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2014 IL App (1st) 130111WC-U

FILED: May 19, 2014

NO. 1-13-0111WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ERIN EILER,)	Appeal from
)	Circuit Court of
Appellant,)	Cook County
)	No. 12L50899
v.)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Innoplos, Inc., Appellee).)	Robert Lopez-Cepero,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* (1) The Commission's order, denying claimant's motion to waive costs associated with the arbitration transcript pursuant to section 20 of the Worker's Compensation Act, was not a final order and also not appealable to the circuit court until the Commission entered an order in the case that left no issues pending or undecided.

(2) The Commission erred in relying on claimant's failure to appeal its order denying her section 20 motion to support its dismissal of her petition for review of the arbitrator's decision.

¶ 2 Claimant, Erin Eiler, sought benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2004)) from the employer, Innoplos, Inc. She alleged a work-

related injury that arose out of and in the course of her employment on September 2, 2005. Following a hearing, the arbitrator awarded claimant 1-3/7 weeks' temporary total disability (TTD) benefits, but found she failed to prove any permanent disability. Claimant sought review with the Workers' Compensation Commission (Commission), but the Commission dismissed her petition for review, finding she "failed to show cause in a timely and appropriate manner why she failed to perfect her Petition for Review in accordance with the Commission rules." On judicial review, the circuit court of Cook County confirmed the Commission's decision. Claimant appeals *pro se*, challenging both the decisions of the arbitrator and the Commission. We reverse and remand with directions.

¶ 3

I. BACKGROUND

¶ 4

The record on appeal contains the arbitrator's and Commission's decisions but neither a transcript of the arbitration hearing nor a record of the proceedings before the Commission. On September 21, 2009, the arbitrator's decision was issued, finding claimant sustained injuries that arose out of and in the course of her employment on September 2, 2005. The arbitrator awarded claimant 1-3/7 weeks' TTD benefits but found claimant "failed to prove a causal relationship to any permanent disability." Claimant filed a petition for review of the arbitrator's decision with the Commission.

¶ 5

On December 17, 2010, the Commission, with one commissioner dissenting, issued a decision in the matter, stating as follows:

"This matter comes before the *** Commission on a Rule to Show Cause dated April 16, 2010, and issued by the Commission requesting that [claimant] show cause why [claimant's] Petition for Review should not be dismissed due to

[claimant's] failure to perfect her review in that she has failed to pay the estimated cost of the transcript of arbitration. In defense of the Rule, [claimant], *pro se*, has raised an oral Section 20 [(820 ILCS 305/20 (West 2008))] Pauper's Petition. A hearing on the Rule to Show Cause and Section 20 Pauper's Petition was held before the Commission on June 16, 2010, *** with [claimant] being present in her own person and the [employer] appearing through counsel ***. A record of the proceedings was made and after considering the entire record and the arguments of the parties, the Commission finds that [claimant's] Section 20 Request For Pauper's Petition should be denied and the hearing on the Commission's Rule to Show Cause continued."

¶ 6 The Commission stated the estimated cost of the arbitration transcript was \$1,176 (or \$1,466.65 for an original and one copy), which claimant failed to pay. Initially, it issued a notice of hearing on a rule to show cause and set the hearing for April 7, 2010. On that date, claimant failed to appear but the employer was present through counsel and informed the Commission that claimant lived in South Dakota and the employer had not received any communication from her. On the Commission's own motion, it set a final hearing on the rule to show cause for May 26, 2010. On that date, claimant, again, failed to appear; however, she did contact the administrative assistant of one of the commissioners to report that she was en route from South Dakota. Ultimately, the Commission and the parties conducted a conference call and agreed a hearing on the Commission's rule to show cause would be continued until June 16, 2010. During that conference call, claimant reported she had not paid costs associated with the

arbitration transcript because she lacked the funds to do so. The Commission interpreted claimant's representation as a request for a finding of pauper's status pursuant to section 20 of the Act (820 ILCS 305/20 (West 2008)) and informed the parties it would conduct a hearing on that request on June 16, 2010, in conjunction with the rule to show cause.

¶ 7 At the June 16, 2010, hearing, claimant appeared and provided testimony regarding her financial circumstances. In its December 2010 decision in the matter, the Commission questioned claimant's "credibility and candor before the Commission," finding "[b]oth her demeanor and the manner in which she answered questions was suspect." The Commission found claimant failed to show she was without financial means to pay the costs associated with her petition for review, but determined it "appropriate under the circumstances to allow [claimant] an opportunity to pay for the transcript and perfect her review." It gave claimant until February 2, 2011, to pay for the transcript, stating "[t]he hearing on the Rule to Show Cause is continued until that date *** at which time [claimant's] Petition for Review will be dismissed if she has failed to pay for the cost of the transcript."

¶ 8 On June 8, 2012, the Commission issued a second decision in the matter, dismissing claimant's petition for review of the arbitrator's September 2009 decision. It stated the hearing scheduled for February 2, 2011, was continued to March 2, 2011, due to inclement weather and noted on February 8, 2011, it received a "Response to Order" from claimant along with documents pertaining to her financial situation. On March 2, 2011, a teleconference hearing was conducted, during which claimant asserted there were factual errors in the Commission's December 2010 order and that she remained unable to pay for the arbitration transcript. Claimant acknowledged she did not seek review of the Commission's December 2010 order, stating she believed she had to file an appeal with the Commission and did so by filing her

"Response to Order." She further admitted "she had not paid any portion of the \$1,176.00 needed to pay for the transcript of the Arbitration hearing ***." In its decision dismissing claimant's petition for review, the Commission stated as follows:

"While recognizing the disadvantage *pro se* [claimants] have in navigating the worker's [*sic*] compensation system, the Commission notes that this [claimant] was given significant latitude in the litigation of her case, sometimes over the objections of [the employer]. When [claimant] failed to appear for the first review call on April 7, 2010, the Commission continued it to May 26, 2010[,] and, when [claimant] failed to appear, again, the Commission agreed to hold the hearing via teleconference. Even after finding that [claimant] had the funds to pay for the arbitration transcript in late November 2009 and early 2010 in its December 17, 2010, order the Commission allowed [claimant] another chance to do so before the February 2011 hearing on the Rule to Show Cause. Finally, the Commission arranged a teleconference for the hearing at [claimant's] request and for [claimant's] convenience, over the reasonable objections of [the employer's] attorney ***."

¶ 9 The Commission also relied on claimant's failure to seek timely review of its December 2010 decision. It stated as follows:

"[Claimant] claims that the Commission's December 17, 2010[,] order was factually inaccurate, but rather than filing an appeal with the Circuit court in the requisite 20 days, [claimant] waited until

after the first scheduled hearing date of February 2, 2011[,] to file a document (her 'Response to Order') to explain the errors in the order and why she still could not pay for the transcript. *** After receiving the Commission's order *** [claimant] failed to file a Petition for Review at all, let alone within the requisite time period. [Claimant] did not even manage to file her 'Response to Order' in a timely manner, doing so after the first scheduled hearing date. Therefore, the Commission finds that [claimant] has failed to show cause in a timely and appropriate manner why she failed to perfect her Petition for Review in accordance with Commission rules, and dismisses her Petition for Review of the *** arbitration decision."

¶ 10 Claimant sought judicial review of the Commission's decision with the circuit court. On December 27, 2012, the court confirmed the Commission.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 Claimant appeals *pro se* and raises challenges to both the arbitrator's and Commission's decisions. She requests this court (1) grant "further examination of this case from medical/mental records that were not considered within lower court decisions," (2) "consider a longer term of relief for damages incurred" than the 1-3/7 weeks' of TTD awarded by the arbitrator, and (3) order a waiver of transcript fees or allow her more time to pay. In response, the employer contends that neither the propriety of the arbitrator's decision nor the Commission's denial of claimant's section 20 motion is properly before this court. Alternatively, it argues the

Commission committed no error by dismissing claimant's petition for review of the arbitrator's decision.

¶ 14 Initially, we agree with the employer that the September 2009 arbitrator's decision is not a proper subject of this appeal. The scope of appellate review extends to any error of law or fact affecting the judgment or order from which an appeal is taken. Ill. S. Ct. R. 366(b)(1) (eff. Feb. 1, 1994). On judicial review, "the circuit court considers a case only on the record made before the *** Commission and has no authority to consider evidence not presented therein." *Gunthrop-Warren Printing Co. v. Industrial Comm'n*, 74 Ill. 2d 252, 255, 384 N.E.2d 1318, 1319 (1979).

¶ 15 Here, the Commission determined claimant failed to perfect her petition for review and dismissed her petition. It never reached the merits of the arbitrator's decision and, in fact, did not have a transcript of those proceedings before it. As the Commission did not review the arbitrator's decision, issues relating to the propriety of that decision were not properly before the circuit court and may not, now, be addressed by this court. Claimant has appealed from the circuit court's decision, which confirmed the Commission's dismissal of her petition for review. Thus, the scope of our review is limited to addressing issues of law or fact affecting that decision.

¶ 16 The employer also argues the Commission's denial of claimant's request for waiver of costs pursuant to section 20 of the Act is not properly before this court, contending claimant never appealed the Commission's December 2010 decision denying her request and, therefore, the Commission's decision became final as to that issue. The Commission made the same finding in its June 2012 order. For the reasons that follow, we disagree with both the employer and the Commission and find the Commission's December 2010 denial of claimant's

section 20 motion was not a final and appealable order.

¶ 17 "[I]nterlocutory orders of the *** Commission are not reviewable by the circuit court." *American Structures, Inc. v. Industrial Comm'n*, 99 Ill. 2d 40, 43, 457 N.E.2d 401, 403 (1983); *Supreme Catering v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 111220WC, ¶ 8, 976 N.E.2d 1047 ("Only final determinations of the Commission are appealable."). "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*, 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 (citing *International Paper Co. v. Industrial Comm'n*, 99 Ill. 2d 458, 465-66, 459 N.E.2d 1353, 1357 (1984)).

¶ 18 Here, the Commission's December 2010 order denied claimant's "Section 20 Request For Pauper's Petition" but continued the matter for further hearing on its own rule to show cause. As a result, administrative involvement in the case had not been terminated at the time of the Commission's December 2010 order. That order was not a final determination by the Commission and also not appealable to the circuit court until the Commission entered a decision that left no issue in the case pending or undecided.

¶ 19 At the hearing which resulted in the Commission's June 2012 order and dismissal of claimant's petition for review, claimant attempted to raise issues related to her financial condition to "show cause" why she did not pay costs associated with the arbitration transcript and perfect review with the Commission. In reaching its decision, the Commission relied on its belief that its December 2010 order was a final and reviewable order that foreclosed any further

consideration of issues related to claimant's financial status and inability to pay for the arbitration transcript when timely review had not been sought. In fact, the employer urged the Commission (and this court on appeal) to find that its December 2010 order was final. As discussed, the Commission's December 2010 order was not final. The Commission erred by holding otherwise and relying on the claimant's failure to seek timely review of its December 2010 order to support its dismissal of her petition for review of the arbitrator's decision.

¶ 20 In this instance, the Commission's June 2012 order contained findings that were contrary to law. *Franklin v. Industrial Comm'n*, 211 Ill. 2d 272, 279, 811 N.E.2d 684, 689 (2004) (On review, the Commission's decision may be overturned when it is "contrary to law or is based on factual determinations against the manifest weight of the evidence."). The Commission could have dismissed claimant's petition for review at the time it denied her section 20 motion, but chose not to. Instead, the Commission elected to give claimant additional time to either pay the costs associated with the arbitration transcript or show cause why she failed to do so. As a result, the Commission's December 2010 order was interlocutory and claimant's failure to seek judicial review of that order could not later be used by the Commission as a basis for dismissing her petition for review. We reverse the circuit court's judgment, confirming the Commission's decision and remand to the Commission with directions that it vacate its decision of June 8, 2012, and reconsider its order to show cause and dismissal of claimant's petition for review consistent with this decision.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we reverse the circuit court's judgment, confirming the Commission's decision and remand to the Commission with directions that it vacate its decision of June 8, 2012, and reconsider its order to show cause and dismissal of claimant's petition for

review consistent with this decision.

¶ 23 Reversed and remanded with directions.