2016 IL App (5th) 150534WC-U
No. 5-15-0534WC
Order filed October 5, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JACK LINGENFELTER,	)	Appeal from the Circuit Court
	)	of Madison County.
Petitioner-Appellee/Cross-Appellant,	)	
	)	
v.	)	No. 15-MR-143
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION, et al.,	)	
	)	Honorable
(Cloverleaf Golf Course, Respondent-Appellant/Cross-Appellee).	)	John Barberis,
	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

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

ORDER

¶ 1 *Held*: The judgment of the circuit court, which set aside the decision of the Commission and remanded the matter for further proceedings, did not constitute a final, appealable order; therefore, the appellate court lacked jurisdiction to consider the propriety of the circuit court's ruling and would dismiss the parties' appeals.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Jack Lingenfelter, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)) alleging that he sustained an injury to his left eye on June 26, 2011, when he was struck by a golf ball while working for respondent, Cloverleaf Golf Course. Following a hearing, the arbitrator denied compensation, finding that claimant failed to establish an employer-employee relationship with respondent. The arbitrator also found that, even if an employer-employee relationship existed, claimant failed to establish that his injury arose out of and in the course of his employment with respondent. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Madison County set aside the Commission's finding on the employer-employee relationship issue and remanded the matter to the Commission "for all of the other issues." Thereafter, respondent filed a notice of appeal, and claimant filed a notice of cross-appeal. We find that we lack jurisdiction to consider the parties' appeals. Accordingly, we dismiss both appeals and remand the matter to the Commission for further proceedings.

¶ 4 II. BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing held on April 22, 2014. On August 23, 2010, claimant was employed by Bechtel Construction Company (Bechtel) when a roller frame broke, fell about 30 to 40 feet, and struck him in the right eye. As a result of the accident, claimant sustained a right corneal injury and became very sensitive to light. Following this injury, claimant was taken off work. In October 2010, claimant was instructed to remain off the job site until his right eye healed. Thereafter, claimant filed an application of adjustment of claim with regard to the injury to his right eye. An

arbitrator found claimant's injury compensable and awarded him benefits, including temporary total disability (TTD) of $1,005.66 per week. The arbitrator's decision was appealed to the Commission.

¶ 6 During the pendency of his workers' compensation claim with Bechtel, claimant approached Brian Lawson, an acquaintance and respondent's vice-president. Claimant, a self-described "golf fanatic," asked Lawson whether the golf course was looking for any help. According to claimant, Lawson instructed him to check with "Vernon," the individual who ran the desk at the golf course. Claimant testified that he went to the golf course, filled out an application, and was hired as a "ranger."

¶ 7 On the morning of his first day of work, claimant encountered Lawson and Lawson's mother, the owner of the golf course. At that time, claimant introduced himself to Lawson's mother. According to claimant, he informed Lawson and Lawson's mother that he was not currently working, that he was receiving workers' compensation benefits due to an injury sustained while employed by Bechtel, and that it was his intention to return to work for Bechtel as soon as he was released to do so. Claimant also related that he wanted to work and "trade and play golf" so as to keep up with his hobby and have something to do. Claimant indicated that he was concerned that taking a job would jeopardize his TTD benefits. However, he loved playing golf, so he thought "trad[ing] it out" was "the better way to do it."

¶ 8 Claimant testified that as a ranger, his duties included showing up early in the morning to prepare the golf carts for customers, filling water coolers and delivering them to stations on the golf course, taking out trash, and "cruising" the golf course to make sure there was no slow play or fooling around. Claimant testified that respondent posted his work schedule a week in advance. Claimant initially stated that he worked three days per week for six to eight hours per

day, but later indicated that his hours "just depended." According to claimant, he typically worked on the weekends so that he could play golf during the week. Claimant was not compensated monetarily for his efforts. Instead, he was allowed to play unlimited golf. Claimant acknowledged that he did not receive a W-2 form from respondent and that he did not have a written contract for hire.

¶ 9 Claimant testified that on June 26, 2011, while working as a ranger, he was hit in his left eye by a golf ball. Claimant was diagnosed with a corneal abrasion. Claimant testified that he is unable to focus on anything with his left eye and he has bad depth perception. Claimant further testified that he has a cataract in his left eye that will eventually have to be removed. Claimant also testified that he told his eye doctor that he intended to return to work for Bechtel on August 1, although he did not specify the year. Claimant stated, however, that because of the injury to his left eye, he cannot get certified to return to work for Bechtel.

¶ 10 Subsequent to the injury to his left eye, claimant reached a settlement with Bechtel regarding his right eye. To that end, on December 23, 2011, claimant signed a settlement contract, which was approved on January 3, 2012. Under that contract, claimant received $190,000 in settlement of any and all claims resulting from his August 23, 2010, accident and "any aggravating incident involving [claimant's] *eyes* to date of approval of the settlement." (Emphasis added.)

¶ 11 Lawson testified that respondent has both employees and volunteers. According to Lawson, claimant was considered a volunteer. Lawson explained that claimant approached him in the summer of 2011 about becoming a volunteer at the golf course. Claimant filled out a form to be a volunteer. As was typical with volunteers, claimant was given limited hours. Lawson noted that volunteers indicate when they are available to work. Claimant, for instance, usually

worked the weekends when there were tournaments. Lawson further testified that unlike volunteers, employees have fixed schedules and longer hours. As Lawson explained, the schedule for regular employees is "pretty regimented on when they have to be there." It was Lawson's understanding that claimant wanted to do some volunteer work in exchange for golf because claimant was off work, he wanted to fill his days, and he had a passion for golf. Lawson noted that while some duties for employees mirror those of volunteers, employees have additional tasks such as pulling crabgrass from the greens, refilling ball washers, collecting damaged golf carts, and working alongside the superintendent. Lawson further testified that claimant played more golf than he volunteered. When asked if he had any control over claimant's duties as a volunteer, Lawson explained that claimant would have been given some general guidelines to adhere to. He noted, however, that volunteers are not "police[d]." Lawson also noted that claimant never requested a W-2.

¶ 12 Based on the foregoing evidence, the arbitrator concluded that claimant failed to establish that the injury to his left eye was compensable under the Act. Citing claimant's "demeanor and inflections while testifying" as well as "the interplay between this claim and [claimant's] 2010 right eye injury," the arbitrator initially found that claimant was not a credible witness. Next, the arbitrator determined that claimant failed to establish the existence of an employer-employee relationship. The arbitrator noted that when claimant reported to the emergency room following the injury to his left eye, he listed Bechtel as his employer and made no specific mention of working for respondent. The arbitrator also cited the following factors in support of her finding: (1) claimant was subject to minimal supervision; (2) claimant did not receive a W-2 form; and (3) claimant volunteered his services to respondent in order to fulfill his desire to play golf and avoid any problem that might be caused by being employed by anyone. Even assuming

arguendo that an employer-employee relationship existed, the arbitrator determined that claimant failed to establish that his accident arose out of and in the course of his employment with respondent. In this regard, the arbitrator found that claimant was subject to no greater risk of being struck by a golf ball than that of the general public. In light of these findings, the arbitrator determined that all other issues were rendered moot.

¶ 13 The Commission affirmed and adopted the decision of the arbitrator in its entirety. With respect to the employer-employee-relationship issue, the Commission remarked:

> "While there were some factors that weight [*sic*] favorable in terms of an employer/employee relationship such as the equipment provided and being placed on the schedule, the majority factors [*sic*] weigh against a finding of an employer/employee [*sic*] in that there was little evidence of the exercise of control, no formal trapping of employment and no indication whatsoever of the right to discharge."

The Commission also rejected the notion that claimant was concurrently employed by respondent and Bechtel at the time of the injury to his left eye. In support of this latter finding, the Commission explained, "the evidence clearly shows that on June 26, 2011, [claimant] was on an employment related disability leave and that he had bartered/traded his services to keep busy, pursue a hobby as an avid golfer and to ensure that he did not jeopardize his disability benefits from a separate claim through receiving monetary compensation for his services."

¶ 14 Thereafter, claimant sought judicial review. In an order entered on November 17, 2015, the circuit court of Madison County set aside the decision of the Commission with respect to whether claimant was an employee at the time of the injury. The court remanded the matter to the Commission "for all of the other issues." The court did not address the accident or

concurrent-employment issues. Thereafter, respondent filed a notice of appeal and claimant filed a notice of cross-appeal.

¶ 15 III. ANALYSIS

¶ 16 Although the parties have not raised the issue of jurisdiction, this court has an independent duty to address the matter. *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 515 (2003); *Kendall County Public Defender's Office v. Industrial Comm'n*, 304 Ill. App. 3d 271, 273 (1999). Absent a statutory or supreme court rule exception, the jurisdiction of a reviewing court is limited to deciding appeals from final judgments. Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) ("Every *final* judgment of a circuit court in a civil case is appealable as of right." (Emphasis added.)); *Trunek v. Industrial Comm'n*, 345 Ill. App. 3d 126, 127 (2003). "A judgment is final for appeal purposes if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment." *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989). Hence, in the context of a workers' compensation claim, when the circuit court sets aside a decision of the Commission and remands the matter for further proceedings involving disputed questions of law or fact, the circuit court order is not final for purposes of appeal. *Stockton v. Industrial Comm'n*, 69 Ill. 2d 120, 124-25 (1977); *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 883-84 (2007); *Roadway Express, Inc. v. Industrial Comm'n*, 347 Ill. App. 3d 1015, 1020-21 (2004); *Williams*, 336 Ill. App. 3d at 516; *Kendall County Public Defender's Office*, 304 Ill. App. 3d at 273. Conversely, if the trial court's instructions on remand require only that the Commission "act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or * * * make a mathematical calculation," then the court's order is final for purposes of appeal. *Williams*, 336 Ill. App. 3d at 516 (citing

A.O. Smith Corp. v. Industrial Comm'n, 109 Ill. 2d 52, 54-55 (1985), and *Wilkey v. Illinois Racing Board*, 96 Ill. 2d 245, 249-50 (1983)); see also *St. Elizabeth's Hospital*, 371 Ill. App. 3d at 884; *Roadway Express*, 347 Ill. App. 3d at 1020. Where a party attempts to appeal an interlocutory or nonfinal order to this court, we are without jurisdiction to consider the appeal. *Kendall County Public Defender's Office*, 304 Ill. App. 3d at 273.

¶ 17 Here, the circuit court set aside the Commission's finding that claimant failed to establish an employer-employer relationship and remanded the matter to the Commission "for all of the other issues." Clearly, the circuit court's instructions on remand will involve substantive evaluations of the evidence and therefore contemplate more than uncontroverted incidental matters or a mathematical calculation. Indeed, in making the oral pronouncement of its ruling, the circuit court remarked, "[the matter is] remanded back to the Commission to rule on the other elements of the case, such as what amounts are owed and so forth and so on." Accordingly, we determine that the trial court's November 17, 2015, order was not final and that we lack jurisdiction to consider the parties' appeals. We note that our decision does not deprive the parties of the right to judicial review because once the Commission addresses the issues presented on remand, its decision will again become reviewable. *Stockton*, 69 Ill. 2d at 124-25; *Kendall County Public Defender's Office*, 304 Ill. App. 3d at 273.

¶ 18 IV. CONCLUSION

¶ 19 For the reasons set forth above, we dismiss respondent's appeal and claimant's cross-appeal. This matter is remanded to the Commission for further proceedings in accordance with this decision.

¶ 20 Appeals Dismissed; Cause remanded to Commission with directions.