2015 IL App (2nd) 140516WC-U

Order filed September 25, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PISTAKEE MARINA, INC.,	)	Appeal from the Circuit Court
	)	of McHenry County, Illinois.
Appellant/Cross-Appellee,	)	
	)	
	)	
v.	)	Appeal No. 2-14-0516WC
	)	Circuit No. 13-MR-319
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*, (Paul Berezowski,	)	Honorable
Appellee/Cross-Appellant).	)	Michael T. Caldwell,
	)	Judge, Presiding.

PRESIDIDNG JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hutchinson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission properly calculated the claimant's average weekly wage and its award of penalties and attorney fees was not against the manifest weight of the evidence. The circuit court did not error in denying the claimant's motion to dismiss.

¶ 2 The claimant, Paul Berezowski, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 1988)), seeking benefits for injuries sustained while working for Pistakee Marina, Inc. (employer) on November 29, 1990. A hearing was held on September 1, September 8, October 4, and November 1, 2011, before

Arbitrator Edward Lee. In an award entered on April 24, 2012, the arbitrator found that the claimant's current condition of ill-being was causally related to the November 29, 1990, accident. The arbitrator determined the claimant's average weekly wage (AWW) to be $1,234.75. The arbitrator determined that this amount exceeded the maximum AWW in effect at the time, which was $618.23 per week. 820 ILCS 305/8(b)(4) (West 1988). He then awarded temporary total disability (TTD) disability benefits of $618.23 per week for 1,084 weeks (November 30, 1990, through September 8, 2011). The employer was given credit for TTD paid through September 9, 2011 in the amount of $668,943.04. The arbitrator ordered the employer to pay all reasonable and necessary medical expenses pursuant to the medical fee schedule. The arbitrator further awarded permanent partial disability (PPD) benefits of $618.23 per week for life commencing on September 8, 2011, pursuant to section 8(d)(1) of the Act. 820 ILCS 305/8(d)(1) (West 1988). The arbitrator also awarded attorney's fees under section 16 of the Act (820 ILCS 305/16 (West 1988)) in the amount of $22,420.34, penalties under section 19(k) of the Act (820 ILCS 305/19(k) (West 1988)) in the amount of $56,050.84, and penalties under section 19(l) of the Act (820 ILCS 305/19(l) (West 1998)) in the amount of $2,500. Both parties sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). The employer sought to overturn the arbitrator's decision as to the AWW calculation and the award of attorney's fees and penalties. The claimant sought review of the amount of attorney's fees and penalties. The Commission affirmed and adopted the arbitrator's award without change.

¶ 3 The employer sought judicial review of the Commission's decision in the circuit court of McHenry County. The claimant filed a motion to dismiss the employer's complaint for lack of jurisdiction, maintaining that the employer failed to comply with section 19(f)(2) of the Act (820 ILCS 305/19(f)(2) (West 2012)) regarding the proper posting of a bond with the clerk of the

court. Following a hearing on October 21, 2013, the circuit court denied the claimant's motion to dismiss. Thereafter, the circuit court confirmed the decision of the Commission. The employer then filed a timely appeal with this court, maintaining that the Commission's AWW calculation and the award of attorney's fees and penalties were contrary to law and against the manifest weight of the evidence. The claimant filed a cross-appeal, maintaining that the Commission erred in the calculation of penalties and fees, and that the circuit court erred in not dismissing the employer's complaint.

¶ 4 On appeal, the employer maintains: (1) the Commission's finding that the claimant's AWW was $1,234.75 was contrary to law and against the manifest weight of the evidence; and (2) the Commission's award of attorney's fees and penalties was against the manifest weight of the evidence. The claimant raised two issues in his cross-appeal: (1) the Commission erred in calculating the amount of attorney's fees and penalties; and (2) the circuit court erred in denying his motion to dismiss the employer's complaint for judicial review of the Commission's decision.

¶ 5 FACTS

¶ 6 On November 29, 1998, the claimant suffered an undisputed workplace injury when he slipped on debris and injured his low back. He had been hired by the employer in April 1981 to manage four stores owned and operated by the employer: Lighthouse Point, Great Lakes Marine Center, Pistakee Mariana and North Point Marina. The Pistakee Marina was located in Fox Lake, Illinois, while the three remaining stores were located in Wisconsin. He was injured at one of the Wisconsin locations. From November 29, 1998, through the hearing in 2011, the claimant underwent extensive medical and psychological treatments, all of which were determined to be related to the November 29, 1998, accident. Likewise, the claimant was unable to work in any capacity due to the injuries sustained in the accident. The employer did not dispute that the

claimant had suffered an industrial accident, its causal relationship to the claimant's condition of ill-being, or the fact that the claimant was totally disabled during this time period. While the record and the briefs of the parties contain extensive recitations as to the claimant's medical treatment as well as his physical and psychological condition during the 13 years between the accident and the hearing, we will not address these facts unless they are relevant to the issues in contention.

¶ 7 ANALYSIS

¶ 8 I. Average Weekly Wage

¶ 9 The claimant testified that he was paid $650 per week during the year preceding his injury, and, in addition to his base salary he was to receive a 4% commission on all sales, including sales of boats. The employer stipulated that the claimant earned $650 per week in base salary. The claimant entered in evidence sales receipts totaling $529,043.44 for that same time period, and suggested that 4% of that figure amounted to $21,161.64. The employer acknowledged that the claimant received a commission on sales, however it disputed both the percentage amount and the gross sales figures produced by the claimant. The employer argued that the claimant's actual commissions in the year preceding his injury were $2,622.14, which would have produced a weekly average of $50.44. The employer maintained that the proper AWW should have been $650 (salary) + 50.44 (commission) for a total of $700.44.

¶ 10 The arbitrator accepted the claimant's figures and determined that, by dividing $21,161.64 by 52 weeks, the average weekly amount from the earned commissions came to $406.96. The arbitrator added the $650 per week base salary and the $406.96 per week in earned commissions to find a total salary and commission of $1056.96. The claimant testified that he also received the unrestricted use of a company automobile as part of his total compensation package. At the time of the accident, the claimant had the exclusive use of a 1988 GMC Safari

which had been purchased by the employer new for $18,490. Prior to the purchase of that vehicle, the employer had purchased a new 1986 GMC Safari for the claimant's exclusive unrestricted use. That vehicle was traded in on the 1988 vehicle. The claimant presented evidence which established that the yearly value of the two vehicles was $9,245. From that figure, the arbitrator calculated a weekly vehicle allowance of $177.79. The arbitrator noted that, although the claimant's AWW wage before adding in the vehicle allowance exceeded the maximum statutory AWW, he nonetheless included the vehicle allowance in the total. The arbitrator then determined the claimant's AWW to be $650 (salary) + $409.96 (commissions) + $177.79 (vehicle allowance) for a total of $1234.45. The arbitrator then determined that the claimant's statutory maximum AWW was $618.23.

¶ 11 The employer maintains that the Commission's AWW calculation is erroneous in three respects: (1) it challenges the Commission's determination that the claimant had actually earned the commission determined by the arbitrator; (2) it claims that collateral estoppel and *res judicata* resulting from a wage claim before Wisconsin Department of Industrial, Labor and Human Resources (WDILHR) dictated that the claimant had earned only earned $18,333.41 in commissions for the prior three years, thus adding only $50.43 to the claimant's AWW, rather than the $409.96 awarded by the Commission; and (3) it disputed the inclusion of the vehicle allowance in the calculation of the AWW.

¶ 12 A. AWW Calculation

¶ 13 Turning first to the employer's argument that the Commission improperly calculated the claimant's commission in setting his AWW, we note that the employer does not dispute that earned commissions are included actual earnings for purposes of calculating AWW but rather disputes the actual amount of the claimant's earned commissions. What constitutes a claimant's actual earnings for purposes of determining a claimant's average weekly wage is a question of

fact subject to the manifest weight standard of review. *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 230-31 (2001). A finding is against the manifest weight of the evidence when the opposite conclusion is clearly apparent. *Dexheimer v. Industrial Comm'n*, 202 Ill. App. 3d 437, 443 (1990). In deciding whether a factual determination by the Commission is against the manifest weight of the evidence, the appropriate test is whether there exists sufficient evidence in the record to support the Commission's determination. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 450 (1995). The Commission's factual determinations will not be overturned merely because a different inference could be drawn and the reviewing court should not substitute its own judgment for that of the Commission. *Greene v. Industrial Comm'n*, 87 Ill. 2d 1, 9 (1981).

¶ 14 At the hearing, the claimant testified that in the 52 weeks prior to his injury he had generated sales totaling $529,043.44. He produced sales receipts documenting those sales. Over the employer's objections, those receipts were admitted into evidence. The claimant further testified that his employment agreement with the employer provided that he was to be paid a commission of 4% on those sales. He also testified that when the employer failed to pay all the commission, salary, and accumulated vacation time that he had earned in the year prior to the accident, he filed a claim with the WDILHR. The record includes a determination by WDILHR in July 1991 which reflected that William Slater III, the son of the principal officer of the employer, had provided a written statement in which he acknowledged that the claimant was entitled to a 4% commission on all boats and yachts sold by him. The record also established that WDILHR determined that "the available evidence clearly suggests that [claimant] was eligible to receive a 4% commission on his sales, that he sold a number of boats in 1988, 1989, and 1990 for which he has not been paid a commission and that he appears to be entitled to a total commission on these sales of $18,333.11."

¶ 15 At the hearing in the instant mater, the claimant maintained that the $18,333.11 in sales that he was able to document to the WDILHR did not, in fact, represent the total sales during that time period. He testified that he did not have access to all the documentation at the time and that the $18,333.11 represented only the sales for which he had documentation at the time. He also testified that even after WDILHR issued its ruling, the employer refused to pay the commission as determined by WDILHR. Instead, the claimant instituted a civil lawsuit, later settling that claim for $4,150. When asked why he accepted such a low amount, the claimant testified that he was involved in other proceedings against the employer and was advised to take whatever he could get. The claimant testified that "quite often when I met with federal agents and the IRS agents, they said the best thing to do is take whatever you can get now." The Commission credited the claimant's testimony regarding the commission rate and the amount of sales subject to commission payment.

¶ 16 The record also contains extensive testimony regarding a purported AWW stipulation, however, the employer maintained that no stipulation had ever been reached. The arbitrator addressed the purported stipulation in the penalties phase of the proceeding, but did not base the AWW determinations on any stipulation by the parties.

¶ 17 It is well-settled that the claimant bears the burden of proving each element of a workers' compensation claim, including the amount of AWW. *Cook v. Industrial Comm'n*, 231 Ill. App. 3d 729, 731 (1992). The employer maintains that the only proof the claimant offered to establish his AWW claim was his own self-serving testimony and his production of sales receipts which he had failed to produce at the earlier WDILHR hearing. The employer maintains that this quantum of evidence is insufficient to prove that the claimant was entitled to 4% commission on sales of $529,043.44. It suggests that the amount of sales established at the WDILHR hearing should have been given more weight.

¶ 18 The employer's argument must fail. While it is clear that the strength of the claimant's case rest almost solely on his credibility and the authenticity of the sales receipts he produced at the hearing, the Commission found the claimant to be credible and the sales receipts to be authentic. It made this credibility determination despite the fact that the sales receipts appeared for the first time over 13 years after they had been generated. While the Commission could have rejected the claimant's version of the facts, it was not required to do so. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 396 (1996). The Commission's finding that the claimant and his exhibits were credible is also supported by the fact that the WDILHR decision referenced Slater's apparent acknowledgement that the claimant was entitled to 4% commission on sales. Given the record, we cannot say that the Commission's calculation of AWW, relying as it did on the credibility of the claimant and his exhibits, was against the manifest weight of the evidence.

¶ 19 B. Collateral Estoppel and *Res Judicata*

¶ 20 Assuming that the record evidence supports the Commission's calculation of the claimant's AWW, the employer alternatively maintains that the claimant was procedurally precluded by the doctrines of collateral estoppel and *res judicata* from arguing that the commission he earned in the 52 weeks prior to the accident was different than the $18,333.11 determined by the WDILHR. The Commission rejected this argument, noting that there was no proof that the WDILHR calculated AWW as mandated under section 10 of the Act. 820 ILCS 305/10 (West 1988). The Commission further noted that nothing in the WDILHR decision established that its decision was based upon a complete record of all sales, noting that the written decision recited that it was based upon "the available evidence" at the time of that determination. Moreover, there was no indication in the record that the WDILHR ruling precluded future filings for additional compensation.

¶ 21 Collateral estoppel prohibits "relitigation of an issue essential to and actually decided in an earlier proceeding by the same parties or their privities." *McCulla v. Industrial Comm'n*, 232 Ill. App. 3d 517, 520 (1992). Administrative agency decisions made in adjudicatory, judicial, or quasi-judicial proceedings may have collateral estoppel effect where: (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 resulted in a final judgment on the merits. *McCulla*, 232 Ill. App. 3d at 520; *Mabie v. Village of Schaumburg*, 364 Ill. App. 3d 756, 758 (2006).

¶ 22 Here, the employer's collateral estoppel argument must fail. The issue decided in the prior adjudication is not identical to the issue in the current action. The Wisconsin action involved a claim for unpaid wage and vacation while the current action involved a claim under the Act. Similarly there is nothing to establish that the issue of the exact amount of commission due and owing to the claimant for the 52 week period prior to the injury was necessarily decided. From the record, it appears that the Wisconsin claim was for unpaid wages over a three year period, but there is nothing to establish if there were statutory limits as to what constituted unpaid wages and to what extent commissions were to be included in the Wisconsin proceeding. Additionally, there is nothing to indicate that the WDILHR determination was a final judgment on the merits. In fact, the record established that when the claimant was unable to collect on the WDILHR ruling, he instituted a separate civil proceeding to recover his unpaid commissions. Based upon the record herein, the employer has not made a sufficient showing that that doctrine of collateral estoppel precluded the claimant from seeking benefits based upon his commissions.

¶ 23 Similarly, under the doctrine of *res judicata*, "a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action." *J&R Carrozza Plumbing Co. v. Industrial Comm'n*, 307 Ill. App. 3d 220, 223 (1999). Administrative agency decisions have *res judicata* effect when the agency's determination is made in a proceeding which are adjudicatory, judicial, or quasi-judicial in nature. *McCulla*, 232 Ill. App. 3d at 520. To establish *res judicata* a party must show that: (1) the former adjudication resulted in a final judgment on the merits; (2) the former and current adjudications were between the same parties; (3) the former adjudication involved the same cause of action and the same subject matter as the latter case; and (4) a court or administrative agency of competent jurisdiction rendered the first judgment." *City of Chicago v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 121507WC, ¶ 48; *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1075-76 (1992).

¶ 24 Viewing the record, we find that the employer has likewise failed to establish that *res judicata* barred the claimant from arguing for the AWW adopted by the Commission. The former adjudication in Wisconsin did not involve the same cause of action or same subject matter as the matter before the Commission. The cause of action in the former adjudication concerned payment of compensation pursuant to Wisconsin wage and hour laws. The instant action was brought under the Act. Additionally, as discussed in the context of collateral estoppel, the record does not support a finding that the Wisconsin ruling was a final judgment on the merits.

¶ 25 C. Vehicle Allowance

¶ 26 The employer next maintains that the Commission erred in including the value of a vehicle owned by the employer and given to the claimant during his employment for his

exclusive use. We note, as did the arbitrator and the Commission, that the question of whether the vehicle allowance was properly included in the AWW calculation is moot, as the claimant's salary and commission exceeded the maximum allowable weekly wage in effect at the time.

¶ 27 The average weekly wage includes anything of value received as consideration for a claimant's work. *Sweringgen v. Industrial Comm'n*, 298 Ill. App. 3d 666, 668 (1998). Payments which reimburse a claimant for any travel expenses are included in an AWW calculation if those payments bestow a benefit that confers a real economic gain and do not merely allow the claimant to recoup actual travel expenses. *Sweringgen*, 298 Ill. App. 3d at 670-71. The operative question is whether the claimant would suffer an economic loss if he fails to receive the payment once his employment ceases. *Id.*

¶ 28 On appeal, the employer acknowledges that, under *Sweringgen*, the claimant would be entitled to include the value of the company owned car in his AWW calculation, but only if he actually purchased a replacement vehicle. Without replacing the vehicle, the employer argues, the claimant suffered no economic loss when the company car was no longer available to him. The employer does not cite any authority in support of this proposition, nor have we found any. The rationale for including the car in the AWW articulated in *Sweringgen* is not predicated on any theory of replacement value. Rather, the focus was upon whether the claimant lost an economic value when his employment was terminated. *Id.* Here, the record established that the claimant had the unrestricted use of a company vehicle as a perquisite of his employment. The benefit ceased when he was injured. We find, therefore, that the value of the company car was properly included in the AWW calculation.

¶ 29 II. Attorney's Fees and Penalties

¶ 30 A. Section 19(l) penalty

¶ 31 The employer stipulated that the claimant sustained a work-related injury rendering him temporarily totally disabled on November 29, 1990, yet it delayed starting TTD payments until September 9, 1991. Section 19(l) of the Act provides for a penalty of $10 per day for late payment of benefits up to a maximum of $2500. 820 ILCS 305/19(l) (West 1988). The arbitrator found no excusable basis for this 283 day delay and imposed the maximum penalty.

¶ 32 The section 19(l) penalty is in the nature of a late fee, and assessment of the penalty is mandatory "if the payment is late for whatever reason, and the employer or its carrier cannot show an adequate justification for its delay." *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 515 (1998). In determining whether an employer has justification of delaying the payment of benefits, the standard is one of objective reasonableness. *Id*. The Commission evaluation of the reasonableness of the employer's delay is a question of fact that will not be disturbed unless it is contrary to the manifest weight of the evidence. *Crockett v. Industrial Comm'n*, 218 Ill. App. 3d 116, 121 (1991).

¶ 33 Here, the employer contends that it disputed it delayed benefits until September 6, 1991, primarily because it disputed whether the workers' compensation claim should have been brought in Wisconsin rather than Illinois. The Commission adopted the arbitrator's finding that delaying payment of benefits based upon a dispute as to where the claim should be filed was objectively unreasonable. It noted that the claimant was hired in Illinois, lived in Illinois and worked in Illinois and the injury occurred while the claimant was at one of the employer's three stores located in Wisconsin. Based upon these facts, we cannot say that the Commission's finding that the employer's reason for delaying payment of TTD benefits was unreasonable was against the manifest weight of the evidence.

¶ 34 B. Section 19(k) penalty

¶ 35 The Commission awarded penalties under section 19(k) of the Act in the amount of $56,050.84, an amount equal to 50% of the total amount of benefits delayed or unpaid. 820 ILCS 305/19(k) (West 1988). The Commission determined that the total amount of delayed compensation was $112,101.68. The standard for awarding penalties under section 19(k) is higher than the standard under section 19(l). See *Jacobo v. Illinois Workers' Compensation Comm'n*, 2011 IL App (3rd) 100807WC ¶¶ 21-24. For section 19(k) penalties to be imposed, it must be established that the delay or non-payment was deliberate or the result of bad-faith or an improper purpose. *McMahan*, 183 Ill. 2d at 515. Despite the higher standard for imposition of penalties under section 19(k), we still review the Commission's decision to impose section 19(k) penalties under the manifest weight of the evidence standard of review. *Jacobo, Id.* at ¶ 26. While the claimant must show that a penalty under section 19(k) is warranted, once the claimant has shown that a payment has been delayed, the employer has the burden of showing that it had a reasonable belief that the delay was justified. *Roodhouse Envelope Co. v. Industrial Comm'n,* 276 Ill. App. 3d 576, 579 (1995).

¶ 36 Here, the Commission noted that the employer paid a total of $469,279.50 in TTD payments from the date of the accident up to April 2006. It further determined, however, that all of the TTD payments were substantially late. As discussed in the context of section 19(l) penalties, no TTD payments were made until the September 9, 1991, a delay of 281 days. That first payment was for $15,498. The next payment was made on January 7, 2005, in the amount of $247,292, which the Commission determined was an underpayment of the amount due on that date. Another TTD payment was made on August 31, 2005, in the amount of $140,000, which also constituted an underpayment of the total due to that date, according to the Commission. The Commission found that a payment of $66,489.08 made on April 18, 2006, finally brought the

total TTD payments current to that date. The record established that all TTD payments made after April 2006 were timely.

¶ 37 In assessing the section 19(k) penalty, the Commission adopted the arbitrator's calculations that of the total $469,279.50 in TTD payments made between the date of the accident and April 2006, a total of $112,101.68 was delayed in bad-faith and subject to the 50% penalty under section 19(k). Although the Commission did not delineate how it calculated the exact amount of vexatiously delayed payments, it took into account the fact that there was some initial uncertainty as to the exact calculation of AWW benefits prior to the prior to the January 7, 2007, payment and there was some delay attributed to the claimant's refusal to cash checks that were sent to him from September 25, 1991, through April 21, 1995, wherein he challenged the amount of those checks.

¶ 38 The arbitrator also made note that there were several "unconscionable" delays in authorizing specific medical treatment procedures. There is, however, nothing in the record to establish that any section 19(k) penalties were imposed for those actions. We can, however, establish that the section 19(k) penalties were calculated using only delayed or withheld TTD payments. Thus, the issue of whether section 19(k) penalties can be properly imposed for a refusal to authorize treatment is not at issue here and need not be addressed. See *Hollywood Casino-Aurora, Inc. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (2d) 110426WC.

¶ 39 The employer offers no explanation as to the delayed TTD payments other than the dispute over the AWW calculation, which was resolved by January 7, 2005. Thus, even if the dispute over the amount of TTD benefits was in good faith, that does not explain the delay in payments from January 7, 2005, until April 18, 2006. The employer points out that there was a period of several years were it was issuing checks but the claimant refused to cash those checks. It does not explain how this dispute allowed the employer to stop issuing checks for years

thereafter. Likewise, it does not explain why even when the employer issued the lump sum checks from January 2005, to April 2006, it still did not pay the full amount of benefits. At the very least, the record established that the employer delayed paying $206,489.08 for over 15 months. While it is somewhat unclear as to why the Commission found only $112,101.68 of that amount to be subject to section 19(k) penalties, it cannot be said that the Commission's finding that these unexplained late payments of TTD benefits were withheld in bad-faith and thus subject to the 50% penalty under section 19(k) is against the manifest weight of the evidence.

¶ 40 C. Attorney Fees

¶ 41 Section 16 of the Act provides for an award of attorney fees when an award of additional compensation under section 19(k) is appropriate. 820 ILCS 305/16 (West 1988). The decision to award attorney fees lies within the discretion of the Commission and the standard for awarding attorney fees is the same as for awarding penalties under section 19(k). *Jacobo,* 2011 IL App (3d) at ¶ 24. In other words, where we have determined that the Commission has properly awarded penalties under section 19(k) an award of attorney fees is also appropriate. *Id*., at ¶ 25. In the instant case, the employer's delay in paying TTD benefits, as discussed above, supported the Commission's award of section 19(k) penalties as well as an award of attorney fees under section 16.

¶ 42 III. Claimant's challenge to the amount of penalties and attorney fees

¶ 43 In his brief, the claimant maintains that, while the Commission's decision to award him penalties and attorney fees was appropriate, the Commission should have awarded him a greater amount of penalties and fees. Specifically, he maintains that the Commission should have based the amount of penalties and attorney fees on the *entire* amount of TTD benefits awarded, not the portion the Commission determined to have been vexatiously delayed. The claimant cites *Moore v. Industrial Comm'n,* 188 Ill. App. 3d 31 (1989) in support of his argument. However, in

Roodhouse Envelope Co. v. Industrial Comm'n, 276 Ill. App. 3d 576, 580 (1995), the court held that *Moore* did not preclude the Commission from crediting certain payments that were made before the ruling imposing penalties. Here, the Commission determined that a portion of the delayed payments were not vexatiously withheld and that a portion of the payments were actually refused by the claimant. Given these unique factual determinations, we cannot say that the Commission's calculations of penalties and attorney's fees were against the manifest weight of the evidence.

¶ 44 IV. Motion to Dismiss

¶ 45 When the employer sought review of the Commission's decision in the circuit court, it simultaneously filed a bond in order to comply with the requirement that, before a summons can be issued, a bond executed by the party against whom the Commission award was rendered must be tendered to the clerk of the court. 820 ILCS 305/19(f)(2) (West 2004). Here, the employer filed a bond identifying Pistakee Marina, Inc. as "Principal" and executed by William J. Slater, who was identified as "President." In his motion to dismiss, the claimant asserted "on information and belief" that at the time the action for judicial review was filed, the corporate entity, Pistakee Marina, Inc., was no longer registered to conduct business in Illinois, and that Slater no longer had an ownership interest in the corporation. The claimant argued, therefore, that Slater had no authority to execute the bond on behalf of the employer and the complaint for judicial review should have been dismissed.

¶ 46 A bond must be executed by the party against whom the award has been made. *Deichmueller Construction Co. v. Industrial Comm'n*, 151 Ill. 2d 413, 414 (1992). An employer's appeal bond must be signed by an individual with authority to bind the employer to the financial obligation represented by the bond. *Id.* Strict compliance with the bond requirement is necessary in order to confer jurisdiction upon the circuit court to review a

decision of the Commission. *Illinois Armored Car Corp. v. Industrial Comm'n*, 205 Ill. App. 3d 993, 997 (1990).

¶ 47 The claimant's argument is that because the employer was a corporate entity that was no longer authorized to conduct business in Illinois at the time the complaint for judicial review was filed, Slater was no longer authorized to execute a bond binding the employer to the financial obligation represented in the bond. He cites *Ahlgren v. Blue Goose Supermarket*, 266 Ill. App. 3d 154, 162 (1994) for the general proposition that corporations act through officers and directors and are only bound by their actions when they perform within the scope of their authority.

¶ 48 The claimant's argument fails in two ways. First, it is well-settled that a bond signed by a person purporting to be a corporate officer is presumed to act to bind the corporation to the bond. *First Chicago v. Industrial Comm'n*, 294 Ill. App. 3d 685, 691 (1988) *citing Anderson v. Rolling Meadows*, 10 Ill. 2d 54, 59 (1956) (presumption exists that a corporate [officer] has authority the authority to execute bond on behalf of corporation); *Illinois Armored Car*, 205 Ill. App. 3d at 999 (a reasonable person would assume that a corporate officer has the authority to bind corporation financially). Thus the record here established that Slater was an officer with authority to bind the employer to the obligation stated in the bond.

¶ 49 The claimant's argument also fails in that there is nothing in the record, other than his unsupported assertion, to establish that the employer was no longer authorized to conduct business in Illinois. To the extent that the claimant sought to create an issue of fact as to whether Slater was authorized to execute a bond on behalf of the employer, it cannot be said that the circuit court's finding to the contrary was against the manifest weight of the evidence. *Lee v. Industrial Comm'n*, 82 Ill. 2d 496, 501 (1980) (trial court should determine whether facts support finding that a bond is properly executed).

¶ 50 Moreover, the claimant misstates the impact of employer's alleged lack of authorization to conduct business in Illinois. Assuming, *arguendo*, that the employer was a foreign corporation that had lost its authority to conduct business in Illinois as required under the Illinois Business Corporation Act (805 ILCS 5/13.5 (West 2004)), there is nothing in that statute that renders its actions or the actions of its officers without any legal effect, as the claimant suggests. *Career Concepts, Inc. v. Synergy, Inc.*, 372 Ill. App. 3d 395, 403 (2007). See also, *Subway Restaurants, Inc. v. Riggs*, 297 Ill. App. 3d 289, 290 (1998) (a foreign corporation may engage in occasional transactions without being required to acquire or maintain authorization to conduct business in Illinois from the Secretary of State). Given the record before the circuit court, the finding that the bond was properly executed was not erroneous.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, the judgment of the circuit court which confirmed the decision of the Commission is affirmed.

¶ 53 Affirmed.