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2014 IL App (1st) 130604WC-U

FILED: November 21, 2014

NO. 1-13-0604WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

|   |   |                      |
|---|---|----------------------|
| ANTHONY SCARPELLI, SR.,                               | ) | Appeal from          |
|   | ) | Circuit Court of     |
| Appellant,  | ) | Cook County          |
|   | ) | No. 12L50465         |
| v.  | ) |                      |
|   | ) |                      |
| THE ILLINOIS WORKERS' COMPENSATION                    | ) | Honorable            |
| COMMISSION <i>et al.</i> (City of Chicago, Appellee). | ) | Daniel T. Gillespie, |
|   | ) | Judge Presiding.     |

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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 Commission committed no error in denying claimant's petition to correct the record and finding it lacked jurisdiction to address the issues raised therein.

¶ 2 On August 8, 2000, claimant, Anthony Scarpelli, Sr., filed an application for adjudgment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 1998)), seeking benefits from the employer, the City of Chicago. Following a hearing, the arbitrator determined claimant sustained an injury to his right leg that arose out of and in the course of his employment and awarded him (1) 140 weeks' permanent partial disability (PPD) benefits pursuant to section 8(e) of the Act (820 ILCS 305/8(e) (West 1998)) for a 45% loss of

use of claimant's leg and a 10% loss of use of the person as a whole and (2) medical expenses totaling \$289. The arbitrator's decision was subsequently recalled twice to correct clerical errors. On May 11, 2009, the arbitrator issued a second corrected decision, which corrected previous errors but inexplicably altered the arbitrator's PPD award and ordered the employer to pay claimant 75 weeks' PPD benefits for a 37.5% loss of use of claimant's right leg. Claimant filed a petition for review of the arbitrator's decision with the Illinois Workers' Compensation Commission (Commission) but his petition was later voluntarily dismissed upon claimant's motion.

¶ 3 On July 8, 2011, claimant filed a petition to correct the record, referencing section 18 of the Act (820 ILCS 305/18 (West 2010)) as providing the statutory authority for the filing of his petition. Claimant asked the Commission to declare the arbitrator's second corrected decision invalid and to "reaffirm" the arbitrator's original decision "as the valid Decision in th[e] case." The Commission entered an order denying claimant's petition and finding it no longer had jurisdiction over the matter. On judicial review, the circuit court of Cook County confirmed the Commission's decision. Claimant appeals, arguing the Commission erred in denying his petition to correct the record and finding it lacked jurisdiction to address the issues raised in the petition. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On August 8, 2000, claimant filed his application for adjustment of claim in case No. 00-WC-42828, alleging he sustained a work-related injury to his right leg on July 14, 2000. On March 23, 2009, the arbitrator issued a decision in the matter, finding claimant sustained an injury that arose out of and in the course of his employment and awarding him benefits under the Act. However, the arbitrator's decision incorrectly identified claimant's accident date as July 14, 2009. It also set forth an award to claimant of 140 weeks' PPD benefits for a 45% loss of use of

claimant's *left* leg and a 10% loss of use of the person as a whole.

¶ 6 On April 20, 2009, the Commission issued a notice of recall, recalling the arbitrator's decision to correct a clerical error pursuant to section 19(f) of the Act (820 ILCS 305/19(f) (West 2008)). The same date, the arbitrator issued a corrected decision in the matter. The corrected decision set forth a PPD award to claimant for a 45% loss of use of claimant's *right* leg and a 10% loss of use of the man as a whole. However, the arbitrator again identified an incorrect accident date. He also attached findings of facts and conclusions of law to his decision that were from a different workers' compensation case involving the same parties, case No. 04-WC-25334. The arbitrator's findings of fact in case No. 04-WC-25334 show claimant sustained injuries to his right knee, right shoulder, and upper back as the result of a work-related accident on May 13, 2004.

¶ 7 On April 30, 2009, claimant filed a motion to recall the arbitrator's corrected decision pursuant to section 19(f). On May 11, 2009, the Commission issued a second notice of recall and the arbitrator filed a second corrected decision. That decision set forth the correct accident date of July 14, 2000, and attached the arbitrator's findings of fact and conclusions of law for the correct case. However, without explanation, the arbitrator altered his previous PPD award and ordered the employer to pay claimant 75 weeks' PPD benefits for a 37.5% loss of use of claimant's right leg.

¶ 8 On June 23, 2009, claimant filed a petition for review of the arbitrator's second corrected decision with the Commission. He identified the issues to which he took exception as a "Jurisdictional error in the second corrected Decision" and "the nature and extent of [his] disability." On July 1, 2009, while claimant's petition for review was pending, the employer issued a check to claimant in the amount of \$72,261, representing the amount of PPD benefits awarded to

claimant under the arbitrator's March 2009 original decision and April 2009 corrected decision. The employer then issued a letter dated August 12, 2009, to claimant's attorney. In the letter, the employer asserted it overpaid claimant based upon the arbitrator's "most recent corrected" decision and asked claimant for a reimbursement in the amount of \$33,549.75, the difference between the award of PPD benefits in the arbitrator's first two decisions and his award in the second corrected decision. On August 26, 2009, claimant filed a motion to voluntarily dismiss his petition for review of the arbitrator's second corrected decision. On September 10, 2009, the Commission granted claimant's motion.

¶ 9 The employer next instituted proceedings before the City of Chicago Department of Administrative Hearings (the Department) to determine claimant's liability with respect to its alleged overpayment. Although those proceedings are not contained within the appellate record in this case, they are detailed in *Scarpelli v. City of Chicago*, 2012 IL App (1st) 111884-U (October 10, 2012) (unpublished order under Supreme Court Rule 23), a First District decision addressing claimant's appeal from those proceedings. We note this court may take judicial notice of a Rule 23 order that is related to a pending case. *Adames v. Sheahan*, 233 Ill. 2d 276, 310, 909 N.E.2d 742, 761 (2009).

¶ 10 In *Scarpelli*, 2012 IL App (1st) 111884-U, ¶ 12, the Department found claimant owed the employer for the amount of its asserted overpayment plus costs and fees. Claimant sought administrative review in the circuit court, which affirmed the Department's decision. *Scarpelli*, 2012 IL App (1st) 111884-U, ¶ 13. He then appealed the circuit court's decision, arguing, in part, that he owed no debt to the employer because the arbitrator lacked jurisdiction to alter the amount it originally awarded him and, as a result, the arbitrator's May 2009, second corrected decision was void. *Scarpelli*, 2012 IL App (1st) 111884-U, ¶¶ 13-15. Ultimately, the

First District rejected claimant's arguments and affirmed the circuit court's decision to affirm the Department. *Scarpelli*, 2012 IL App (1st) 111884-U, ¶ 38.

¶ 11 On July 8, 2011, while claimant's appeal in the First District was pending, claimant filed a petition to correct the record pursuant to section 18 of the Act (820 ILCS 305/18(a) (West 2010)) before the Commission. Claimant maintained that section 18 "authorize[d] the Commission to determine all questions arising under the Act." Further, he argued the arbitrator's second corrected decision was invalid because, pursuant to section 19(f) of the Act, the arbitrator could only correct clerical errors in its previous decision and had no authority to reduce claimant's PPD award. Claimant asked the Commission to "declare the Arbitrator's second corrected Decision \*\*\* invalid and reaffirm the Arbitrator's original Decision of 45% loss of use of right leg and 10% loss of use of man as a whole as the valid Decision in the case." On September 16, 2011, the employer filed a motion to dismiss claimant's petition to correct the record, arguing the Commission lacked jurisdiction.

¶ 12 On September 21, 2011, the Commission conducted a hearing in the matter and the parties presented argument. On March 9, 2012, the Commission issued its decision, denying claimant's petition and finding it did not have jurisdiction over his claim. It first determined the arbitrator's second corrected decision was the final decision of the Commission, stating as follows:

"Under \*\*\* the Act, an Arbitrator's decision becomes the final decision of the Commission unless a petition for review is filed by either party within 30 days after the receipt of the Arbitrator's decision. In this case, [claimant] did file a timely Petition for Review of the second corrected decision; however, [claimant] abandoned

his review when he filed a voluntary dismissal, which was later granted [.]"

The Commission next set forth the limited circumstances under which it was authorized to reopen or modify a final award and found those circumstances inapplicable to the instant case. It stated that, although it agreed the arbitrator's modification of claimant's permanency award in the second corrected decision was improper, it was without jurisdiction to correct the arbitrator's errors. Further, the Commission concluded section 18 of the Act did not give it authority to act once jurisdiction over a claim was lost. On January 17, 2013, the circuit court in this case confirmed the Commission's decision, denying claimant's petition and finding it lacked jurisdiction in the matter.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, claimant argues the Commission erred in finding it lacked jurisdiction to address his petition to correct the record. Specifically, he maintains the arbitrator's second corrected decision is void because the arbitrator was without authority to alter the benefits he originally awarded to claimant when correcting a clerical error pursuant to section 19(f). Further, claimant contends section 18 of the Act provides the Commission with the authority to consider and address his petition as it empowers the Commission to decide all questions arising under the Act.

¶ 16 Initially, we note the issues presented on appeal involve matters of statutory interpretation. As such, they present questions of law and are subject to *de novo* review. *Gruszczyka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212, ¶12, 992 N.E.2d 1234, 1237 (2013).

¶ 17 "[T]he Workers' Compensation Commission is an administrative agency, lacking general or common law powers." *Cassens Transportation Co. v. Industrial Comm'n*, 218 Ill. 2d 519, 525, 844 N.E.2d 414, 419 (2006). "Because its powers are limited to those granted by the legislature, any action taken by the Commission must be specifically authorized by statute" and "[a]n act that is unauthorized is beyond the scope of the agency's jurisdiction." *Cassens*, 218 Ill. 2d at 525, 844 N.E.2d at 419. "Although the term 'jurisdiction' is not strictly applicable to an administrative body, [the supreme court] has held that the term may be employed to designate the authority of an administrative body to act." *Alvarado v. Industrial Comm'n*, 216 Ill. 2d 547, 554, 837 N.E.2d 909, 914 (2005).

¶ 18 As stated, claimant argues section 18 of the Act (820 ILCS 305/18 (West 2010)) gives the Commission the authority to consider and address his petition to correct the record. That section provides that "[a]ll questions arising under th[e] Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Commission." 820 ILCS 305/18 (West 2010). However, we find that, while section 18 provides the general authorization for the Commission to preside over workers' compensation claims, it is the other provisions of the Act which establish the precise manner in which the Commission's authority may be exercised. See *Cassens*, 218 Ill. 2d at 525, 844 N.E.2d at 419 ("Section 18 of the Act authorizes the Commission to settle all questions arising under the Act [citation], and section 19 establishes the procedure by which the Commission is authorized to do so [citation]."). Contrary to claimant's assertions, section 18 does not permit the Commission to address any workers' compensation related matter at any time and in any manner presented by the parties. Rather, the Commission's actions must be specifically and expressly provided for by the Act.

¶ 19 Section 19 of the Act (820 ILCS 305/19 (West 2010)) provides specific proce-

dures for determining "[a]ny disputed questions of law or fact." Under that section, an arbitrator's decision becomes the conclusive decision of the Commission "[u]nless a petition for review is filed by either party within 30 days after the receipt" of the arbitrator's decision. 820 ILCS 305/19(b) (West 2010). "[T]he Commission may modify a conclusive decision only where the Act specifically authorizes it to do so." *Cassens*, 218 Ill. 2d at 525, 844 N.E.2d at 419.

¶ 20 In *Cassens*, 218 Ill. 2d at 525, 844 N.E.2d at 419, the supreme court discussed the limited circumstances under which the Act authorizes the Commission to modify or reopen a final award. In particular, the court noted section 19(f) allows modifications to correct clerical errors, section 19(h) permits the Commission to reopen an installment award for a limited time, and section 8(f) allows the reassessment of any award for total and permanent disability. *Cassens*, 218 Ill. 2d at 526-27, 844 N.E.2d at 420 (quoting 820 ILCS 305/19(f), 19(h), 8(f) (West 2002)). In finding that another section of the Act did not authorize the Commission to reopen a final award, the court noted as follows with respect to the aforementioned sections of the Act:

"Each of these provisions includes language that is tailored to authorize a review proceeding. Section 19(f) specifically gives the arbitrator and Commission the power to recall an award. Section 19(h) allows either party to petition for review of an installment award within 30 months of its issuance. Section 8(f) indicates that employers may cease payments when a totally and permanently disabled employee returns to the workforce, giving the employee authorization to petition the Commission for a review of the award. The plain language of each section alerts employers

and employees to when review may be had and how to obtain it."

*Cassens*, 218 Ill. 2d at 527, 844 N.E.2d at 420-21.

¶ 21 Here, the arbitrator issued the second corrected decision on May 11, 2009. Although claimant initially filed a timely petition for review of that decision, he abandoned his petition by moving to have it voluntarily dismissed. The Commission granted claimant's motion and the arbitrator's second corrected decision became the conclusive decision of the Commission. None of the circumstances set forth in *Cassens* under which a conclusive decision of the Commission may be modified or reopened exists. Further, section 18 contains no specific language authorizing either the filing of claimant's petition to correct the record or the Commission's modification or reopening of its conclusive decision.

¶ 22 On appeal, claimant argues his petition did not seek to reopen or reinstate his workers' compensation case but to "declare the last or final order of the Arbitrator to be void." He points out the arbitrator's second corrected decision was entered after the arbitrator's previous decision was recalled under section 19(f) to correct clerical errors. Claimant asserts section 19(f) "does not authorize the Arbitrator to make changes to his decision, *except to correct clerical errors.*" (Emphasis in original.) He argues the arbitrator exceeded his authority under section 19(f) by altering his award of PPD benefits and, thus, the arbitrator's second corrected decision is void. Claimant contends the arbitrator's void order could be attacked at any time.

¶ 23 We agree that when "an agency enters a decision that it has no statutory power to enter, the decision is void" (*Alvarado*, 216 Ill. 2d at 554, 837 N.E.2d at 914) and an agency's void action is subject to attack at any time (*Peabody Coal Co. v. Industrial Comm'n*, 349 Ill. App. 3d 1023, 1026, 813 N.E.2d 263, 265-66 (2004)). "A judgment or order is void where it is entered by a court or agency which lacks personal jurisdiction, subject-matter jurisdiction, \*\*\*

the inherent power to enter the particular judgment or order, or where the order is procured by fraud." *Siddens v. Industrial Comm'n*, 304 Ill. App. 3d 506, 511, 711 N.E.2d 18, 21 (1999). Generally, "a party cannot collaterally attack an agency order \*\*\* unless the order is void on its face as being unauthorized by statute." *Newkirk v. Bigard*, 109 Ill. 2d 28, 39, 485 N.E.2d 321, 325 (1985).

¶ 24 On appeal, the employer argues claimant's contention that the arbitrator's second corrected decision constituted a void order was addressed by the First District in *Scarpelli*, 2012 IL App (1st) 111884-U, and rejected. Therefore, it maintains claimant is barred by the doctrine of collateral estoppel from relitigating the same issue in this proceeding. We agree.

¶ 25 "The doctrine of collateral estoppel prevents the relitigation of issues resolved in earlier causes of action." *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 158, 940 N.E.2d 1122, 1127 (2010). "Collateral estoppel may be asserted when: (1) the issue decided in the prior adjudication is identical to the issue in the current action; (2) the issue was 'necessarily determined' in the prior adjudication; (3) the party against whom estoppel is asserted was a party or in privity with a party in the prior action; (4) the party had a full and fair opportunity to contest the issue in the prior adjudication; and (5) the prior adjudication must have resulted in a final judgment on the merits." *City of Chicago v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 121507WC, ¶ 51, 4 N.E.3d 158.

¶ 26 The First District's decision in *Scarpelli*, 2012 IL App (1st) 111884-U, involved the same parties and resolved precisely the same issue—whether the arbitrator's second corrected decision constituted a void order—as claimant seeks to raise in this appeal. Resolution of that issue was necessary to the First District's ultimate disposition, claimant had a full and fair opportunity to present his position, and that prior appeal resulted in a final order resolving the merits of

the parties' claims.

¶ 27 Claimant argues collateral estoppel does not apply and asserts as follows in his reply brief:

"The [First District's] Rule 23 Order makes no effort [to] interpret Section 19(f). Therefore[,] the most important issue was not decided in the Court's Rule 23 Order. As a result[,] collateral estoppel does not exist here. In addition, a Rule 23 Order does not establish precedence so that this Court may interpret 19(f) and apply it to the facts of this case."

¶ 28 First, to the extent claimant argues Illinois Supreme Court Rule 23 (eff. July 1, 2011) does not permit reliance by either the employer or this court on the First District's decision in *Scarpelli*, 2012 IL App (1st) 111884-U, we disagree. In particular, although Rule 23 orders are not precedential authority, they may be cited "to support contentions of \*\*\* collateral estoppel." Ill. S. Ct. R. 23(e)(1) (eff. July 1, 2011). Second, although claimant argues the First District did not interpret section 19(f) of the Act, a clear reading of the court's order shows it accepted claimant's position on that issue and cited a decision of this court (a case relied upon by claimant in this appeal) for the proposition that section 19(f) permits "an arbitrator to recall his decision *only* to correct clerical or computational errors." (Emphasis added.) *Scarpelli*, 2012 IL App (1st) 111884-U, ¶ 18 (citing *Smalley Steel Ring Co. v. Illinois Workers' Compensation Comm'n*, 386 Ill. App. 3d 993, 996, 900 N.E.2d 1161, 1164 (2008)).

¶ 29 Importantly, the First District went on to reject claimant's contention that the arbitrator's second corrected decision constituted a void order—the exact same issue he raises in this appeal. The court cited the supreme court's decision in *Newkirk*, 109 Ill. 2d at 36-39, 485 N.E.2d

at 324-325, for the propositions that (1) an agency order is void if the agency lacked personal jurisdiction, subject matter jurisdiction, or the inherent power to enter the order involved and (2) a party generally may not collaterally attack an agency order unless the order is void on its face as unauthorized by statute. The court then stated as follows:

"[Claimant] does not deny that the arbitrator had jurisdiction over the parties and the subject matter of his claim for workers' compensation. He argues that the arbitrator lacked inherent authority to enter the May [2009, second corrected] decision because the new decision amounted to much more than a correction of clerical or computational errors in the April [2009] decision. See 820 ILCS 305/19(f) (West 2008). But the difference between the April decision and the May decision does not appear on the face of the May decision, and nothing else on the face of the May decision shows any problem with the arbitrator's authority to issue the decision."

*Scarpelli*, 2012 IL App (1st) 111884-U, ¶ 21.

The court went on to discuss case law distinguishing void as opposed to merely voidable orders and, ultimately, determined the arbitrator's second corrected decision was merely voidable, stating claimant could not "successfully mount a collateral attack on the [arbitrator's] May [2009, second corrected] decision." *Scarpelli*, 2012 IL App (1st) 111884-U, ¶¶ 24-26.

¶ 30 Here, the Commission correctly determined it lacked the authority to consider and address claimant's July 2011 petition to correct the record. The proper method for claimant to challenge the arbitrator's May 2009, second corrected decision was by seeking review of that decision with the Commission. Although claimant filed a timely petition for review, he later

sought to have it voluntarily dismissed (even after the record reflects the employer sent notice that it was seeking reimbursement for amounts paid pursuant to the arbitrator's earlier decisions). Thereafter, the arbitrator's second corrected decision became the final and conclusive decision of the Commission. The Commission was without statutory authority to alter that decision in any way two years later when claimant filed his petition to correct the record. Additionally, claimant's contention that the arbitrator's second corrected decision constituted a void order was addressed and rejected in an earlier proceeding between the same parties and may not be relitigated in this appeal.

¶ 31

### III. CONCLUSION

¶ 32 For the reasons stated, we affirm the circuit court's judgment, confirming the Commission's decision.

¶ 33 Affirmed.