

NOTICE

Decision filed 04/24/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 110323WC-U

NO. 5-11-0323WC

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

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).

WORKERS' COMPENSATION COMMISSION DIVISION

SOUTH CENTRAL TRANSIT,)	Appeal from the
Appellant,)	Circuit Court of
v.)	Clinton County.
THE ILLINOIS WORKERS' COMPENSATION)	No. 10-MR-65
COMMISSION <i>et al.</i> (Charles Splechter and South)	
Central Transit, as insured by Illinois Public Risk Fund,)	Honorable
Appellees).)	William J. Becker,
)	Judge, Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of appellate jurisdiction where the circuit court properly exercised jurisdiction, reversed the Commission's decision, and remanded to the Commission for further proceedings, resulting in a nonfinal, interlocutory order.

¶ 2 Claimant, Charles Splechter, filed two applications for adjustment of claim (case Nos. 08-WC-52978 and 08-WC-52979) pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2006)), seeking benefits from the employer, South Central Transit. He alleged neck, back, arm, and leg injuries stemming from separate automobile accidents on March 13 and August 22, 2008. The employer had different insurance carriers at the time of each accident and was represented by different legal counsel in connection with each claim for benefits. At

arbitration, the cases were consolidated "for trial purposes" and the arbitrator issued a single decision, finding claimant sustained accidental injuries that arose out of and in the course of his employment on both alleged accident dates and awarding him benefits under the Act.

¶ 3 Following the arbitrator's decision, the employer's legal counsel in case No. 08-WC-52979, involving the August 2008 accident, filed a petition for review of the arbitrator's decision but, in its petition, listed only case No. 08-WC-52978, involving the March 2008 accident. Both the employer's legal counsel in case No. 08-WC-52978 and claimant filed motions to dismiss review. Following a hearing, the Workers' Compensation Commission (Commission) granted the motions to dismiss. The employer, through its legal counsel in case No. 08-WC-52979, sought judicial review in the circuit court of Clinton County. The court reversed the Commission's decision and remanded for further proceedings. The employer, through counsel in case No. 08-WC-52978, seeks appellate review, arguing (1) the circuit court lacked jurisdiction to review the Commission's decision and (2) the Commission committed no error in finding it lacked jurisdiction to review the arbitrator's decision. We dismiss the appeal for lack of appellate jurisdiction.

¶ 4

I. BACKGROUND

¶ 5 Claimant worked for the employer as a bus driver. On December 3, 2008, he filed two applications for adjustment of claim, alleging he was injured as the result of two separate work-related automobile accidents. In the first application, case No. 08-WC-52978, claimant alleged a March 15, 2008, work-related accident and injuries to his neck, back, arms, and legs. In the second application, case No. 08-WC-52979, claimant alleged a July 17, 2008, work-related accident and injuries to his neck, back, arms, and legs. On January 15, 2009, he amended both

applications to reflect accident dates of March 13, 2008, and August 22, 2008, respectively.

¶ 6 The record shows the employer changed insurance carriers between claimant's two accident dates and separate legal counsel was secured to represent the employer in defense of each of claimant's workers' compensation claims. In connection with case No. 08-WC-52978 and the March 2008 accident, the employer was represented by Wiedner & McAuliffe, Ltd. (Wiedner & McAuliffe). In connection with case No. 08-WC-52979 and the August 2008 accident, the employer was represented by Evans & Dixon, LLC (Evans & Dixon).

¶ 7 At arbitration, the arbitrator ordered the cases consolidated "for trial purposes" and stated she would issue one decision with respect to both cases. On June 29, 2009, the arbitrator issued a decision, finding claimant sustained accidental injuries that arose out of and in the course of his employment on both March 13 and August 22, 2008. In connection with the March 2008 accident, the arbitrator awarded claimant medical expenses incurred through March 24, 2008. In connection with the August 2008 accident, the arbitrator awarded claimant (1) 24-3/7 weeks' temporary total disability benefits from September 8 through September 15, 2008, and November 11, 2008, through April 15, 2009, and (2) medical expenses incurred after August 22, 2008. She also ordered the employer to authorize and pay for surgery recommended by one of claimant's doctors, stating claimant's current condition of ill-being and need for surgery was causally connected to his August 2008 accident.

¶ 8 On August 4, 2009, Evans & Dixon, acting on the employer's behalf, filed a petition for review of the arbitrator's decision, stating the employer took exception to the arbitrator's findings regarding temporary disability and medical expenses. Although Evans & Dixon represented the employer in connection with case No. 08-WC-52979 and the August 2008 accident, the petition

for review listed only case No. 08-WC-52978. On November 2, 2009, Evans & Dixon filed a statement of exceptions on the employer's behalf. The statement listed both case numbers but noted the employer's claim of error was that the arbitrator erred in finding claimant's condition at the time of trial was causally connected to his August 2008 accident.

¶ 9 On November 13, 2009, the employer, through Wiedner & McAuliffe, filed a motion to dismiss the petition for review filed by Evans & Dixon, arguing Evans & Dixon had no standing to challenge the arbitrator's decision in case No. 08-WC-52978. On November 30, 2009, claimant also filed a motion to dismiss review, raising the same contentions as Wiedner & McAuliffe in its motion to dismiss. In response, the employer, through Evans & Dixon, maintained its petition for review listed only one case number due to a clerical error. It requested the Commission amend the petition for review by adding case No. 08-WC-52979 and permit review.

¶ 10 On December 2, 2009, a hearing was conducted before Commissioner Yolaine Dauphin on the motions to dismiss review. On September 9, 2010, the Commission entered its decision, granting the motions to dismiss. It determined it lacked jurisdiction in the matter because claimant's workers' compensation claims had been consolidated for trial purposes only and the petition for review in case No. 08-WC-52978 was not filed by the attorney of record in that case.

¶ 11 On October 4, 2010, the employer, acting through Evans & Dixon, sought judicial review of the Commission's decision by filing a request for summons in the circuit court of Clinton County. The request for summons listed the names and addresses of claimant and his attorney but not Wiedner & McAuliffe, the employer's representative in case No. 08-WC-52978. The same date, a certificate of mailing was filed, showing the circuit court clerk mailed a copy of the

summons to the Commission, claimant, and claimant's attorney. On October 13, 2010, the employer, through Evans & Dixon, filed a request for additional summons, asking the court clerk to also direct summons to Wiedner & McAuliffe. On October 19, 2010, Wiedner & McAuliffe entered its appearance in the matter as the employer's representative in case No. 08-WC-52978.

¶ 12 On May 10, 2011, the circuit court entered its order, reversing the Commission's decision to grant Wiedner & McAuliffe and claimant's motions to dismiss the petition for review and remanding the case for further proceedings. The court stated as follows:

"In filing its appeal on behalf of the [employer], Evans & Dixon substantially complied with the requirements of the Commission, and therefore, the Commission did have jurisdiction to consider the appeal. The Judge also finds persuasive the fact there was a single hearing, a single transcript, and a single decision issued from the consolidated hearing. As the Commission did have jurisdiction to consider the appeal, it was an error to grant the cross-motions to dismiss ***."

On May 20, 2011, the employer, through Wiedner & McAuliffe, filed a motion to reconsider.

On June 30, 2011, the court denied that motion.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Initially on appeal, we address the employer's challenge to the circuit court's jurisdiction. The employer, through Wiedner & McAuliffe, argues Evans & Dixon failed to comply with the Act's requirements when seeking judicial review of the Commission's decision on the employer's

behalf. Specifically, the employer, through Wiedner & McAuliffe, argues Evans & Dixon improperly failed to request summons be issued to the employer as a party defendant and, as a result, not all necessary parties were included on the certificate of mailing as required by section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2008)). Wiedner & McAuliffe point out that it was not listed on either Evans & Dixon's timely filed request for summons or on the certificate of mailing. Finally, it notes that, although the request for additional summons named Wiedner & McAuliffe, that document was untimely and did not name the employer as a party to whom service was required.

¶ 16 "[O]n appeal from a decision of the Commission, the circuit court obtains subject matter jurisdiction only if the appellant complies with the statutorily prescribed conditions set forth in the Act." *Residential Carpentry, Inc. v. Kennedy*, 377 Ill. App. 3d 499, 502, 879 N.E.2d 439, 442-43 (2007). Pursuant to section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2008)) "[a] proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission." The court clerk issues a summons upon a written request "and the written request shall contain the last known address of other parties in interest and their attorneys of record who are to be served by summons." 820 ILCS 305/19(f)(1) (West 2008).

¶ 17 "The failure to file a written request for issuance of summons deprive[s] the circuit court of subject matter jurisdiction." *Bracy v. Industrial Comm'n*, 338 Ill. App. 3d 285, 288, 788 N.E.2d 737, 740 (2003). However, in *Jones v. Industrial Comm'n*, 188 Ill. 2d 314, 321, 721 N.E.2d 563, 567 (1999), the supreme court recognized that, under certain circumstances, "where the timely initiation of the appeal process has not been in issue, *** substantial compliance with the precepts of section 19(f) is sufficient to vest the circuit court with jurisdiction." The court

noted several cases to illustrate this proposition, including *Bethlehem Steel Corp. v. Industrial Comm'n*, 41 Ill. 2d 40, 241 N.E.2d 444 (1968). *Jones*, 188 Ill. 2d at 323, 721 N.E.2d at 568.

There, the court found no merit to a claim that the circuit court lacked jurisdiction even though the filings to initiate review of the Commission's decision failed to name the claimant's attorneys of record as required by section 19(f)(1). *Bethlehem*, 41 Ill. 2d at 44-45, 241 N.E.2d at 446. In that case, "[t]he court noted that an attorney appeared for the [claimant's] law firm throughout the proceedings and that the attorney did not deny that service was properly made upon him." *Jones*, 188 Ill. 2d at 323, 721 N.E.2d at 568 (citing *Bethlehem*, 41 Ill. 2d at 44, 241 N.E.2d at 446).

¶ 18 In *Jones*, 188 Ill. 2d at 324, 721 N.E.2d at 568, the supreme court also provided examples of several appellate court cases where substantial compliance with section 19(f) of the Act was found sufficient to vest the circuit court with jurisdiction. Specifically, in *Forest Preserve Dist. of Cook County v. Industrial Comm'n*, 305 Ill. App. 3d 657, 660-62, 712 N.E.2d 856, 858-59 (1999), this court held the employer's failure to include the claimant's last known address in its request to issue summons did not deprive the circuit court of jurisdiction. In so holding, we noted the request named the claimant as a party in interest, omitted only the claimant's address, included the name and address of the law firm representing the claimant, and the claimant's attorneys were properly served with summons in their representative capacities. *Forest Preserve*, 305 Ill. App. 3d at 660-62, 712 N.E.2d at 858-59.

¶ 19 Similarly, in *Old Ben Coal Co. v. Industrial Comm'n*, 217 Ill. App. 3d 70, 72-73, 576 N.E.2d 890, 892 (1991), the employer's request for summons did not expressly name the claimant as a party in interest or include his last known address; however, the names and addresses of the claimant's attorneys of record had been provided and summons was directed to

them. This court found the circuit court appropriately exercised jurisdiction because the employer's request for summons provided sufficient information for the clerk to properly notify the claimant and his attorneys and the claimant failed to show he was prejudiced as a result of the employer's omissions. *Old Ben Coal*, 217 Ill. App. 3d at 76, 576 N.E.2d at 894. We pointed out that the employer had "submitted an incomplete written request rather than none at all" and concluded that under all of the circumstances presented the employer appeared "to have been in substantial compliance with the material provisions of *** the Act." *Old Ben Coal*, 217 Ill. App. 3d at 76, 576 N.E.2d at 894. See also *Chambers v. Industrial Comm'n*, 213 Ill. App. 3d 1, 5, 571 N.E.2d 1001, 1004 (1991) (Holding the claimant's written request for summons substantially complied with statutory requirements even though it failed to name the employer's attorney of record, provide the addresses of the parties in interest, or designate a return date); *Chadwick v. Industrial Comm'n*, 154 Ill. App. 3d 859, 507 N.E.2d 878 (1987) (Finding substantial compliance with the material provisions of section 19(f)(1) despite the failure to provide the employer's address in the documents initiating review of the Commission's decision).

¶ 20 Providing the names and addresses of the parties in interest and the attorneys of record in a request for summons allows the circuit court clerk to properly notify necessary parties and their legal representatives. This case involves a unique set of circumstances, in that the employer was insured by two separate entities on the dates claimant was injured and has two separate legal representatives. Nevertheless, the employer, as the party initiating review of the Commission's decision, was well aware of the proceedings. Under such circumstances, it was unnecessary for employer to list itself as a party in interest to be notified by the court clerk.

¶ 21 Additionally, the record fails to show prejudice from the employer's omission in the

request for summons of Wiedner & McAuliffe as attorneys of record. Wiedner & McAuliffe was the employer's legal representative in connection with case No. 08-WC-52978. Not only does the record show the employer, as the party initiating review, was fully aware of the proceedings at issue, it also shows Wiedner & McAuliffe's awareness of, and full participation in, the proceedings before the circuit court. Specifically, on October 13, 2010, the employer, through Evans & Dixon, filed a request for additional summons, asking the circuit court clerk to direct a summons to Wiedner & McAuliffe. Wiedner & McAuliffe filed its entry of appearance in the matter on October 19, 2010, only 15 days after the employer filed the documents initiating review. Thereafter, Wiedner & McAuliffe fully represented the employer's interests with respect to case No. 08-WC-52978.

¶ 22 Like the cited case authority, this case, at most, involves an incomplete request for summons. However, the request was timely filed and sufficient to notify the parties in interest of the litigation. Moreover, no prejudice resulted from the omission of one of the employer's legal representatives in the request for summons. Given these circumstances, the employer's request for summons substantially complied with the material provisions of section 19(f)(1) of the Act and the circuit court was properly vested with jurisdiction in the matter.

¶ 23 While the circuit court properly exercised jurisdiction, appellate jurisdiction is lacking. "Although neither party raises a jurisdictional issue, we have a duty to consider our jurisdiction and to dismiss this appeal if our jurisdiction is lacking." *Wood Dale Electric v. Workers Compensation Comm'n*, 2013 IL App (1st) 113394WC, ¶ 8. "An order of the circuit court which reverses a decision of the Commission and remands the matter to the Commission is interlocutory and not appealable." *Wood Dale*, 2013 IL App (1st) 113394WC, ¶ 8. Here, the

circuit court reversed the Commission's decision and remanded the matter to the Commission. As a result, the court's order was interlocutory and not appealable. This court lacks jurisdiction to address the merits of employer's appeal regarding whether the Commission correctly concluded that it lacked jurisdiction to review the arbitrator's decision. The matter must be remanded to the Commission for further proceedings as set forth in the circuit court's nonfinal order.

¶ 24

III. CONCLUSION

¶ 25 For the reasons stated, we dismiss the appeal and remand to the Commission for further proceedings.

¶ 26 Appeal dismissed; cause remanded.