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2012 IL App (5th) 110219WC-U

NO. 5-11-0219WC

Order filed: April 24, 2012

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

UNION ROOFING CO., INC., Appellant,	)	Appeal from the Circuit Court of
v.	)	St. Clair County.
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Robert Harrison, Appellee).	)	No. 10-MR-54
	)	Honorable
	)	Stephen P. McGlynn,
	)	Judge, presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Hoffman, Hudson, Holdridge and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The Commission properly exercised jurisdiction over claimant's workers' compensation claim, (2) the arbitrator committed no error in conducting an *ex parte* arbitration hearing pursuant section 7020.60(b)(2)(C) of the Illinois Administrative Code (50 Ill. Adm. Code 7020.60(b)(2)(C), amended at 20 Ill. Reg. 3842 (eff. Feb. 15, 1996)), and (3) and the Commission's decision to affirm the arbitrator's award was not against the manifest weight of the evidence.

¶ 2 On June 5, 2006, claimant, Robert Harrison, filed an application for adjustment of claim

pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), seeking benefits from employer, Union Roofing Co., Inc. On June 15, 2009, the matter was called for status before the arbitrator. Claimant appeared but no representative for employer was present. Following an *ex parte* hearing the same date, the arbitrator determined claimant sustained bilateral carpal tunnel injuries that arose out of and in the course of his employment and awarded him 7-5/7 weeks' temporary total disability benefits and $7,681.80 in medical expenses. The arbitrator also ordered employer to authorize and pay for carpal tunnel surgery recommended by one of claimant's doctors.

¶ 3 The Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. It also remanded to the arbitrator pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980), for a determination of further benefits, if any, under the Act. On judicial review, the circuit court of St. Clair County confirmed the Commission's decision. Employer appeals, arguing (1) the Commission lacked jurisdiction over claimant's workers' compensation claim, (2) it did not receive proper notice of a trial, (3) the arbitrator erred in conducting an *ex parte* trial, and (4) the Commission erred in affirming and adopting the arbitrator's decision.

¶ 4 On June 5, 2006, claimant filed his application for adjustment of claim, alleging he sustained bilateral carpal tunnel injuries arising out of and in the course of his employment. On June 15, 2009, after the case had been on file with the Commission for just over three years, claimant and his attorney appeared before the arbitrator for a status call. No one appeared on employer's behalf and no requests for a continuance had been made by either party. The arbitrator noted claimant was prepared and ready for trial and stated claimant's attorney had informed her that there had "been no contact with a claims adjustor, insurance company or another attorney" since the inception of the case on June 9, 2003, claimant's alleged accident date. Citing section 7020.60(b)(2)(C) of the Illinois

Administrative Code (Code) (50 Ill. Adm. Code 7020.60(b)(2)(C), amended at 20 Ill. Reg. 3842 (eff. Feb. 15, 1996)), claimant requested that the case "go forward [that day] in a default fashion against [employer]." The arbitrator agreed with claimant's position and the matter proceeded with a hearing.

¶ 5 Claimant testified he worked for employer, an Illinois corporation engaged in the business of construction. He asserted employer hired him in Illinois but, during the entire time he worked for employer, he worked on a project located in Missouri. Claimant further described his job duties for employer, problems he began to experience with his hands while working for employer, and his subsequent medical treatment. On June 25, 2009, the arbitrator determined claimant sustained compensable, work-related injuries and awarded benefits as stated. On February 3, 2010, the Commission affirmed and adopted the arbitrator's decision. On April 8, 2011, the circuit court confirmed the Commission.

¶ 6 This appeal followed.

¶ 7 On appeal, employer first argues the Commission lacked jurisdiction over claimant's workers' compensation claim. Although it acknowledges jurisdiction exists over out-of-state injuries when the employee's contract for hire was made in Illinois, it contends claimant failed to present sufficient evidence to show his contract for hire was made in Illinois.

¶ 8 The Act defines an "employee" as "[e]very person in the service of another under any contract of hire, express or implied, oral or written, including persons whose employment is outside of the State of Illinois where the contract of hire is made within the State of Illinois." 820 ILCS 305/1(b)(2) (West 2004). An injured employee may elect to pursue his claim "in the State where the contract of hire is made." 820 ILCS 305/1(b)(3) (West 2004). The supreme court has confirmed that the Act plainly and unambiguously "confers jurisdiction to the Commission over injuries occurring

outside Illinois when the contract of hire is made within Illinois." *Mahoney v. Industrial Comm'n*, 218 Ill. 2d 358, 374, 843 N.E.2d 317, 326 (2006). "[T]he place of the contract of hire is the sole determining factor for the existence of jurisdiction over employment injuries occurring outside this state." *Mahoney*, 218 Ill. 2d at 374, 843 N.E.2d at 327. "As long as the initial contract remains in force, the Commission retains jurisdiction." *Mahoney*, 218 Ill. 2d at 374, 843 N.E.2d at 326-27.

¶ 9 "A contract is made where the last act necessary to give validity occurs." *Hunter Corp. v. Industrial Comm'n*, 268 Ill. App. 3d 1079, 1083, 645 N.E.2d 259, 262 (1994). "The determination of whether a contract for hire has been made in Illinois is a question of fact and the determination thereof is the province of the Commission." *Hunter*, 268 Ill. App. 3d at 1083, 645 N.E.2d at 262. "The Commission's resolution of a question of fact will not be disturbed on appeal unless it is contrary to the manifest weight of the evidence." *Hunter*, 268 Ill. App. 3d at 1083, 645 N.E.2d at 262.

¶ 10 Here, employer complains claimant presented "absolutely no testimony regarding the last act that occurred to complete the contract in this case." However, the record shows claimant testified employer was an Illinois corporation and that he was hired to work for employer in Illinois. No evidence was presented to rebut claimant's testimony or to support a finding that the contract for hire was made in a state other than Illinois. As a result, claimant's testimony was sufficient to support a finding that he was hired in Illinois and to support the Commission's exercise of jurisdiction.

¶ 11 Employer further argues it failed to receive proper notice of the arbitration hearing pursuant to various provisions in the Act and the Code, and the arbitrator erred by conducting an *ex parte* trial. In addressing employer's claims we note that, generally, "the Commission's interpretation of its rules is entitled to deference and will be set aside only if it is clearly erroneous, arbitrary, or unreasonable."

Banks v. Industrial Comm'n, 345 Ill. App. 3d 1138, 1141, 804 N.E.2d 629, 632 (2004).

¶ 12 Initially, employer argues claimant failed to comply with the notice requirements of section 19(b) of the Act (820 ILCS 305/19(b) (West 2004)). It maintains it was not provided with any notice of an arbitration hearing pursuant to that section. Employer requests the Commission's decision be reversed on all issues and remanded to the arbitrator for a hearing after proper notice is given.

¶ 13 Here, the record fails to show claimant filed a petition for an immediate hearing pursuant to section 19(b). Instead, the arbitrator proceeded with a hearing pursuant to section 7020.60(b)(2)(C)(i) of the Code. That section provides as follows:

> "In all cases which have been on file at the Industrial Commission for three years or more, the parties or their attorneys must be present at each status call on which the case appears. *The case will be set for trial unless a written request has been made to continue the case for good cause*. Such request shall be made part of the case file. The written request must be received by the Arbitrator at least fifteen days in advance of the status call date and contain proof of service showing that the request for a continuance was served on all other parties to the case and/or their attorneys. Any objection to a continuance in such case must be received by the Arbitrator at least seven days prior to the status call date and contain a similar proof of service. The Arbitrator shall rule on such requests for continuances or objections thereto at the status call. The parties must appear at the status call even if there is no objection to the continuance." (Emphasis added.) 50 Ill. Adm. Code 7020.60(b)(2)(C)(i), amended at 20 Ill. Reg. 3842 (eff. Feb. 15, 1996).

¶ 14 In this case, the record supports the arbitrator's action in setting the matter for trial and shows the notice provisions relating to section 19(b) petitions were inapplicable. Specifically, when

claimant's workers' compensation claim was called for status on June 15, 2009, it had been on file with the Commission in excess of three years. Neither party had moved to continue the matter within the applicable time frames set forth in section 7020.60(b)(2)(C)(i) and, although the presence of both parties was required at the status call, no one appeared on employer's behalf.

¶ 15 Employer does not dispute notice and knowledge of claimant's workers' compensation claim, and the Code provides as follows with respect to status call dates:

> "Written notices will be sent to the parties for the initial status call setting on arbitration only. Thereafter, cases will be continued for 3 month intervals, or at other intervals upon notice by the Commission, until the case has been on file at the Industrial Commission for 3 years, has been set for trial ***, or otherwise disposed of. The parties must obtain any continued status call dates from the Industrial Commission records." 50 Ill. Adm. Code 7020.60(a), amended at 20 Ill. Reg. 3842 (eff. Feb. 15, 1996).

The Commission's decision to affirm the arbitrator's actions in setting the matter for hearing pursuant to section 7020.60(2)(b)(C)(i) was not clearly erroneous, arbitrary, or unreasonable.

¶ 16 Employer also contends claimant failed to provide it with notice of the arbitration hearing as required by section 7030.20 of the Code (50 Ill. Adm. Code 7030.20, amended at 20 Ill. Reg. 4053 (eff. Feb. 15, 1996)), which concerns the setting of a trial date upon motion of the parties. However, as discussed, this case involved section 7020.60(b)(2)(C)(i), which required the arbitrator to set the matter for trial under the circumstances presented. Section 7030.20 has no application to this case.

¶ 17 On appeal, employer further argues claimant should be estopped from proceeding with an *ex parte* hearing because he provided incorrect information to the arbitrator regarding the status of the case. It notes the arbitrator stated she had been informed by claimant's counsel that since the

inception of the case, there had "been no contact with a claims adjustor, an insurance company, or another attorney." Employer maintains that information was false and alleges communications took place between claimant's attorney and a "Specialty Risk Services" claims representative. It references two email communications between those individuals in February 2009, discussing the status of the case and a possible settlement demand from claimant. (Employer also references a third email from the claims representative to claimant's attorney; however, as that email was not sent until after the date of the arbitration hearing, it does little to advance employer's claims.)

¶ 18 Again, the arbitrator proceeded with an *ex parte* hearing pursuant to section 7020.60(b)(2)(C)(i) of the Code after the case had been on file with the Commission for over three years, the matter was called for status, no motion to continue had been made by either party within the applicable time frames, and respondent failed to appear for the status call as required by the Code. Under those specific circumstances, the arbitrator was required to set the matter for hearing regardless of email contact between the parties' representatives some months earlier.

¶ 19 Further, even considering the emails employer references, the arbitrator's comments show she had an accurate view of the case. Despite employer's knowledge of the claim against it and the June 2009 status call, the record reflects no action on its part to respond to claimant's filing before the Commission. The record shows a lack of diligence by employer in defending and monitoring the claim against it.

¶ 20 Finally, in its appellant's brief, employer identifies as an issue for review "whether the Commission erred in affirming and adopting all other findings" of the arbitrator. Because it provides no argument or citation to legal authority with respect to this issue, we need not address it on appeal. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("Points not argued are waived and shall not be raised in

the reply brief, in oral argument, or on petition for rehearing").

¶ 21 For the reasons stated, we affirm the circuit court's judgment.

¶ 22 Affirmed.