

No. 1-11-1884

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(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANTHONY SCARPELLI, Sr.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	11 CH 00121
)	
CITY OF CHICAGO, a municipal corporation,)	Honorable
)	Patrick T. Rogers,
Defendant-Appellee.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Steele and Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* The Department of Administrative Hearings has jurisdiction to hear a municipality's complaint seeking reimbursement of the amount of workers' compensation it claims it overpaid to an employee. An arbitrator of the Workers' Compensation Commission has jurisdiction to correct clerical errors in his award of benefits, and such corrections, even if erroneous, do not subject the award to collateral attack.

¶ 2 In 2000, Anthony Scarpelli sustained an injury while working for the City of Chicago. He filed a claim for workers' compensation. The arbitrator awarded Scarpelli benefits, and then withdrew the decision and rendered a new decision, which awarded Scarpelli a smaller amount of

benefits. The City paid Scarpelli the higher amount of benefits, as awarded in the withdrawn decision. When the City recognized that the arbitrator's final decision awarded Scarpelli an amount less than the City had paid, the City filed a complaint with the Department of Administrative Hearings (the Department), claiming that Scarpelli owed the City restitution of the amount by which the arbitrator's initial award exceeded the amount awarded in the later decision. The Department ordered Scarpelli to reimburse the City for the overpayment. Scarpelli filed a complaint for administrative review, and the trial court affirmed the Department's decision.

¶ 3 On appeal, Scarpelli argues that the arbitrator lacked jurisdiction to reduce the amount awarded in the initial decision. He also argues that he does not owe the City a debt the City can recover in this proceeding, in part because only the Workers' Compensation Commission had jurisdiction to hear the City's complaint based on an alleged overpayment of a workers' compensation award.

¶ 4 We hold that the arbitrator had jurisdiction to enter the award he entered, and the amount by which the City overpaid Scarpelli counts as a debt Scarpelli must pay the City. The Department had jurisdiction to resolve the City's claim for reimbursement of the overpayment. Therefore, we affirm the trial court's judgment affirming the Department's decision.

¶ 5 **BACKGROUND**

¶ 6 On July 14, 2000, Scarpelli injured his right knee while he was working for the City. After surgery on the knee, Scarpelli returned to work with some restrictions. He filed a claim for workers' compensation benefits. He suffered a second work-related injury in May 2004 and filed a second workers' compensation claim related to the 2004 injury.

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¶ 7 On March 23, 2009, an arbitrator for the Workers' Compensation Commission (the Commission) issued a decision (the March decision) resolving Scarpelli's claim related to the 2000 injury. In the decision, the arbitrator said that Scarpelli "sustained a 45% loss of use of a right leg and 10% loss of use of a person as a whole." The arbitrator noted that the City had already paid Scarpelli \$622.72 per week for about three years while Scarpelli was temporarily totally disabled, plus other minor benefits. The arbitrator awarded Scarpelli an additional \$516.15 per week for 140 weeks, requiring the City to pay Scarpelli \$72,261.

¶ 8 On April 20, 2009, the arbitrator recalled the March decision to correct a clerical error. That same day, he issued a new decision (the April decision), reaching the same monetary award, based on the same disability findings. But the findings of fact related to the injury Scarpelli suffered in 2004.

¶ 9 Scarpelli moved for a recall of the April decision, noting that the decision "states the date of accident to be May 13, 2004, when the accident in this cause was on July 14, 2000." The arbitrator's findings of fact, according to Scarpelli, were "the same findings and facts and conclusions of law entered on behalf of the same Petitioner in a different case," and those findings "[did] not relate to the injuries" for which Scarpelli sought compensation in the case based on the 2000 accident.

¶ 10 On May 11, 2009, the arbitrator granted Scarpelli's motion and withdrew the April decision. In its place, the arbitrator substituted a new decision (the May decision), with factual findings related to the 2000 accident. The arbitrator held that Scarpelli sustained a 37.5% loss of use of his right leg, and awarded Scarpelli, in addition to the temporary total disability the City had already paid, \$516.15 per week for 75 weeks, directing the City to pay Scarpelli \$38,711.25.

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¶ 11 Scarpelli promptly petitioned for review of the May decision. On July 21, 2009, before the Commission could hear the petition for review, the City issued Scarpelli a check for \$72,261. Scarpelli cashed the check. On August 12, 2009, the City notified Scarpelli that it had overpaid him by \$33,549.75 (\$72,261 - \$38,711.25), and the City demanded repayment of that amount. On September 10, 2009, Scarpelli moved to dismiss his petition for review of the May decision. The Commission granted the motion. Scarpelli did not return the alleged overpayment to the City.

¶ 12 The City filed a complaint with the Department for determination of Scarpelli's liability for reimbursement of the alleged overpayment. Scarpelli moved to dismiss the complaint for lack of jurisdiction, on grounds that only the Commission could determine the validity of the arbitrator's decision. The Department denied the motion to dismiss, and separately found that Scarpelli owed the City the amount of the overpayment plus costs and fees, for a total of \$37,714.05.

¶ 13 Scarpelli filed a complaint for administrative review, and the trial court affirmed the decision. Scarpelli now appeals.

¶ 14 ANALYSIS

¶ 15 Scarpelli argues that he owes the City no debt, in part because the arbitrator lacked jurisdiction to alter the amount of the award, and therefore the May decision is void. He also argues that the Department had no jurisdiction to hear the City's complaint for repayment of the alleged debt. Because Scarpelli raises only issues of law, we review the issues *de novo*. *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d 519, 524 (2006).

¶ 16 Arbitrator's Jurisdiction

¶ 17 Scarpelli argues that the arbitrator lacked jurisdiction to hear the City's complaint for

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repayment of the alleged debt. Scarpelli relies on *Smalley Steel Ring Co. v. Illinois Workers' Compensation Comm'n*, 386 Ill. App. 3d 993 (2008). In *Smalley Steel*, the arbitrator issued his decision, and the employer moved to recall the arbitrator's decision and reopen the proofs. The arbitrator granted the motion, and after hearing new evidence, the arbitrator issued a second decision that awarded the employee nothing. On the employee's petition for review, the Commission found that the arbitrator lacked jurisdiction to reopen the proofs and issue a second decision. The Commission adopted the arbitrator's initial decision as its ruling.

¶ 18 The employer then filed an action for administrative review. The appellate court found that section 19(f) of the Workers' Compensation Act (Act) (820 ILCS 305/19(f) (West 2004)) permitted an arbitrator to recall his decision only to correct clerical or computational errors. Because the employee's motion for recall alleged no such clerical or computational errors, the "employer's motion and the arbitrator's second decision were nullities." *Smalley Steel*, 386 Ill. App. 3d at 996. Because the arbitrator had no valid basis for recalling his original decision, that decision became the decision of the Commission. The appellate court affirmed the Commission's decision.

¶ 19 The case before us differs from *Smalley Steel* in at least one crucial respect. Scarpelli admits he had a legitimate reason to ask the arbitrator to recall the April decision, due to the clerical error of substituting facts about the 2004 injury for the facts stated in the March decision, which related to the 2000 accident. The valid withdrawal of the decision left Scarpelli with no award until the arbitrator entered a new decision. See *Flavell v. Ripley*, 247 Ill. App. 3d 842, 847 (1993) (“[w]here a judgment order is vacated, the effect is to leave the pleadings as if no judgment were ever entered.”) We must decide whether the arbitrator had jurisdiction to enter the May decision after he

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withdrew the April decision.

¶ 20 This case does not arise on a direct appeal from the arbitrator's award, or any subsequent decision of the Commission. Instead, it arises from the City's complaint with the department for repayment of the amount it allegedly overpaid Scarpelli. Thus, Scarpelli has made his complaint with the department for administrative review a collateral attack on the arbitrator's decision, as a collateral attack "is an attempt to impeach that judgment in an action other than that in which it was rendered." *Buford v. Chief, Park District Police*, 18 Ill. 2d 265, 271 (1960). Our supreme court said that on a collateral attack, "an agency order would be declared void if the agency lacked jurisdiction of the parties or of the subject matter, or lacked the inherent power to make or enter the particular order involved." *Newkirk v. Bigard*, 109 Ill. 2d 28, 36 (1985). "[T]he general rule is that a party cannot collaterally attack an agency order *** unless the order is void on its face as being unauthorized by statute." *Newkirk*, 109 Ill. 2d at 39.

¶ 21 Scarpelli does not deny that the arbitrator had jurisdiction over the parties and the subject matter of his claim for workers' compensation. He argues that the arbitrator lacked inherent authority to enter the May decision because the new decision amounted to much more than a correction of clerical or computational errors in the April decision. See 820 ILCS 305/19(f) (West 2008). But the difference between the April decision and the May decision does not appear on the face of the May decision, and nothing else on the face of the May decision shows any problem with the arbitrator's authority to issue the decision.

¶ 22 Moreover, the change from the April decision to the May decision may reflect only the correction of clerical errors. A clerical error may, in some circumstances, affect the amount of an

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award. See *Dauderman v. Dauderman*, 130 Ill. App. 2d 807, 808-09 (1970) (change of award from \$400, to \$400 per month, corrected clerical error). "The distinction between a clerical error and a judicial one does not depend upon the source of the error, but rather, upon whether it was the deliberate result of judicial reasoning and determination." *First Bank v. Rezek*, 179 Ill. App. 3d 956, 959 (1989).

¶ 23 Scarpelli admits that the April decision included the clerical error of completely misstating all of the facts of the case, by stating instead the facts related to Scarpelli's claim for his 2004 injury. The arbitrator may have intended the April decision, with its assessment of Scarpelli's loss, to pertain entirely to the 2004 injury rather than the 2000 injury at issue here. If the arbitrator so intended, the error of assessing the wrong amount for Scarpelli's 2000 loss would result from inadvertent error in writing the April decision pertaining to the wrong injury, and not from judicial reasoning and determination of the proper award for the 2000 injury. Nothing in this record, and especially nothing on the face of the May decision, shows that the assessment of Scarpelli's loss in the April decision did not result from clerical error, which the arbitrator had authority to correct by entering the May decision to replace the withdrawn April decision. See 820 ILCS 305/19(f) (West 2008).

¶ 24 In *Newkirk*, a statute required the administrative agency to include election provisions in its order, and the agency failed to include those provisions in the order the appellant sought to attack collaterally. Our supreme court said:

"Plaintiffs contend that the mining board was without authority to issue any order which did not contain the election provisions. We disagree. The mining board had personal jurisdiction,

subject matter jurisdiction, and the inherent authority to issue the order. An agency's jurisdiction or authority is not lost merely because its order may be erroneous. [Citation.]

* * *

*** To accept plaintiffs' argument that the failure to include the omitted provisions rendered the order void would allow the exception to swallow up the rule. Plaintiffs' argument would allow a collateral attack on an order whenever the agency has failed to follow the exact letter of a statutory provision. A party could merely point to any provision of a statute which was not complied with and claim that the agency did not have authority to act unless the provision was complied with. *** To accept plaintiffs' argument would be to disregard the distinction between agency orders which are void and subject to collateral attack, and those which are merely voidable and subject to attack only through the applicable administrative and judicial review proceedings. We decline to adopt such a rule."

Newkirk, 109 Ill. 2d at 37-39.

¶ 25 The *Newkirk* court analyzed *Beam v. Erven*, 133 Ill. App. 2d 193 (1971). The petitioner in *Beam* asked the court to set aside, as void, a zoning board order granting a variation. The zoning ordinance allowed the zoning board to grant variances from the zoning regulations based on lot size only if the area of the lot in question exceeded 90% of the required lot area. The petitioner showed

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that the zoning board had granted a variance where the lot had less than 90% of the required area. The *Newkirk* court said that the *Beam* court "held that the fact that the zoning board erred in issuing the order did not deprive the zoning board of its authority to issue the variance but rather made the order voidable through a proper review proceeding. The appellate court noted that the zoning board had personal and subject matter jurisdiction and the authority to grant variances. The court held that the granting of a variance of less than 90%, while rendering the order voidable, did not divest the zoning board of its jurisdiction." *Newkirk*, 109 Ill. 2d at 38-39. The *Newkirk* court agreed with the *Beam* court's holding that the zoning commission's order was only voidable, not void, and thus not subject to collateral attack.

¶ 26 Following *Newkirk*, we find that the arbitrator here had personal and subject matter jurisdiction to enter the May decision even if we assume that the arbitrator in the May decision did not merely correct clerical errors in the April decision. Scarpelli cannot successfully mount a collateral attack on the May decision in this proceeding. The May decision stands as the Commission's decision on Scarpelli's claim for the 2000 injury.

¶ 27 Debt

¶ 28 The City paid Scarpelli \$72,261 for the 2000 injury, even though the Commission's final order directed the City to pay only \$38,711.25. Scarpelli claims that he does not owe the City the amount of the overpayment, because the overpayment does not qualify as a "debt" within the meaning of section 1-19-010 of the Municipal Code of Chicago (Code) (Chicago, Ill., Municipal Code § 1-19-010 (2008)).

¶ 29 The City answers that it did not sue to recover a debt under chapter 19 of the Code. Instead,

the City sued under chapter 20, which provides:

"(a) The failure to pay any debt due the city, including *** amounts owed on account of *** overpayment *** shall constitute violation of this Code. ***

(b) In addition to any other means authorized by law, the city may enforce this section by instituting an action with the department of administrative hearings." Chicago, Ill., Municipal Code § 1-20-090 (2008).

¶ 30 Scarpelli counters that chapter 20, entitled "Cost Recovery," applies only to costs of services the City rendered to the debtor, not to workers' compensation payments it owes because of services the alleged debtor rendered to the City. If the costs relate only to services the City rendered to the debtor, we cannot envision any circumstance in which a court could find a debtor liable for an "overpayment." When the City provides services, it does not also pay the person to whom it provides the services, so it cannot overpay the recipient. Thus, Scarpelli's interpretation of section 1-20-090 makes the provision for recovery of overpayments meaningless. But we should construe the ordinance to give meaning to every word or phrase, and we should not treat any words as superfluous. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990).

¶ 31 Chapter 20 of the Code, in its definitions, contradicts Scarpelli's interpretation of the chapter. The definition section provides:

"The word 'costs' includes all costs of the city incurred in relation to the provision of services by the city or its agents, ***

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including but not limited to wages and benefits of personnel involved in providing such services[.]" Chicago, Ill., Municipal Code, § 1-20-010 (2008).

¶ 32 In the course of his work for the City, Scarpelli provided services for which the City paid him wages, and his workers' compensation benefits qualify as costs the City incurred in relation to the provision of services. When the City overpays its agents, chapter 20 establishes the City's right to recover the overpayment. Chicago, Ill., Municipal Code, § 1-20-090 (2008). Because the City overpaid Scarpelli for his workers' compensation benefits, and Scarpelli failed to reimburse the City for the overpayment, Scarpelli owes the City a debt within the meaning of section 1-20-090 of the Code.

¶ 33 Department's Jurisdiction

¶ 34 Finally, Scarpelli contends that the Department lacked jurisdiction to decide this case because the Commission has exclusive jurisdiction over workers' compensation matters. Section 18 of the Act provides:

"All questions arising under this Act, if not settled by agreement of the parties interested therein, shall, except as otherwise provided, be determined by the Commission." 820 ILCS 305/18 (West 2008).

¶ 35 But the City, in this case, did not seek the determination of any question arising under the Act. For this case, the arbitrator already settled all questions arising under the Act when he issued the May decision resolving Scarpelli's claim. The City overpaid the amount ordered and sought

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reimbursement of the overpayment.

¶ 36 Scarpelli argues that the Department lacked jurisdiction to hear the City's claim because Scarpelli, in response to the City's complaint, raised the issue of whether the arbitrator's April decision, rather than the May decision, stated the Commission's final resolution of his claim for the 2000 injury. The Commission would have decided that issue if Scarpelli had pursued his appeal from the arbitrator's May decision. But Scarpelli abandoned the appeal without responding to the City's request for reimbursement of its overpayment, leaving the City to seek judicial or quasi-judicial relief. Section 1-20-090(b) of the Code establishes that the Department has jurisdiction to resolve any question relating to overpayment of an amount a court or agency ordered the City to pay. The City, in effect, seeks enforcement of the arbitrator's May decision, and "the Commission has no power to enforce payment of its own award." *Smith v. Gen Co. Corp.*, 11 Ill. App. 3d 106, 110 (1973). Accordingly, we find that the Department had jurisdiction to decide whether Scarpelli owed the City the amount by which the City's payment to Scarpelli exceeded the amount the arbitrator ordered the City to pay in the May decision.

¶ 37

CONCLUSION

¶ 38 The Commission's arbitrator had jurisdiction to enter the May decision which resolved Scarpelli's claim for workers' compensation related to the injury Scarpelli suffered in 2000. When the City paid Scarpelli more than the award ordered in the May decision, Scarpelli owed the City a debt, within the meaning of section 1-20-090 of the Code, in the amount of the difference between the arbitrator's award and the City's payment to Scarpelli. The Department had jurisdiction to resolve the City's claim for repayment of the debt. Accordingly, we affirm the judgment of the trial court,

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which affirmed the Department's order directing Scarpelli to repay the debt and pay associated costs.

¶ 39 Affirmed.