2018 IL App (2nd) 160840WC-U

NO. 2-16-0840WC

Order filed February 2, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MIREYA GARCIA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Kane County.
	)	
v.	)	No. 16-MR-249
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, *et al.*,	)	Honorable
(Lulay Law Offices, Appellant, Donald W.	)	David R. Akemann,
Fohrman and Associates, Ltd., Appellee).	)	Judge, presiding.

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

ORDER

¶ 1 *Held:* Because adequate evidence was presented to support a claim of *quantum*

meruit, and because the appellant has forfeited his other claims on appeal, the decision of the Commission is affirmed.

¶ 2 FACTS

¶ 3 The issues on appeal in this case relate entirely to the division, between the claimant's initial attorney and her successor attorney, of a $4,000 award of attorney fees, pursuant to a settlement agreement signed by the claimant (Mireya Garcia) and the employer (Staff Force Comp USA) to fully settle the claimant's case. The claimant's initial attorney, Adam Scholl of Donald W. Fohrman and Associates, Ltd. (Scholl), filed a petition for fees pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)), which was contested by the successor attorney, Michael Lulay of Lulay Law Offices (Lulay). The petition proceeded to hearing before arbitrator Barbara N. Flores.

¶ 4 On March 28, 2014, the arbitrator filed her decision, in which she found, *inter alia*, that: (1) although the case was above the "red line" at the time, Lulay failed to appear at the February 21, 2014, hearing on the petition for fees; (2) she recessed the February 21, 2014, hearing to give Scholl and counsel for the employer the opportunity to contact Lulay and secure his appearance; (3) she subsequently "allowed [Scholl] to present evidence in support of his petition for fees given [Lulay's] unexplained absence;" (4) Scholl's evidence included "an itemization of his time and efforts on [the claimant's] behalf in support of a *quantum meruit* argument for $4,800.00 in attorney's fees;" (5) subsequent to the February 21, 2014, hearing, Lulay moved to vacate and/or augment the proofs on the petition for fees; (6) she held a second hearing on the matter on March 12,

2014, at which Lulay appeared but did not adduce evidence, although given multiple opportunities to do so, to support his claim of entitlement to the entire $4,000; (7) Lulay instead attempted to present argument that was unsubstantiated by any evidence; (8) the only basis to award any portion of the fees to Lulay was the fact "that the first and only settlement offer made by [the employer] to [the claimant] occurred while she was represented by [Lulay];" and (9) Lulay misrepresented in the settlement papers that there were no outstanding disputes over fees. Pursuant to these findings, the arbitrator ruled that Scholl was entitled to $3,000 and Lulay was entitled to $1,000 "on the basis of *quantum meruit*."

¶ 5 Lulay sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On January 22, 2016, the Commission unanimously affirmed and adopted, without modification, the arbitrator's decision. The Commission noted various delays in the case attributable to Lulay, as well as Lulay's failure to appear at the February 21, 2014, hearing, none of which were sufficiently explained by Lulay. The Commission also concluded that, Lulay's argument to the contrary notwithstanding, attorney Scholl "produced a substantive basis for his claim at the February 21, 2014, hearing date," and noted that if Lulay had "bothered to appear that day, he would have had the opportunity to review same." The Commission specifically found that "Scholl presented evidence supporting his claim for *quantum meruit* fees."

¶ 6 Lulay filed a timely petition for judicial review in the circuit court of Kane County. On September 19, 2016, the circuit court affirmed the Commission's decision. On September 30, 2016, Lulay filed this timely appeal.

¶ 7 ANALYSIS

¶ 8 On appeal, Lulay raises four claims of error, questioning whether: (1) the arbitrator's decision properly applied *quantum meruit* to the facts of the case; (2) "sworn to or authenticated evidence in the record" supports the arbitrator's decision; (3) *quantum meruit* can "trump the statutory restrictions" of the Act "against a lawyer charging a fee for work that did not contribute to the injured worker receiving any compensation on disputed matters;" and (4) the arbitrator possessed "procedural authority" to conduct the February 21, 2014, hearing on Scholl's petition for fees.

¶ 9 In support of his first claim of error, Lulay argues that the arbitrator employed the "forbidden" comparison/apportionment approach, rather than properly applying *quantum meruit* to the facts of this case. He argues that he had no obligation to present any evidence about his representation of the claimant, and that the arbitrator erred by repeatedly offering him the opportunity to do so. He also takes issue with the arbitrator's use of the word "apportionment," insinuating that the use of the term means the arbitrator employed the comparison/apportionment approach. Finally, he claims the arbitrator erred when she denied him the opportunity to call Scholl as a witness. Lulay has cited no authority in support of the following propositions: (1) that it is error for an arbitrator to offer a party the opportunity to present evidence; (2) that use of the term "apportionment" is tantamount to employing the comparison/apportionment approach; and (3) that the arbitrator erred by not allowing him to call Scholl as a witness. Accordingly, he has forfeited consideration of each of these claims. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (argument must contain the contentions of the appellant, the reasons therefor, and

the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing); see also, *e.g., Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208 (2009) (when party fails to support argument with citation to authority, party has forfeited claim on appeal).

¶ 10 With regard to his overall claim of error that the arbitrator's decision did not properly apply *quantum meruit* to the facts of the case, and that the Commission's and circuit court's decisions should therefore be reversed, we begin with our standard of review. "It is the function of the Commission to judge the credibility of witnesses" (*City of Springfield v. Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009)), and "to determine disputed facts and draw reasonable inferences from the evidence in workers' compensation cases," and we will not set aside the findings of the Commission unless they are contrary to the manifest weight of the evidence. *Continental Tire of the Americas, LLC v. Illinois Workers' Compensation Com'n*, 2015 IL App (5th) 140445WC, ¶ 20 (quoting *Hiram Walker & Sons, Inc. v. Industrial Com'n*, 71 Ill. 2d 476, 479 (1978)). A finding of fact is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370 (2009). We may affirm a decision of the Commission if there is any basis in the record on appeal to do so, regardless of whether we believe the Commission's reasoning is correct or sound. *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208 (2009). Moreover, the Commission is presumed to know and follow the law, and even when an order of the Commission is

"neither clear nor definitive," we may affirm it. *DeSalvo v. Industrial Com'n*, 307 Ill. App. 3d 628, 633 (1999).

¶ 11 It is well-established that a client may discharge his or her attorney with or without cause at any time, including when the client and attorney have signed a contingency-fee-based agreement. *DeLapaz v. Selectbuild Construction, Inc.*, 394 Ill. App. 3d 969, 973 (2009). In the context of a contingency agreement, when an attorney is discharged, the contingency agreement itself "no longer exists and the contingency term is no longer operative." *Id.* The discharged attorney, nevertheless, is entitled to payment, for the services rendered by that attorney prior to discharge, on a *quantum meruit* basis. *Id.* For purposes of analysis, *quantum meruit* is construed to provide an attorney as much payment as that attorney deserves for his or her work on the case. *Id.* The following factors are among those to be considered to determine the *quantum meruit* amount for services rendered: (1) time and labor required; (2) attorney's skill and standing; (3) nature of the cause; (4) novelty and difficulty of the subject matter; (5) attorney's degree of responsibility in managing the case; (6) usual and customary charge for the type of work in the concerned community; and (7) benefits resulting to the client. *Id.* When an attorney has performed "much of the work on a case" prior to the attorney's discharge, and a settlement immediately follows the discharge, the factors used to determine the appropriate *quantum meruit* fee may justify a court's conclusion that the entire contract fee is the reasonable value of the services rendered. *Id.* This court has noted that it is not appropriate to simply adopt a comparison/apportionment approach which "entails comparing the services provided by a discharged attorney with the services provided by

the successor attorney and then awarding the portion of the recovery allocable to attorney fees to the attorneys based on the ratio of work performed by each attorney." *Id*. at 975-976. See also, *Susan E. Loggans & Associates v. Estate of Magid,* 226 Ill. App. 3d 147, 162 (1992).

¶ 12 In this case, the arbitrator appeared to base her award of $3,000 in attorney fees to Scholl, in part, on the fact that Lulay had "failed to adduce evidence" supporting his claim for fees. The Commission affirmed and adopted this analysis without modification. However, at the time of the arbitration hearings on attorney fees, a contingency fee agreement between Lulay and the claimant was still in effect. Accordingly, Lulay was not required to present evidence to justify his claim of attorney fees on a *quantum meruit* basis. He was presumably entitled to 20 percent of the Commission award under the binding contingency contract, unless Scholl could prove otherwise. As the discharged attorney (*i.e.*, the attorney who no longer had a binding fee contract with the claimant), Scholl, and only Scholl, had the burden to show his entitlement to legal fees under a *quantum meruit* theory. To the extent that the Commission adopted an analysis that suggested otherwise, it erred. However, because, as described below, we conclude that the Commission could have reasonably found that Scholl met his burden of proving his entitlement to $3,000 in legal fees on the basis of *quantum meruit*, we do not believe that any error that might have occurred merits reversal.

¶ 13 At the February 21, 2014, hearing, Scholl verbally presented the history of his firm's representation of the claimant in this case, and also provided an itemized listing of the hours the firm expended on the case, which was accepted into evidence and marked

as "Fohrman – Exhibit 1" and which includes over 70 phone calls to the claimant, the adjuster, and various doctors who treated the claimant. Scholl indicated that his firm represented the claimant from March 2010 to December 2012, during which time they secured temporary total disability (TTD) benefits for the claimant, participated in multiple phone conversations with the claimant "counseling her and assisting her with regard to her TTD benefits," and secured a surgery for the claimant, to which the employer assented. He indicated that his firm represented the claimant "up until the point where her benefits were terminated based on an IME" of her. He noted that Fohrman – Exhibit 1 indicates that his firm spent 16.20 hours on the case. He multiplied 16.20 hours by an hourly rate of $250 to claim $4,050.00. He asked for, and received, leave to amend the exhibit to reflect the additional 3 hours he had spent on the case that day, which brought the total fees claimed to $4,800.00. Scholl specifically noted that his request for fees was based upon principles of *quantum meruit*.

¶ 14 At the second hearing on the matter, held on March 12, 2014, Scholl disagreed with Lulay's assertion that Scholl's firm had done nothing to secure compensation for the claimant. Scholl noted that although the matter was uncontested when the claimant became the firm's client, his firm's work was "making sure the case remain[ed] uncontested." He submitted that his firm "spent numerous hours" ensuring the claimant received her TTD benefits, including "constantly calling the adjusters up to get her TTD." He further noted that the firm was "dealing with issues with regard to the medical bills that needed to be paid," and that the entire time the firm represented the claimant, "she received her TTD, she was able to get a surgery, she was able to get treatment," and that

she terminated the firm once "she received MMI per her doctor." Scholl asserted that "we basically prepped the case, got the case ready, [Lulay] stepped in, ordered the records, settle[d] the case." He further asserted that he did not believe Lulay's work "really represents what he is essentially looking for as far as his fee."

¶ 15 Our review of the record demonstrates that the Commission had before it the documentary evidence provided by Scholl, as well as the transcripts of the above hearings. As explained above, it was the province of the Commission to judge the credibility of the witnesses and to determine disputed questions of fact. As noted above, the Commission specifically found that "Scholl presented evidence supporting his claim for *quantum meruit* fees." Although the Commission did not list individually each *quantum meruit* factor, the Commission's finding is consistent both with the principle that when an attorney has performed "much of the work on a case" prior to the attorney's discharge, and a settlement immediately follows the discharge, the factors used to determine the appropriate *quantum meruit* fee may justify a court's conclusion that the entire contract fee is the reasonable value of the services rendered, and with an analysis of the individual factors. See *DeLapaz v. Selectbuild Construction, Inc.*, 394 Ill. App. 3d 969, 973 (2009). There is no support in the record for the notion that the Commission employed the comparison/apportionment approach.

¶ 16 With regard to the first *quantum meruit* factor, the time and labor required, Scholl presented evidence of the time and labor required by his firm. Between the evidence presented, and the Commission's general knowledge of workers' compensation claims and the attorneys practicing before it, the Commission was also in the appropriate

position to evaluate the remaining factors: attorney's skill and standing; nature of the cause; novelty and difficulty of the subject matter; attorney's degree of responsibility in managing the case; usual and customary charge for the type of work in the concerned community; and the benefits resulting to the client.

¶ 17 Again, the Commission specifically found that "Scholl presented evidence supporting his claim for *quantum meruit* fees." Although the Commission could have analyzed each *quantum meruit* factor individually in its written decision, it was not required to do so. See *DeSalvo v. Industrial Com'n*, 307 Ill. App. 3d 628, 633 (1999) (Commission presumed to know and follow law; even when order of the Commission is "neither clear nor definitive," we may affirm it). Because a conclusion opposite to that reached by the Commission is not "clearly apparent," we decline to disturb the decision on appeal. See, *e.g.*, *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370 (2009) (findings against manifest weight of the evidence only where opposite conclusion is clearly apparent).

¶ 18 With regard to Lulay's second claim of error—that there is no "sworn to or authenticated evidence in the record" that supports the arbitrator's decision—we have discussed in detail above the evidence before the arbitrator and the Commission. Lulay has cited no authority, and presented no coherent argument, in support of the proposition that the evidence was not properly admitted of record. Accordingly, he has forfeited consideration of this claim. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in

the reply brief, in oral argument, or in a petition for a rehearing); see also, *e.g.*, *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n,* 389 Ill. App. 3d 191, 208 (2009) (when party fails to support argument with citation to authority, party has forfeited claim on appeal).

¶ 19 With regard to Lulay's third claim of error—that *quantum meruit* cannot "trump the statutory restrictions" of the Act "against a lawyer charging a fee for work that did not contribute to the injured worker receiving any compensation on disputed matters"—Lulay merely reiterates his argument, already rejected by this court, as well as by the arbitrator and the Commission, that the work done by Scholl did not contribute to the claimant receiving compensation. There is no merit to Lulay's third claim of error.

¶ 20 With regard to Lulay's fourth claim of error—that the arbitrator did not possess "procedural authority" to conduct the February 21, 2014, hearing on Scholl's petition for fees, Lulay has cited no authority, and presented no coherent argument, in support of the proposition that the arbitrator lacked authority to conduct the February 21, 2014, hearing. Accordingly, he has forfeited consideration of this claim of error. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing); see also, *e.g.*, *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n,* 389 Ill. App. 3d 191, 208 (2009) (when party fails to support argument with citation to authority, party has forfeited claim on appeal).

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court, which confirmed the Commission's unanimous decision.

¶ 23 Affirmed.