

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).

2015 IL App (3d) 140193WC-U

FILED: February 23, 2015

NO. 3-14-0193WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

| | | |
|--|---|---------------------|
| JOLIET PUBLIC GRADE SCHOOL DISTRICT |) | Appeal from |
| NO. 86, |) | Circuit Court of |
| |) | Will County |
| Appellant, |) | No. 11MR246 |
| |) | 13MR2129 |
| v. |) | |
| THE ILLINOIS WORKERS' COMPENSATION |) | |
| COMMISSION <i>et al.</i> (Carolyn Occhuizzo, |) | Honorable |
| Appellee). |) | Barbara Petrungaro, |
| |) | Judge Presiding. |

JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's judgment, confirming the Commission's award of penalties and attorney fees to claimant, is affirmed where the employer's sole challenge to the Commission's award was based upon its contention that underlying Commission decisions were improper and the court lacked jurisdiction to review those underlying decisions.

¶ 2 In January 2001, claimant, Carolyn Occhuizzo, sustained a back injury while working for the employer, Joliet Public Grade School District No. 86. The Illinois Workers' Compensation Commission (Commission) awarded her benefits pursuant to the Workers'

Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2000)) and, on judicial review, the Commission's decision was upheld. See *Joliet Public Grade School District No. 86 v. Industrial Comm'n*, 3-14-0193WC (Dec. 28, 2006) (unpublished order under Supreme Court Rule 23).

¶ 3 In August 2009, after proceedings to review the Commission's original decision had concluded, claimant filed a petition with the Commission, alleging she received additional medical treatment related to her January 2001 work injury and seeking additional benefits under the Act. Following a hearing, the Commission awarded claimant medical expenses but rejected her claim for temporary total disability (TTD) benefits, penalties, and attorney fees. On review, the circuit court reversed the Commission's decision and remanded with respect to the issues of medical expenses and TTD benefits. In March and December 2012, the Commission issued decisions on remand—one addressing each issue. Neither party sought review of the Commission's decisions.

¶ 4 In March 2013, claimant filed a petition with the Commission, seeking penalties and attorney fees. She alleged the employer did not follow Commission rules when paying TTD benefits and failed to pay medical expenses as ordered by the Commission on remand. In August 2013, the Commission issued a decision and awarded claimant attorney fees and penalties pursuant to sections 16 and 19(l) of the Act (820 ILCS 305/16, 19(l) (West 2000)). In February 2014, the circuit court confirmed the Commission. The employer appeals, arguing the Commission's August 2013 award of penalties and attorney fees was erroneous because its underlying award of medical expenses, upon which its August 2013 award was based, was incorrect as a matter of law. We affirm.

¶ 5 I. BACKGROUND

¶ 6 On January 31, 2001, claimant sustained a back injury while working as a grade

school teacher for the employer. She underwent medical treatment, including spinal fusion surgery in June 2002. On March 22, 2004, an arbitrator issued a decision in the matter and awarded claimant (1) 10-4/7 weeks' TTD benefits; (2) 325 weeks' permanent partial disability benefits to the extent of 65% of the person as a whole; and (3) \$118,057.22 in medical expenses. The arbitrator also ordered the employer to pay claimant penalties and attorney fees pursuant to sections 16 and 19(1) of the Act (820 ILCS 305/16, 19(1) (West 2000)).

¶ 7 On July 1, 2005, the Commission modified the arbitrator's award by increasing the amount of TTD benefits awarded to claimant to 14-2/7 weeks and vacating the award of penalties and attorney fees. The Commission otherwise affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Will County confirmed the Commission. Both parties appealed to this court, which affirmed the circuit court's judgment but remanded to the Commission so that the employer could receive an appropriate credit pursuant to section 8(j)(1) of the Act (820 ILCS 305/8(j)(1) (West 2000)). See *Joliet Public Grade School District No. 86*, 3-14-0193WC (Dec. 28, 2006) (unpublished order under Supreme Court Rule 23). On September 7, 2007, the Commission issued its decision on remand.

¶ 8 In August 2009, claimant filed a petition for medical expenses with the Commission, asserting she sought and received further medical treatment related to her January 2001 work injury, including a second surgery on her lower back on October 8, 2008. Claimant alleged she incurred medical charges exceeding \$209,843 as a result of her additional medical treatment. She stated she submitted those charges to the employer on March 6, 2009, but received no response. Claimant asked the Commission to enter an order directing the employer to pay all of the medical charges for her second surgery "and other treatment related to this incident." She also requested attorney fees, penalties, and TTD benefits.

¶ 9 On March 15, 2010, a hearing was conducted before the Commission. On February 24, 2011, it entered a decision in the matter. The Commission first found claimant's need for a second surgery in October 2008 was causally related to her January 2001 work accident. It noted evidence showed that costs relating to claimant's second surgery totaled \$226,940.40, of which Medicare paid \$38,511.62. Relying on this court's decision in *Tower Automotive v. Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 943 N.E.2d 153 (2011), the Commission accepted the employer's argument that the maximum amount of medical expenses for which it was liable was the amount paid by Medicare—\$38,511.62—and not the total amount billed by claimant's medical service providers. It found the holding in *Tower Automotive* was limited to cases arising from accidents that occurred prior to implementation of the fee schedule on February 1, 2006, and claimant's January 2001 accident occurred before that time. The Commission further found claimant failed to prove her entitlement to TTD benefits for the period of October 8, 2008, through January 6, 2009, or that the employer's failure to pay medical expenses related to her October 2008 surgery required the imposition of penalties and attorney fees.

¶ 10 Claimant sought judicial review of the Commission's decision and, on July 20, 2011, the circuit court issued a decision in the matter (case No. 11-MR-246). First, relying on language contained in section 8.2(a) of the Act (820 ILCS 305/8.2(a) (West 2006)) and the Commission's own rules (50 Ill. Adm. Code 7110.90, amended at 33 Ill. Reg. 2850 (eff. Feb. 1, 2009)), the court agreed with claimant's position that medical expenses claimant incurred for services occurring after February 1, 2006, were subject to the Act's fee schedule. It remanded the matter so that the Commission could calculate the appropriate amount of medical expenses to be paid pursuant to the fee schedule and so that the Commission could also consider claimant's

out-of-pocket expenses.

¶ 11 Second, the circuit court found the Commission failed to consider an exchange that occurred between claimant's counsel and the commissioner who presided over the hearing regarding the period of TTD asserted by claimant. The court remanded the matter "for the Commission to consider its decision" in light of that exchange. Finally, the court agreed with the Commission's denial of penalties and attorney fees and confirmed that portion of the Commission's decision.

¶ 12 On remand, the Commission issued two decisions. First, on March 27, 2012, it ordered that (1) "all medical bills incurred after February 1, 2006[,] shall be paid by [the employer] subject to the fee schedule that was in effect at that time"; (2) "all the medical bills incurred before the February 1, 2006[,] date that were processed by Medicare or any other insurance carrier be awarded in the amounts paid by Medicare or the insurance carrier in accordance with *Tower Automotive*"; (3) "any medical bills before February 1, 2006, which were not paid pursuant to negotiated contracts with Medicare or any other insurance carrier be awarded in their entirety"; and (4) "all of [claimant's] out[-]of[-]pocket medical expenses be reimbursed by the [employer]." Second, on December 17, 2012, the Commission issued a decision, stating it held a hearing regarding the issue of TTD and finding claimant entitled to 15-6/7 weeks' TTD benefits from October 8, 2008, through January 27, 2009. Neither party sought review of either Commission decision.

¶ 13 On March 5, 2013, claimant filed a petition for penalties and attorney fees with the Commission. She alleged the employer paid TTD compensation as ordered by the Commission but violated a Commission rule by issuing the check solely in claimant's name and failing to deliver it to the office of her attorney. See 50 Ill. Adm. Code 7080.20 (2015) ("Unless

otherwise directed by the petitioner or the Commission, the respondent, its agent or insurance carrier, shall deliver the first payment of accrued compensation following an award or settlement to the offices of the attorney of record for the petitioner."). Claimant also asserted the employer failed to pay her medical expenses as ordered by the Commission.

¶ 14 On July 22, 2013, the Commission issued a decision on claimant's petition for penalties and attorney fees. However, on the employer's motion, that decision was recalled and, on August 13, 2013, the Commission issued a corrected decision. It determined that, because the employer violated a Commission rule, claimant's attorney was "entitled to a 20% fee in regard to the [TTD] payment" in the amount \$1,592.79 pursuant to section 16 of the Act (820 ILCS 305/16 (West 2000)). The Commission also ordered the employer to pay \$690 in penalties pursuant to section 19(l) of the Act (820 ILCS 305/19(l) (West 2000)) because the employer's "payment to Medicare was clearly late." However, it declined to award any penalties under section 19(k) of the Act (820 ILCS 305/19(k) (West 2000)), finding no showing that the employer's actions were unreasonable or vexatious.

¶ 15 The employer sought review of the Commission's decision with the circuit court of Will County (case No. 13-MR-2129). During those proceedings, claimant made a motion to consolidate the matter with the previous review proceeding before the circuit court (case No. 11-MR-246). Initially, the employer objected to the motion. However, later, it withdrew its objection and the circuit court granted the motion.

¶ 16 On February 6, 2014, the circuit court issued its decision. It first noted the employer challenged the Commission's March 2012 decision on remand, which awarded medical expenses to claimant. However, the court determined it did not have jurisdiction to address either the Commission's March or December 2012 decisions because neither party sought review

of those decisions as provided for in the Act. The court further stated as follows:

"[The employer] also contends that the Commission's award of fees and penalties in the order of August 13, 2013, was incorrect as a matter of law because the Commission did not properly calculate the amount of medical bills to be paid in accordance in 11 MR 246 and thus should be reversed. As this Court has determined that it does not have subject matter jurisdiction to review the underlying order, that amount stands, and as such, the Commission's award of fees and penalties is not erroneous as a matter of law."

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 The employer filed a timely proceeding for review of the Commission's August 2013 decision regarding penalties and attorney fees. However, before both the circuit court and this court, it raises issues with respect to earlier decisions of both the Commission and the circuit court. The employer contends the Commission's original February 2011 decision, regarding claimant's request for additional compensation under the Act, was correct. It maintains the circuit court erred by reversing that decision and remanding the matter back to the Commission and that all subsequent decisions of the Commission and circuit court were incorrect and should be reversed or vacated. For the reasons that follow, we find jurisdiction does not exist to review Commission decisions which underlie the Commission's August 2013 award of penalties and fees as no timely proceedings to review those earlier decisions was brought by either party. In the instant proceedings, the only subject appropriate for review is the Commission's August 2013

order.

¶ 20 Although "[c]ircuit courts are courts of general jurisdiction and enjoy a presumption of subject matter jurisdiction, *** such a presumption is not available in workers' compensation proceedings, where the court exercises special statutory jurisdiction, and strict compliance with the statute is required to vest the court with subject matter jurisdiction." *Gruszczyka v. Workers' Compensation Comm'n*, 2013 IL 114212, ¶ 13, 992 N.E.2d 1234. Under the Act, a proceeding for review of the Commission's decision with the circuit court must be "commenced within 20 days of the receipt of notice of the decision of the Commission." 820 ILCS 305/19(f)(1) (West 2000). The Commission's decision becomes conclusive when no review is sought as set forth in the Act. 820 ILCS 305/19(f)(1) (West 2000).

¶ 21 Additionally "[o]nly final determinations of the Commission are appealable" to the circuit court. *Bechtel Group, Inc. v. Industrial Comm'n*, 305 Ill. App. 3d 769, 772, 713 N.E.2d 220, 221 (1999). "A judgment is final if it determines the litigation on the merits, and it is not final if the order leaves a case pending and undecided." *Supreme Catering v. Workers' Compensation Comm'n*, 2012 IL App (1st) 111220WC, ¶ 8, 976 N.E.2d 1047. "In determining whether a decision of the Commission is final, the question to be decided is whether administrative involvement in the case has been terminated or the Commission has ordered further administrative proceedings." *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 8, 976 N.E.2d 1047.

¶ 22 As discussed, in August 2009, claimant filed a petition with the Commission seeking additional compensation under the Act as the result of further medical treatment she received due to her work-related injury. In February 2011, the Commission issued a decision awarding medical expenses but denying her claim for TTD benefits, penalties, and attorney fees.

Timely review of that decision was sought before the circuit court. On review, the court reversed the Commission's decisions as to medical expenses and TTD and remanded the matter to the Commission.

¶ 23 On remand, the Commission issued two decisions. The first decision was issued in March 2012 and addressed only the issue of medical expenses. We agree with the employer that the Commission's March 2012 decision was not a final decision because it left issues relating to TTD pending. Specifically, the Commission noted it intended to schedule a hearing to address claimant's entitlement to TTD. However, on December 17, 2012, the Commission issued its second decision, awarding claimant TTD benefits. Contrary to the employer's assertions on appeal, the Commission's December 2012 order was a final decision. The record reflects, at that point, administrative involvement in the case had concluded and no matters were left pending before the Commission. Additionally, neither party sought review of the Commission's December 2012 decision within the 20-day time frame identified by the Act. As a result, the Commission's decision became conclusive as to the matters addressed therein and was not subject to attack by the employer in review proceedings from the Commission's August 2013 order.

¶ 24 On appeal, the employer argues that "[f]inal disposition of matters directed to be addressed on remand by the Circuit Court *** was not until the Commission entered its Corrected Order on August 13, 2013." This statement is incorrect and the cases it relies upon for support of its position do not involve proceedings under the Act. Here, the record clearly shows no matters were left pending after the Commission's December 2012 order. Further, there were no further proceedings in the case until over two months later when claimant filed a petition for penalties and attorney fees and alleged the employer failed to comply with the Commission's

orders.

¶ 25 The employer further asserts the Commission did not enter a final and appealable order because it did not specifically "calculate" an award of medical expenses on remand as it alleges was required by the circuit court's decision. We disagree. On remand, the Commission altered its original award of medical expenses to address the circuit court's concerns, in particular, concerns related to application of the Act's fee schedule provisions. If either party had concerns with the manner in which the Commission interpreted the court's remand order or complaints that the Commission's new decision was incorrect, that party should have instituted review proceedings as set forth in the Act. Again, what is clear from the record is that the Commission issued two decisions addressing matters identified by the circuit court and, following the Commission's December 2012 order, no matters were left pending with the Commission. Additionally, we note that, if we were to accept the employer's argument, there would still be no final and appealable decision of the Commission to review because the Commission has never issued an order "calculating" the specific amount of medical expenses owed by the employer.

¶ 26 Finally, on appeal, the employer argues the Commission's decisions on remand are void. Specifically, it contends "both the circuit court and the Commission lacked authority to order the employer to pay [claimant's] medical charges pursuant to the fee schedule amounts that were in effect at the time of her" additional medical services.

¶ 27 "A void order may be attacked, either directly or collaterally, at any time or in any court." *Siddens v. Industrial Comm'n*, 304 Ill. App. 3d 506, 511, 711 N.E.2d 18, 21-22 (1999). "A judgment or order is void where it is entered by a court or agency which lacks personal jurisdiction, subject-matter jurisdiction, or the inherent power to enter the particular judgment or

order, or where the order is procured by fraud." *Siddens*, 304 Ill. App. 3d at 511, 711 N.E.2d at 21. "[T]he general rule is that a party cannot collaterally attack an agency order *** unless the order is void on its face as being unauthorized by statute." *Newkirk v. Bigard*, 109 Ill. 2d 28, 39, 485 N.E.2d 321, 325 (1985).

¶ 28 Initially, we find nothing on the face of the Commission's March 2012 order which would render it void. Further, we note the employer does not allege the Commission lacked either personal or subject matter jurisdiction, nor does it raise any allegations of fraud. To the extent it argues the Commission lacked the inherent power to enter the particular order at issue, we disagree. Specifically, the Commission has the authority to determine "[a]ll questions arising under th[e] Act" (820 ILCS 305/18 (West 2000)), which includes a determination of medical expenses payable to an employee (820 ILCS 305/8(a) (West 2000)).

¶ 29 In this instance, the employer's argument appears to be that the Commission's order on remand is void because its decision as to medical expenses was incorrect. However, "[a]n agency's jurisdiction or authority is not lost merely because its order may be erroneous." *Newkirk*, 109 Ill. 2d at 37, 485 N.E.2d at 325. Thus, even if we were to find the Commission's decision with respect to medical expenses was incorrect, it would not necessarily follow that the order was also void.

¶ 30 Here, the record shows the circuit court correctly determined it lacked jurisdiction to review the propriety of the Commission's decisions on remand, both of which became conclusive after neither party sought review of the Commission's December 2012 decision. Further, the employer's sole challenge to the Commission's August 2013 decision—of which it timely sought review—was based on its contention that the Commission's previous orders were erroneous. As a result, it has failed to raise any issue that would warrant reversal of the

Commission's August 2013 award of penalties and fees.

¶ 31

III. CONCLUSION

¶ 32

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

¶ 33

Affirmed.