

2013 IL App (3d) 110868WC-U  
NO. 3-11-0868WC  
Order Filed January 14, 2013

**NOTICE:** The 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).

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IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

UNITED STATES COLD STORAGE, INC.,	)	Appeal from
Appellant,	)	Circuit Court of
v.	)	La Salle County
THE ILLINOIS WORKERS' COMPENSATION	)	No. 11MR84
COMMISSION <i>et al.</i> (Robert L. Wing, Appellee).	)	
	)	Honorable
	)	Joseph P. Hettel,
	)	Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Holdridge and Justices Hoffman, Hudson and Stewart concurred  
in the judgment.

**ORDER**

¶ 1 *Held:* The employer failed to satisfy the Workers' Compensation Act's bond requirements where it neglected to identify a surety for the bond that could be accepted by the circuit court clerk and, as a result, the circuit court lacked jurisdiction over the employer's appeal.

¶ 2 Claimant, Robert L. Wing, filed claims (case Nos. 01-WC-20623 and 02-WC-60941) pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2000)), seeking benefits from employer United States Cold Storage, Inc. Following a consolidated hearing on those claims, the arbitrator determined claimant sustained accidental injury to his

lower back arising out of his work activities on February 21 and March 6, 2001. The arbitrator awarded claimant (1) 244 weeks' temporary total disability benefits; (2) permanent and total disability benefits beginning November 14, 2005; and (3) medical expenses in the amount of \$65,549.89. After the final hearing date and the closing of proofs but before the arbitrator issued his decision, an order for dismissal for want of prosecution was entered in case No. 01-WC-20623. The employer moved to vacate the arbitrator's decision and dismiss the matter, arguing before the Workers' Compensation Commission (Commission) that claimant never filed a petition to reinstate the case within 60 days of the dismissal as required by the Commission's rules and, as a result, the dismissal order became final and the proceedings after that date became a nullity. The Commission denied the employer's motion, finding "an inadvertent procedural dismissal took place." Ultimately, it affirmed and adopted the arbitrator's award.

¶ 3 On judicial review, the circuit court of La Salle County confirmed both the Commission's procedural and substantive decisions. The employer appeals, arguing the Commission erred in affirming and adopting the arbitrator's decision rather than granting its motion to vacate the arbitrator's decision and dismiss the matter with prejudice. On December 20, 2011, claimant filed a motion to dismiss the employer's appeal for lack of subject-matter jurisdiction pursuant to section 19(f) of the Act (820 ILCS 305/19(f) (West 2010)). We grant claimant's motion and dismiss the employer's appeal.

¶ 4 On appeal, claimant argues the circuit court was without jurisdiction to review the employer's claims because the employer failed to file a proper and timely appeal bond. He contends (1) the initial bond document the employer filed was not properly executed and the

record fails to demonstrate the circuit clerk's acceptance, (2) a subsequent bond document was untimely filed and executed by the employer's principal, and (3) the employer failed to identify a surety for the bond.

¶ 5 "[O]n appeal from a decision of the Commission, the circuit court obtains subject matter jurisdiction only if the appellant complies with the statutorily prescribed conditions set forth in the Act." *Residential Carpentry, Inc. v. Kennedy*, 377 Ill. App. 3d 499, 502, 879 N.E.2d 439, 442 (2007). Section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2010)) requires that proceedings for review "be commenced within 20 days of the receipt of notice of the decision of the Commission." That section "also provides that, within the same 20-day period, a written request to the clerk of the court for the issuance of a summons must be made." *Vallis Wyngroff Business Forms, Inc. v. Workers' Compensation Comm'n*, 402 Ill. App. 3d 91, 93, 930 N.E.2d 587, 589 (2010). "However, before a summons can be issued, a bond must be tendered to the clerk of the circuit court." *Vallis*, 402 Ill. App. 3d at 93, 930 N.E.2d at 589. Specifically, section 19(f)(2) of the Act (820 ILCS 305/19(f)(2) (West 2010)) provides as follows:

"No such summons shall issue unless the one against whom the Commission shall have rendered an award for the payment of money shall upon the filing of his written request for such summons file with the clerk of the court a bond conditioned that if he shall not successfully prosecute the review, he will pay the award and the costs of the proceedings in the courts. The amount of the bond shall be fixed by any member of the Commission and the

surety or sureties of the bond shall be approved by the clerk of the court. The acceptance of the bond by the clerk of the court shall constitute evidence of his approval of the bond."

¶ 6 "Because the appeal bond must be filed at the time the written request for summons is presented to the clerk of the court, it too must be filed within the 20-day deadline." *Residential Carpentry*, 377 Ill. App. 3d at 503, 879 N.E.2d at 443. "Strict compliance with the section 19(f)(2) bond requirement is necessary in order to confer jurisdiction upon the circuit court to review a decision of the Commission." *Vallis*, 402 Ill. App. 3d at 93-94, 930 N.E.2d at 589. A bond is sufficient where it clearly shows the amount of the bond, the principals, and the surety. *Wal-Mart Stores, Inc. v. Industrial Comm'n*, 326 Ill. App. 3d 438, 442, 761 N.E.2d 768, 771 (2001).

¶ 7 Here, the Commission set the bond for removal of the case to the circuit court at \$64,700. The record shows the employer received the Commission's decision on April 25, 2011, and, as a result, had until May 16, 2011, to seek judicial review of the Commission's decisions. On May 16, 2011, the employer filed its request for the circuit court of La Salle county to issue summons, seeking judicial review of the Commission's decisions. The same date, it filed the affidavit of Lawrence Sokolowski, who asserted he was vice president of human relations for the employer and had authority to bind the employer "to pay the award, as set forth on the attached Bond-Certiorari-Workers['] Compensation" and was "fully authorized to execute said bond." The next document to appear in the record was a faxed copy of an undated bond document bearing Sokolowski's unwitnessed signature and identifying him "as principal." The document is

not file stamped nor does it bear the clerk's signature or seal. Further, although it correctly states the amount of the bond obligation the document does not list a surety.

¶ 8 On June 15, 2011, the employer filed a second bond document. The second document contains Sokolowski's notarized signature "as principal" and shows it was witnessed on May 18, 2011. The document was file stamped, bears the circuit clerk's signature and seal, and contains the correct bond amount. However, the employer again failed to identify a surety for the bond.

¶ 9 Claimant argues the employer's appeal bond was deficient and not in compliance with the Act's requirements because (1) the initial bond document was unwitnessed, undated, and not file stamped by the circuit clerk; (2) the subsequent, file-stamped bond document was not filed until 50 days after employer received the Commission's decision and was not executed by Sokolowski until two days after the 20-day statutory appeal period; and (3) neither bond document contains a surety. Section 19(f)(2) clearly requires that the surety of the bond be approved by the circuit clerk and states the clerk's acceptance of the bond constitutes evidence of approval. See *Will County Forest Preserve District v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110077WC, ¶ 18, 970 N.E.2d 16, 23 ("The best indicator of the legislature's intent is the plain language of the statute itself, which must be given its plain and ordinary meaning").

¶ 10 In this case, the initial bond document failed to show acceptance by the clerk on the face of the document. Although it was contained within the record, apparently by being attached to Sokolowski's file-stamped affidavit, the bond document itself was not file stamped by

the clerk. *Republic Steel Corp. v. Industrial Comm'n*, 30 Ill. 2d 311, 313, 196 N.E.2d 654, 655-56 (1964) ("Where \*\*\* the clerk accepts a bond tendered to him and files it without objection, there is a presumption of approval and it is unnecessary for him to indorse his approval upon the bond to satisfy the statute"). Most important, however, the record shows neither the initial bond document nor the untimely bond document filed on June 15, 2011, identified a surety for the bond. The clerk could not have accepted a surety where none was provided. As a result, the employer failed to satisfy the bond requirements set forth in section 19(f)(2) of the Act and the circuit court lacked jurisdiction over the employer's appeal.

¶ 11 The employer's response to claimant's motion to dismiss addresses issues related to the filing of an appeal from the circuit court's decision. Its response has no bearing on the requirements of section 19(f)(2) of the Act.

¶ 12 For the reasons stated, we dismiss the appeal.

¶ 13 Appeal dismissed.