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2016 IL App (2d) 141240WC-U

FILED: January 7, 2016

NO. 2-14-1240WC

IN THE APPELLATE COURT

OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CHARTER DURA-BAR, INC., Formerly Wells Manufacturing Company,	)	Appeal from
	)	Circuit Court of
Appellant,	)	McHenry County
	)	No. 13MR620
v.	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (Jose J. Pena, Appellee).	)	Michael T. Caldwell,
	)	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 employer's appeal is dismissed for lack of appellate jurisdiction.

¶ 2 On March 28, 2008, claimant, Jose J. Pena, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2006)), seeking benefits from the employer, Charter Dura-Bar, Inc., formerly known as Wells Manufacturing Company. Following a hearing, the arbitrator determined claimant sustained accidental injuries that arose out of and in the course of his employment on January 25, 2008, and awarded claimant compensation under the Act, including temporary total disability (TTD) benefits, per-

manent partial disability (PPD) benefits for a 15% loss of use of the man as a whole, and medical expenses. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. Neither party sought judicial review.

¶ 3 On April 3, 2012, claimant filed a petition for benefits pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)) with the Commission, requesting it order that the employer "remain liable for [his] ongoing, non-narcotic medical care." Following a hearing, the Commission granted claimant's petition and found him entitled to $24,523.03 in unpaid medical expenses. The employer sought judicial review in the circuit court of McHenry County. The court reduced the net amount owed by the employer for unpaid medical expenses to $6,477.84, but otherwise confirmed the Commission's decision. The employer appeals. We dismiss its appeal for lack of appellate jurisdiction.

¶ 4 I. BACKGROUND

¶ 5 On January 25, 2008, claimant was injured while working for the employer when his clothing ignited after being splashed with molten metal. Claimant suffered second and third degree burns over 18 to 22% of his body. On September 3, 2010, an arbitration hearing was conducted in the matter. The sole issues in dispute were the nature and extent of claimant's injuries and his entitlement to medical expenses.

¶ 6 On November 8, 2010, the arbitrator issued a decision, awarding claimant TTD benefits and PPD benefits for a 15% loss of the man as whole. The arbitrator also awarded claimant medical expenses, stating as follows:

> "The [employer] shall pay the further sum of $24.00 for necessary medical services, as provided in Section 8(a) of the Act, and for all past and present prescription charges for Celebrex. Furthermore,

> pursuant to the fee schedule[,] the [employer] shall pay $29,468.81
> for medical."

Elsewhere in his decision, the arbitrator identified the $29,468.81, as representing unpaid expenses for medications, including Lyrica, Cymbalta, and Prozac, that were prescribed to claimant by Dr. Stephen Minore for neuropathic pain relief.

¶ 7 The employer sought review of the arbitrator's decision with the Commission. It argued the arbitrator erred in awarding "certain and ongoing prescription medications recommended by Dr. Minore" and that the arbitrator's PPD award was excessive. On July 22, 2011, the Commission affirmed and adopted the arbitrator's decision without further comment. Neither party sought review with the circuit court.

¶ 8 On April 3, 2012, claimant filed a petition for benefits under section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)) with the Commission. He maintained the Commission's previous decision required the employer "to pay for a number of non-narcotic pain medications[,] including Cymbalta, Lyrica, Celebrex, Prozac, and Xanax" but complained the employer was interpreting that previous decision as requiring "that it is only responsible for Celebrex." Claimant requested the Commission order that the employer "remain liable for [claimant's] ongoing, non-narcotic medical care, consistent with" the previous decisions of both the arbitrator and the Commission.

¶ 9 On January 22, 2013, a hearing was conducted before the Commission. The parties argued their respective positions and presented various exhibits. On November 8, 2013, the Commission issued its decision granting claimant's petition and finding the employer was "liable for payment of [claimant's] medications." The Commission expressly found claimant was "entitled to $24,523.03 for unpaid medical expenses" related to claimant's prescription medications.

It ordered the employer to pay that amount, but noted the employer was "entitled to a credit for any amounts paid towards [those] charges."

¶ 10 The employer sought judicial review of the Commission's decision with the circuit court of McHenry County. On November 14, 2014, the court issued its decision, holding (1) the Commission's finding that the employer was "responsible for the future expense of [claimant] for Cymbalta, Lyrica, Celebrex, Prozac[,] and Xanax [was] adequately supported by the evidence" and (2) the employer was entitled to a credit of $18,045.19, for payments made toward claimant's medical expenses, resulting in a net amount owed for medical expenses of $6,477.84. It otherwise confirmed the Commission's decision. Additionally, the record reflects the court remanded the matter to the Commission with instructions that it "[r]evise the amount [the employer] owes for medical expenses to $6,477.84."

¶ 11 On December 16, 2014, the employer filed a notice of appeal in the circuit court.

¶ 12 II. ANALYSIS

¶ 13 Initially, we note this appeal presents an issue of jurisdiction that must be addressed before proceeding with the merits of the employer's claims. Specifically, the record presents a question as to whether the employer timely sought review from the circuit court's final decision. In this instance, neither claimant nor the employer has raised a jurisdictional issue; however, "[a] reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue." *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009); see also *Wood Dale Electric v. Illinois Workers Compensation Comm'n*, 2013 IL App (1st) 113394WC, ¶ 8, 986 N.E.2d 107 ("Although neither party raises a jurisdictional issue, we have a duty to consider our jurisdiction and to dismiss this appeal if our jurisdiction is lacking.").

¶ 14 In workers' compensation cases, "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). Under the Act, appeals from circuit court decisions "shall be taken to the Appellate Court in accordance with Supreme Court Rules 22(g) and 303." 820 ILCS 305/19(f)(2) (West 2006). Pursuant to Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008), an appealing party's "notice of appeal must be filed with the clerk of the circuit court 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 directed against that judgment or order."

¶ 15 "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura*, 232 Ill. 2d at 213, 902 N.E.2d at 664. "In the absence of a properly filed notice of appeal, the appellate court lacks jurisdiction and must dismiss the appeal." *Huber v. American Accounting Ass'n*, 2014 IL 117293, ¶ 8, 21 N.E.3d 433.

¶ 16 In this case, the circuit court's final order was filed on November 14, 2014. The record fails to reflect any postjudgment motions were filed by either party within the ensuing 30-day period. Therefore, the employer's notice of appeal had to be filed within 30 days of November 14, 2014, to invoke the jurisdiction of this court, specifically, on or before December 15, 2014. See 5 ILCS 70/1.11 (West 2012) ("The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday ***, and then it shall also be excluded."). Here, the employer's notice of appeal bears a file-stamp date of December 16, 2014, reflecting that it was actually received by and filed with the circuit court outside of the relevant 30-day period.

¶ 17 We note, however, that pursuant to Illinois Supreme Court Rule 373 (eff. Sept. 19, 2014) a "notice of appeal may be filed by mail." *Secura*, 232 Ill. 2d at 214, 902 N.E.2d at 665; see also *Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212, ¶ 28, 992 N.E.2d 1234 (stating that, in workers' compensation proceedings, "a party may rely on the mail-box rule when appealing the circuit court's decision to the appellate court"). That rule provides as follows:

> "Unless received after the due date, the time of filing records, briefs or other papers required to be filed within a specified time will be the date on which they are actually received by the clerk of the reviewing court. *If received after the due date*, the time of mailing, or the time of delivery to a third-party commercial carrier for delivery to the clerk within three business days, shall be deemed the time of filing. Proof of mailing or delivery to a third-party commercial carrier shall be as provided in Rule 12(b)(3). This rule also applies to a motion directed against the judgment and to the notice of appeal filed in the trial court." (Emphasis added.) Ill. S. Ct. R. 373 (eff. Sept. 19, 2014).

¶ 18 In turn, Illinois Supreme Court Rule 12(b)(3) (eff. Sept. 19, 2014) provides that service by mail is proved "by certificate of the attorney, or affidavit of a person other than the attorney, who deposited the document in the mail ***, stating the time and place of mailing or delivery, the complete address which appeared on the envelope or package, and the fact that proper postage or the delivery charge was prepaid." Further, "Rule 12(b)(3) also requires a certificate or affidavit of mailing *to the clerk*." (Emphasis added.) *Secura*, 232 Ill. 2d at 217, 902

N.E.2d at 666.

¶ 19 Here, the record fails to reflect the employer's notice of appeal was timely filed with the circuit court clerk by mail. As discussed, the record shows the employer's notice of appeal was actually received by the clerk on December 16, 2014, after the relevant "due date." Although Rule 373 would apply to permit the date of mailing of the notice to be deemed the date of filing, the record fails to contain documents establishing proof of mailing—as required by Rule 12(b)(3)—to the *clerk* within the relevant 30-day time period.

¶ 20 The record shows that, along with its notice of appeal, the employer filed a certificate of service, signed by its attorney, and which stated as follows:

> "I hereby certify that on this 11th day of December 2014, I served by mail a copy of the foregoing Notice of Appeal on the following, by mail, postage prepaid and addressed as follows:"

The certificate of service identified those to whom the employer's notice of appeal was mailed as claimant's attorney and the chairman of the Commission. The certificate of service does not show or assert that the employer's notice of appeal was mailed to the clerk of the circuit court.

¶ 21 Because there is nothing in the record to establish proof of mailing of the employer's notice of appeal to the clerk of the circuit court within the 30-day period prescribed by Rule 303(a)(1), we must find that the notice of appeal was filed on the date it was actually received by the clerk and file stamped—December 16, 2014. As that date is outside of the 30-day deadline within which the employer was required to file its notice, its appeal was untimely. Thus, this court lacks jurisdiction to address the merits of the employer's claims and its appeal must be dismissed.

¶ 22 Finally, we note that the circuit court's November 14, 2014, decision remanded

the matter to the Commission so that it could revise its medical expenses award to the specific amount set forth by the court. Generally, "[a]n order of the circuit court which reverses a decision of the Commission and remands the matter to the Commission is interlocutory and not appealable." *Wood Dale Electric*, 2013 IL App (1st) 113394WC, ¶ 8, 986 N.E.2d 107. However, this court has held that where "the only purpose of the remand is to have the administrative agency make a mathematical calculation, then the order is final for purposes of appeal." *Roadway Express, Inc. v. Industrial Comm'n*, 347 Ill. App. 3d 1015, 1020, 808 N.E.2d 1118, 1122 (2004).

¶ 23 In this instance, the portion of the circuit court's order remanding the matter to the Commission did not have the effect of rendering its November 14, 2014, decision interlocutory and nonfinal. On remand, the court instructed the Commission to reduce its medical expenses award to the amount specified by the court ($6,477.84). Thus, the Commission was required to do even less than make a simple mathematical calculation. Under such circumstances, the circuit court's November 14, 2014, decision was final for purposes of appeal and the court's remand language has no affect on our finding that the employer's notice of appeal was untimely.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we dismiss this case for lack of appellate jurisdiction.

¶ 26 Appeal dismissed.