." 50 Ill. Adm. Code 7020.60(b)(2)(C)(ii) (1996).

¶ 14 After a case has been dismissed from the arbitration call for want of prosecution, a party may petition to reinstate the case within 60 days of receiving the dismissal order. 50 Ill. Adm. Code 7020.90(a) (1982). The petition must "set forth the reason the cause was dismissed and the grounds relied upon for reinstatement." The parties are permitted to present evidence in support of, or in opposition to, the petition. 50 Ill. Adm. Code 7020.90© (1982). 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." *Id.*

¶ 15 The Commission properly applied these standards in denying the claimant's petition in this case. The Commission's rules provide that when a party's attorney fails to appear on a case that has been pending for more than three years, the case shall be dismissed for want of prosecution unless the party can show "good cause." 50 Ill. Adm. Code 7020.60(b)(2)(C)(ii) (1996). The Commission's rule governing petitions for reinstatement requires a party moving for reinstatement to set forth "grounds" justifying reinstatement (50 Ill. Adm. Code 7020.90(b) (1982)), and it allows the party to present evidence in support of the petition (50 Ill. Adm. Code 7020.90© (1982)). Moreover, although the rule requires an arbitrator to "apply standards of fairness and equity" when ruling on a petition to reinstate, it also expressly provides that the arbitrator "*shall consider the grounds relied on by [the] Petitioner*" and "the objections of Respondent." (Emphasis added.) *Id.* When read together, these rules require an arbitrator to consider whether the petitioner has presented grounds justifying reinstatement. Although the rules require an arbitrator to apply standards of fairness and equity in determining whether the petitioner has presented such grounds, they do not require him to grant reinstatement when the claimant has failed to articulate any grounds supporting reinstatement. Thus, the arbitrator in this case did not apply the wrong standard when he dismissed the claimant's petition for failing to present good cause (*i.e.*, grounds) justifying reinstatement, and the Commission did not err in applying the same standard.²

² It would be inappropriate for us to second-guess the Commission's determination of the standard governing its review of petitions for reinstatement because that determination turns on

¶ 16 The claimant also argues that we should review the Commission's denial of his petition *de novo*, rather than for abuse of discretion. The claimant is mistaken. It is well established that the Commission's decision to grant or deny a petition for reinstatement "rests in the sound discretion of the Commission" (*Bromberg*, 97 Ill. 2d at 400; *Banks*, 345 Ill. App. 3d at 1140), and that we review such decisions for abuse of discretion (see, *e.g.*, *Bromberg*, 97 Ill. 2d at 402; *Cranfield v. Industrial Comm'n*, 78 Ill. 2d 251, 255-56 (1980); *Zimmerman v. Industrial Comm'n*, 50 Ill. 2d 346, 349 (1972); *Banks*, 345 Ill. App. 3d at 1143; *Conley*, 229 Ill. App. 3d at 930, 932). Petitioner cites no authority to the contrary. Nor have we found any such authority.

¶ 17 Nevertheless, the claimant argues that we should review the Commission's decision *de novo* because the facts are undisputed and the appeal presents a pure question of law. We disagree. As the employer notes, there were disputed issues of fact presented to the Commission for resolution. For example, the Commission had to determine whether the claimant's attorney needed more information regarding the claimant's medical treatment and whether he was prevented from obtaining such information because the claimant was incarcerated. Moreover, the only question of law presented in this case concerns the Commission's interpretation of its own rules governing petitions for reinstatement. Unlike the Commission's interpretation of case

the Commission's interpretation of its own rules, which is entitled to substantial deference. See, *e.g.*, *Banks*, 345 Ill. App. 3d at 1141 ("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."). In this case, the Commission's interpretation of its rules regarding review of petitions to reinstate is supported by the plain language of the rules and was not clearly erroneous, arbitrary, or unreasonable.

law, the Commission's interpretation of its own rules is not reviewed *de novo*; rather, it is "entitled to deference and will be set aside only if it is clearly erroneous, arbitrary, or unreasonable." *Banks*, 345 Ill. App. 3d at 1141; see also *TTC Illinois, Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 354 (2009).

¶ 18 We cannot say that the Commission abused its discretion in denying the claimant's petition. The claimant bore the burden to allege and prove facts justifying reinstatement. *Bromberg*, 97 Ill. 2d at 401; *Banks*, 345 Ill. App. 3d at 1140. The claimant failed to carry this burden. The claimant's counsel presented no evidence during the hearing on the claimant's petition. Although he asserted that the fact that the claimant was incarcerated at the time of the hearing justified reinstatement, the claimant's counsel was unable to explain why that was so. As the arbitrator noted, the claimant was not incarcerated when the case was dismissed for want of prosecution, and there was no showing that he was incarcerated and unable to prosecute his claim at any other time during the eight years his case had been pending. Moreover, although he argued that he needed more information regarding the claimant's medical treatment, claimant's counsel was unable to identify what steps he or any other attorney in his office had taken to obtain any such information.

¶ 19 Nor did the claimant demonstrate that "standards of fairness and equity" justified reinstatement. He presented no colorable excuses for the lengthy delay in prosecuting his case, and he cannot explain why it was unfair to dismiss his claim for want of prosecution. In fact, because the case had been pending for eight years, the Commission might reasonably have concluded that the equities favored dismissal and that reinstatement would be unfair to the employer. See, e.g., *Banks*, 345 Ill. App. 3d at 1141-42 (affirming Commission's denial of

petition to reinstate case that had been pending for five and one-half years when it was dismissed, and noting that "[a]fter a lengthy delay *** witnesses may be unavailable or their ability to recall the incident may be diminished" and that "as the delays mounted, the potential for prejudice to employer increased").

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the Macon County circuit court, which confirmed the Commission's decision.

¶ 22 Affirmed.