

Workers' Compensation Law

The newsletter of the Illinois State Bar Association's Section on Workers' Compensation Law

Strict Compliance Is Alive and Well With Regard to Timely Filing of Petition for Judicial Review and Notice of Intent to File for Review

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In two recent Rule 23 decisions, the appellate court ruled that strict compliance with Section 19(f)(1) of the Workers' Compensation Act is necessary to vest the circuit court with jurisdiction where the appellant seeks review of a Commission decision.

Section 19(f)(1) of the Act governs judicial review of decisions by the Commission and requires that a proceeding for review be commenced within 20 days of the receipt of notice of the decision of the Commission. It also requires the appellant to file with the circuit court within 20 days of receiving the Commission's decision either (1) proof that the notice of intent to file for review in the circuit court was filed with the Commission; or (2) an affidavit of the attorney setting forth that notice of intent to file for review in the circuit court was given in writing to the secretary or assistant secretary of the Commission. [820 ILCS 305/19(f)(1)]

In *Miller v Workers' Compensation Comm'n*, 2020 IL App (1st) 191951WC-U (June 12, 2020), the court affirmed the circuit court's dismissal of claimant's proceeding for lack of subject-matter

jurisdiction holding that claimant failed to comply with the requirements set forth in Section 19(f)(1). The court explained that courts in workers' compensation proceedings exercise special statutory jurisdiction and therefore strict compliance with the Act is required to vest the circuit court with subject matter jurisdiction. The court held that in order for there to be jurisdiction, the party seeking review must strictly comply with the requirements of Section 19(f)(1) within the 20-day period and that failure to do so divests the trial court of subject matter jurisdiction.

In *Miller*, the Commission issued its decision on May 17, 2019, and the evidence showed that claimant had notice of the decision by May 29, 2019. As such, she was required to comply with the requirements of Section 19(f)(1) by June 18, 2019. The Claimant provided no evidence that within the 20 day period she either provided the circuit court with proof of filing the notice of intent to file review with the Commission or an affidavit setting forth that the notice of intent to file for review in the circuit court was given in writing to the secretary or assistant secretary of the Commission.

In light of this, the court concluded that the circuit court correctly determined that it lacked subject matter jurisdiction over Claimant's review and it affirmed the circuit court's judgment granting respondent's motion to dismiss Claimant's proceeding for lack of subject matter jurisdiction.

In *Krutal v. Workers' Compensation Comm'n*, 2020 IL App. (1st) 190303WC-U, claimant alleged injuries while working as a union carpenter for respondent. Following a hearing, the arbitrator found that claimant sustained an accident arising out of and in the course of his employment but that his current condition of ill-being was not causally related to the accident.

Claimant filed a timely petition for review with the Commission. Shortly thereafter, claimant filed a motion to dismiss his attorney and a motion to proceed as a poor person pursuant to Section 20 of the Act. A hearing was held before Commissioner Brennan at which time the claimant was instructed how to perfect a review of his case to the Commission. Claimant acknowledged that he understood the requirements.

When the parties later appeared

before Commissioner Luskin, respondent advised that the transcript from the arbitration hearing was prepared and paid for by the state and was authenticated by respondent. Claimant was ordered to file the authenticated transcript on or before December 1, 2017.

On December 11, 2017, the Commission, on its own motion, issued a rule to show cause order due to claimant's failure to timely file the authenticated transcript. On December 13, 2017, the matter was heard before Commissioner Mathis. He gave claimant until December 22, 2017 to file the transcript and until March 21, 2018, to file his brief if the review were perfected. He told claimant that the petition for review would be dismissed if the transcript was not filed by December 22, 2017.

On January 31, 2018, the Commission denied claimant's petition for review for failure to timely file the authenticated transcript by December 22, 2017. The Commission adjudicated payment and distribution of the arbitrator's award. Claimant did not appeal the Commission order.

On April 17, 2018, claimant filed a pro se motion for reinstatement of the case, penalties and attorneys' fees. On April 18, 2018, Commissioner Mathis held a hearing on claimant's motion. Claimant explained that he failed to timely file the authenticated transcript because he received multiple letters from collection agencies and had been disputing Medicare and false statements allegedly made by his former counsel.

On June 18, 2018, the Commission issued a decision, finding that it lacked jurisdiction to reinstate claimant's case. The Commission concluded: (1) that Section 9020.90(a) of the Illinois Administrative Code (50 Ill. Adm. Code 9020.90(a)(2016)), which governs petitions to reinstate, applied to reinstatement only where the case was dismissed from the Arbitration call for want of prosecution, and (2) that it had no authority to reinstate a petition for review which had been correctly dismissed on jurisdictional grounds due to claimant's failure to file the authenticated transcript with the Commission.

On July 6, 2018, claimant filed a *pro se* notice of intent to file for review in the circuit court seeking judicial review of the January 31, 2018 Commission order. On January 15, 2019, the circuit court issued its decision granting respondent's motion to dismiss under section 2-619 of the Code of Civil Procedure due to claimant's failure to timely file a transcript of the proceedings with the Commission and failure to timely file a timely appeal of the Commission's order dismissing the petition for review. On February 13, 2019, claimant timely filed a pro se notice of appeal with the appellate court.

The appellate court noted that the presumption of subject matter jurisdiction does not apply to workers' compensation proceedings. It pointed out that an appeal of a Commission decision requires the Appellant to comply with the procedures set forth in the Act to vest the circuit court with subject matter jurisdiction. In order to vest the circuit court with jurisdiction to review a Commission decision, strict compliance with the provisions of the Act is necessary and must affirmatively appear in the record. Because claimant failed to file for judicial review within 20 days of receiving the Commission's January 31, 2018 order (and did not do so until July 6, 2018), the appellate court affirmed the circuit court's dismissal of the appeal for lack of jurisdiction.

Practice Point

There have been instances where the appellate court found that "substantial compliance" with the requirements of Section 19(f)(1) did not deprive the circuit court of subject matter jurisdiction. See *Chadwick v. Industrial Comm'n*, 154 Ill. App.3d 859, 507 N.E.2d 878 (1987) (failure to state the address of the employer); *Advance Transportation Company v. Industrial Comm'n*, 202 Ill.App.3d 449, 559 N.E.2d 1038 (1990) (failure to designate a specific return date of the Summons). **The Miller and Krutal cases unequivocally mandate that strict compliance is required** with regard to the Section 19(f)(1) requirements of filing the petition for review within 20 days of receiving notice of the Commission's decision and filing with the circuit court within 20 days of receiving the Commission's

decision proof that the notice of intent to file for review was filed with the Commission or that an affidavit of the attorney setting forth that notice of intent to file for review in the circuit court was given in writing to the secretary or assistant secretary of the Commission. ■