

2013 IL App (2d) 121421WC-U
No. 2-12-1421WC
Order filed December 16, 2013

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

CENTEGRA HEALTH SYSTEMS,)	Appeal from the Circuit Court
)	of McHenry County.
Plaintiff-Appellant,)	
)	
v.)	No. 12-MR-86
)	
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION and)	
DOMINIQUE KAY,)	Honorable
)	Thomas A. Meyer,
Defendants-Appellees.)	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:* Employer's appeal from the Commission's denial of its motion to dismiss employee's petitions for review of arbitrator's decisions did not present an appeal from a final order; accordingly, circuit court decision confirming Commission's ruling would be vacated and cause would be remanded to the Commission for further proceedings.
- ¶ 2 Respondent, Centegra Health Systems, appeals from the judgment of the circuit court of McHenry County, which confirmed a decision of the Illinois Workers' Compensation

Commission (Commission). The Commission denied respondent's motion to dismiss two petitions for review filed by claimant, Dominique Kay. We conclude that the Commission's decision was interlocutory and that the circuit court therefore lacked jurisdiction to consider the Commission's ruling. Accordingly, we vacate the judgment of the circuit court and remand this cause to the Commission for further proceedings.

¶ 3 Claimant filed two applications for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), asserting that she was injured as a result of two separate accidents while employed by respondent. In the first application, case No. 05 WC 05517, claimant alleged that she sustained injuries to her right upper extremity after she fell at work on October 6, 2004. In the second application, case No. 06 WC 32115, claimant alleged that she sustained injuries to her right arm, nervous system, and back on July 19, 2006, "while maintaining machine" at work. The applications were later amended, consolidated for hearing, and tried before an arbitrator on October 8, 2010. The arbitrator issued separate decisions on December 17, 2010. In case No. 05 WC 05517, the arbitrator determined that claimant sustained an accidental injury arising out of and in the course of her employment with respondent. The arbitrator awarded claimant reasonable and necessary medical expenses, temporary total disability benefits, and permanent partial disability benefits, but denied claimant's request for penalties. In case No. 06 WC 32115, the arbitrator denied benefits, finding that while claimant sustained an accident arising out of and in the course of her employment, her condition of ill-being was not causally related to the accident.

¶ 4 Thereafter, respondent filed a petition for review of the arbitrator's decision before the Commission in case No. 05 WC 05517. Claimant filed two petitions for review of the arbitrator's decisions, one in case No. 05 WC 05517 and one in case No. 06 WC 32115. In May

2011, respondent filed with the Commission a motion to dismiss claimant's petitions for review.¹ Respondent argued that the petitions were untimely under section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)) because they were filed with the Commission more than 30 days after claimant received the arbitrator's decisions. A hearing on respondent's motion to dismiss was held before Commissioner Molly Mason over two dates in May and June 2011. At the conclusion of the hearing, respondent's attorney asked that the Commission decide the motion to dismiss "prior to orally arguing the remainder of the case," reasoning that part of the appeal would become "moot" if the Commission granted the motion. Commissioner Mason agreed to proceed in the manner requested. On February 8, 2012, the Commission issued an order denying respondent's motion to dismiss claimant's petitions for review as untimely. In its order, the Commission did not address the merits of the arbitrator's findings. Respondent sought judicial review of the Commission's decision in the circuit court of McHenry County. The circuit court confirmed the decision of the Commission and "dismissed" the case. Respondent then initiated the present appeal.

¶ 5 Before this court, respondent maintains that the Commission's denial of its motion to dismiss claimant's petitions for review of the arbitrator's decisions is against the manifest weight of the evidence. According to respondent, records from the United States Postal Service show

¹ Respondent referenced only one petition for review in its motion to dismiss and attached to the motion the petition for review filed by claimant in case No. 05 WC 05517. Respondent later filed a second motion to dismiss and attached thereto both of claimant's petitions for review. At the hearing on the motions to dismiss, respondent noted that only one of claimant's petitions for review was attached to its first motion to dismiss because that was the only one it had originally received. Respondent indicated at the hearing that it intended its motion to address the timeliness of both of claimant's petitions for review.

that the arbitrator's decisions were delivered to claimant via her attorney's office at 10:42 a.m. on December 24, 2010. Thus, pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2004)), claimant had 30 days from December 24, 2010, or until January 24, 2011, to file with the Commission a petition for review of the arbitrator's decisions.² Claimant, however, did not file her petitions for review until January 26, 2011. As such, they were filed more than 30 days after receipt of the arbitrator's decision, and the Commission was without jurisdiction to consider them.

¶ 6 Neither party has questioned the circuit court's jurisdiction to review the Commission's decision in this case. Nevertheless, it is our obligation to consider, *sua sponte*, matters which relate to the jurisdiction of the circuit court. *Consolidated Freightways v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 1077, 1079 (2007). As we recently noted, if the circuit court lacked subject matter jurisdiction, then its orders are void and of no effect. *University of Illinois Hospital v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113130WC, ¶ 8; *Supreme Catering v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 111220WC, ¶ 7. Subject matter jurisdiction cannot be waived, stipulated to, or consented to by the parties. *University of Illinois Hospital*, 2012 IL App (1st) 113130WC, ¶ 8; *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 7. Moreover, the failure of a party to object to the lack of subject matter jurisdiction cannot confer jurisdiction upon the court. *University of Illinois Hospital*, 2012 IL App (1st) 113130WC, ¶ 8; *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 7.

² The 30th day after December 24, 2010, is actually January 23, 2011. However, as January 23, 2011, is a Sunday, it is excluded in calculating the applicable 30-day period. See 5 ILCS 70/1.11 (West 2010).

¶ 7 It is well recognized that “ ‘[o]nly final determinations of the Commission are appealable’ ” *Supreme Catering*, 2012 IL App (1st) 111220WC, ¶ 8 (quoting *Bechtel Group, Inc. v. Industrial Comm’n*, 305 Ill. App. 3d 769, 772 (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*, 2012 IL App (1st) 111220WC, ¶ 8. As such, and subject to exceptions not applicable here, the denial of a motion to dismiss is not a final and appealable order. See *Mund v. Brown*, 393 Ill. App. 3d 994, 996 (2009); *Saddle Signs, Inc. v. Adrian*, 272 Ill. App. 3d 132, 135 (1995); *Cabinet Service Tile, Inc. v. Schroeder*, 255 Ill. App. 3d 865, 868 (1993).

¶ 8 In the instant case, the Commission denied respondent’s motion to dismiss claimant’s petitions for review of the arbitrator’s decisions, but did not resolve the underlying litigation on the merits. In fact, at the hearing on the motion to dismiss, respondent expressly asked the Commission to defer consideration of the merits of the appeal pending resolution of the motion to dismiss, and Commissioner Mason agreed to respondent’s request. Accordingly, we conclude that the Commission’s denial of respondent’s motion to dismiss constituted an interlocutory order and was therefore not final and appealable. In the absence of a final determination by the Commission on the arbitrator’s ruling, the circuit court lacked the requisite subject-matter jurisdiction to entertain this matter and enter its order confirming the Commission’s decision. *University of Illinois Hospital*, 2012 IL App (1st) 113130WC, ¶ 12. Accordingly, we vacate the judgment of the circuit court, and remand the cause to the Commission for further proceedings not inconsistent with this decision. We note that our holding does not foreclose respondent from seeking review of the Commission’s ruling upon the motion to dismiss after the Commission reaches a final decision on the merits. See *Metropolitan Sanitary District of Greater Chicago v. Industrial Comm’n*, 37 Ill. 2d 447, 450 (1967); *Bechtel Group, Inc.*, 305 Ill. App. 3d at 772.

¶ 9 For the foregoing reasons, we vacate the judgment of the circuit court of McHenry County and remand the cause to the Commission for further proceedings.

¶ 10 Circuit court judgment vacated and cause remanded to the Commission.