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

T.A. BRINKOETTER & SONS,)	Appeal from the
)	Circuit Court of
Appellant,)	Macon County
)	
v.)	No. 12-MR-1518
)	
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Lonie Ginger,)	A.G. Weber,
Appellee).)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission's decision is not a final and appealable decision, but is interlocutory, where the Commission ordered the employer to provide the claimant with rehabilitation services but did not specify a plan for the rehabilitation services to be rendered.

¶ 2 The claimant, Lonie Ginger, worked as a journeyman electrician for the employer, T.A. Brinkoetter & Sons. On July 11, 2008, the claimant fell eight feet after he lost his

balance while working on a ladder. He hit the right side of his back on a steel motor as he fell to the floor, and he landed on the right side of his back. The claimant subsequently underwent a course of medical treatments for injuries to his lumbar spine and sought benefits under the Illinois Workers' Compensation Act (the Act), 820 ILCS 305/1 *et seq.* (West 2008). The arbitrator found that the claimant suffered from conditions of ill-being as a result of the accident and awarded the claimant medical expenses, temporary total disability (TTD) benefits, and maintenance benefits. The arbitrator found that the claimant was permanently partially disabled to the extent of 45% loss of the person as a whole and awarded the claimant permanent partial disability (PPD) benefits. However, the arbitrator also ordered the employer to provide vocational rehabilitation services to the claimant but did not set out a specific rehabilitation plan.

¶ 3 The Illinois Workers' Compensation Commission (the Commission) unanimously affirmed and adopted the arbitrator's decision. The circuit court confirmed the Commission's decision, finding that there was sufficient evidence to support the Commission's awards. The employer now appeals the circuit court's judgment.

¶ 4 **BACKGROUND**

¶ 5 The employer does not dispute that the claimant suffered from a workplace accident. Following the accident, the claimant experienced significant back pain, and a CT scan of the claimant's spine revealed fractures of the transverse processes at L2, L3, and L4. A neurosurgeon, Dr. Krause, examined the claimant and recommended physical therapy instead of surgery. The fractures subsequently healed, but the claimant continued to report back pain.

¶ 6 Several physicians have treated the claimant's back condition since the accident. The claimant's treatments have included pain medications, muscle relaxers, physical therapy, trigger point injections, and radio frequency ablation, but the claimant continued to report severe pain in the right side of his back. The claimant's medical records include evidence of disc desiccation, a blackened disc at L5-S1, disc disease, and possible facet disease. One of the claimant's treating physicians, Dr. Shane Fancher, diagnosed the claimant as having myofascial pain syndrome, and he recommended chiropractic care and more physical therapy. An occupational medicine specialist, Dr. Barnes, placed the claimant on a permanent 20-pound lifting restriction with no twisting of the lumbar spine. Under these restrictions, the claimant is unable to perform the duties of a journeyman electrician.

¶ 7 At the arbitration hearing, Dr. Robert Krause testified by way of an evidence deposition. He testified that he treated the claimant in July 2008 upon a referral from the emergency room doctor, Dr. Bahrainawala. At that time, he diagnosed the claimant as having right lumbar transverse-process fractures of L2, L3, and L4. He recommended light duty work restrictions and prescribed physical therapy. In September 2008 he released the claimant to work normal duty.

¶ 8 The claimant, however, returned to Dr. Krause in January 2009, with complaints of ongoing back pain. Dr. Krause's neurologic examination was normal, and he recommended an MRI to evaluate other possible causes of the pain. The doctor did not believe that the claimant's pain was ongoing from the fractures because they had healed at that point. It was unclear to Dr. Krause what was causing the pain. In February 2009, the

claimant's complaints were unchanged, and the doctor imposed light duty restrictions. In March 2009, Dr. Krause noted that the claimant's MRI indicated disc desiccation. He recommended physical therapy.

¶ 9 Dr. Shane Fancher also testified by way of an evidence deposition about his treatment of the claimant's pain symptoms. He diagnosed the claimant as having myofascial pain and believed that he was at maximum medical improvement. His diagnosis was based on a lack of any other explanation for the pain. He believed that the claimant's prognosis was that he was "going to stay essentially how he is" because his treatments had already included a lot of medications, therapies, and injections, but "his pain and level of functioning had been reported pretty consistently the same through the whole process."

¶ 10 The claimant underwent two functional capacity examinations (FCE). The first FCE placed the claimant at sedentary to light physical demand level, but the evaluator noted a number of performance inconsistencies that made it difficult for the evaluator to make any recommendations concerning the claimant's employability. The evaluator believed that the claimant had the ability to improve his functional levels if he was motivated to do so.

¶ 11 The second FCE placed the claimant at the light physical demand level. The evaluator noted that the claimant's occupation required a minimum medium physical demand level and, therefore, the claimant had not demonstrated the ability to return to unrestricted duty. The evaluator also concluded that the claimant would likely benefit

from further rehabilitation efforts. The evaluator recommended an evaluation by a physical therapist with a more mechanical assessment approach.

¶ 12 The employer submitted a report of an independent medical evaluation conducted by Dr. Kenneth Smith. Dr. Smith examined the claimant and concluded that he had reached maximum medical improvement since the July 2008 workplace accident. Dr. Smith believed that the claimant could return to work in a full duty capacity.

¶ 13 At the time of the arbitration hearing, the claimant was 49 years old and had worked as a journeyman electrician since 1982. His education consisted of a high school education and a journeymen wireman card. He testified that since August 2009, his condition has "gotten approximately a little bit worse," and that he did not believe that he would be able to work as a journeyman electrician. He testified that he applied for jobs through his union, but there were no jobs available for an electrician on a light duty work restriction. He stated that he had requested the employer to provide him with vocational rehabilitation to help with his job search, but the employer had not provided any rehabilitation services.

¶ 14 At the conclusion of the arbitration hearing, the arbitrator noted that the claimant's medical records indicated that the various treating physicians were "baffled" by the claimant's continued complaints of pain. The arbitrator stated that this was a "difficult case." Nonetheless, the arbitrator found that the claimant's continued complaints of pain were causally connected to the July 11, 2008, workplace accident. The arbitrator awarded the claimant TTD benefits, maintenance benefits, and medical expenses. The arbitrator found that the claimant was permanently partially disabled to the extent of a

45% loss of use of a person as a whole, but also ordered the employer to provide rehabilitation services. The Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 15 On appeal to the circuit court, the employer argued that the Commission's awards were against the manifest weight of the evidence, noting that the Commission based its decision on the claimant's subjective complaints of back pain and that there was evidence of symptom magnification and malingering. In addition, the employer emphasized that one of the claimant's treating physicians released him to work without restrictions. The circuit court noted, however, that other physicians, including the claimant's family physician, pain management specialists, and an occupational medicine specialist all believed that the claimant suffered some permanent disability. The court described the medical evidence as "voluminous and contradictory."

¶ 16 The court concluded that the claimant's subjective complaints of pain supported the award and that the case involved "questions of credibility and the weighing of conflicting medical evidence." With respect to the permanency award, the court noted as follows:

"[The employer] now concedes some degree of PPD is appropriate – just not 45%. [The claimant] asked the Arbitrator for 100% (PTD) and [the employer] argued zero. Now this Court is asked by [the employer] to review the conflicting evidence and determine a figure between 45% and zero. This is the job of the Arbitrator and the Commission, and there is sufficient evidence to support their determination."

¶ 17 The circuit court determined that the Commission's awards were not against the manifest weight of the evidence, and the employer now appeals the circuit court's judgment.

¶ 18 DISCUSSION

¶ 19 The first issue we consider in this appeal concerns the circuit court's jurisdiction to address the merits of the Commission's decision. Neither party questioned the circuit court's jurisdiction to review the Commission's decision until the employer filed its reply brief in the present appeal. We are obligated to consider matters that concern the jurisdiction of the circuit court. *Consolidated Freightways v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 1077, 1079, 870 N.E.2d 839, 840 (2007).

¶ 20 "Subject to exceptions created by statute or set forth in the Rules of our Supreme Court, the jurisdiction of the appellate court is limited to reviewing appeals from final judgments." *Pace Bus Co. (South Division) v. Industrial Comm'n*, 337 Ill. App. 3d 1066, 1068, 787 N.E.2d 234, 236 (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, 535 N.E.2d 818, 823 (1989).

¶ 21 In *Cardox Corp. v. Industrial Comm'n*, 186 Ill. App. 3d 946, 950-51, 542 N.E.2d 1242, 1244 (1989), this Court held that decisions containing generalized orders for vocational rehabilitation without a specific plan for the services to be rendered to the claimant are interlocutory in nature and not appealable. "Such orders are 'inherently incomplete' as they require further determination as to the nature and extent of the

services provided." *Consolidated Freightways*, 373 Ill. App. 3d at 1079, 870 N.E.2d at 840 (citing *International Paper Co. v. Industrial Comm'n*, 99 Ill. 2d 458, 464, 459 N.E.2d 1353, 1356 (1984)). In *International Paper*, the supreme court stated, "[i]f judicial review is allowed before [a determination of the vocational rehabilitation plan], the courts will invariably be faced with piecemeal review of such cases, as litigants dissatisfied with the individualized rehabilitation program repeat the entire administrative and judicial review process." *International Paper*, 99 Ill. 2d at 466, 459 N.E.2d at 1357.

¶ 22 In *Consolidated Freightways*, the Commission ordered the employer to provide the claimant with "meaningful vocational rehabilitation." *Consolidated Freightways*, 373 Ill. App. 3d at 1078, 870 N.E.2d at 840. The circuit court confirmed the Commission's decision, and on appeal, the employer argued that vocational rehabilitation was inappropriate because there was no evidence that such services would increase the claimant's earning capacity. *Id.* at 1079, 870 N.E.2d at 840. The appellate court, however, concluded that the Commission's order was interlocutory and not appealable. The court explained that the Commission's rehabilitation award that did not specify "the services to be offered" merely incorporated "the provisions of [section 8(a) of] the statute." *Id.* at 1080, 870 N.E.2d 841 (citing 820 ILCS 305/8(a) (West 2000)). The court, therefore, vacated the order of the circuit court that confirmed the Commission's decision for want of jurisdiction and remanded the cause to the Commission for further proceedings. *Id.*; see also, *Cardox Corp.*, 186 Ill. App. 3d at 950-51, 542 N.E.2d at 1244 (Commission's decision was interlocutory and not final and appealable where its

rehabilitation award was "couched in the general language of the authorizing statute, and development of specific plans was left to others.").

¶ 23 In the present case, the Commission ordered the employer to provide the claimant with rehabilitation services. The Commission's decision, however, does not specify a plan for the rehabilitation services to be rendered. Determination of the specific rehabilitation program requires further deliberation by either the litigants or the arbitrator. "The case reached the circuit court, therefore, before administrative involvement in the case had been terminated." *International Paper Co.*, 99 Ill. 2d at 465-66, 459 N.E.2d at 1357. Accordingly, the Commission's decision is interlocutory in nature and is not appealable. Further hearings are required before the Commission for a determination of what specific rehabilitation services the employer must provide. "[A] remand for further hearing on the issue of vocational rehabilitation requires further administrative involvement, and the decision of the Commission is not final." *Supreme Catering v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 111220WC, ¶ 18, 976 N.E.2d 1047.

¶ 24 Because the Commission's decision is interlocutory and not appealable, we must vacate the circuit court's judgment that confirmed the Commission's decision and remand the matter to the Commission for further proceedings. The circuit court lacked jurisdiction to hear an appeal from the Commission's interlocutory order, and we lack jurisdiction to consider employer's contentions on an appeal from the circuit court's improper judgment. Consequently, this appeal must be dismissed.

¶ 25

CONCLUSION

¶ 26 For the foregoing reasons, the circuit court's judgment that confirmed the Commission's decision is hereby vacated, this appeal is dismissed, and this matter is remanded to the Commission for further proceedings.

¶ 27 Circuit court's judgment vacated; appeal dismissed; cause remanded.