

No. 1-14-3061

2016 IL App (1st) 143061-U

FIFTH DIVISION
October 28, 2016

No. 1-14-3061

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN S. NOVAK, SR., and SOKOL CHIAPAS)	Petition for Review of
COFFEE COMPANY, LLC,)	Orders of the Illinois
)	Human Rights Commission.
Petitioners,)	
)	
v.)	Charge Nos. 2003 CF 3905,
)	2003 CN 3906
ILLINOIS HUMAN RIGHTS COMMISSION,)	
ILLINOIS DEPARTMENT OF HUMAN RIGHTS,)	
and SHERYL LYNN,)	
)	
Respondents.)	

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

Held: Following our remand, the Illinois Human Rights Commission did not abuse its discretion by ordering petitioners to reimburse respondent for the expenses she incurred in obtaining psychological treatment for her emotional distress. The Commission did not abuse its discretion in awarding respondent postjudgment interest on travel expenses she incurred. And finally, the Commission did not abuse its discretion by awarding respondent accrued interest during the ten-month period the Commission delayed in serving petitioners with its order denying their petition for rehearing.

¶ 1 This is a discrimination case involving charges of workplace sexual harassment brought by respondent Sheryl Lynn under the Illinois Human Rights Act (Act) (775 ILCS 5/1-101 *et seq.* (West 2002)). The action arises from two charges of sexual harassment and retaliatory constructive discharge respondent filed with the Illinois Human Rights Department (Department) against her former employer, petitioner Sokol Chiapas Coffee Company, LLC (Sokol), and its president, managing partner, and supervisor, petitioner John S. Novak, Sr. (Novak).

¶ 2 Sokol was engaged in the business of selling coffee. Novak hired respondent in July 2002, when he was just starting the business. At that time, Sokol employed only one other person. Respondent was employed as the company's national sales director.

¶ 3 After the two charges of discriminatory sexual harassment were filed, the petitioners subsequently defaulted on the issue of their liability regarding the charges, due to their failure to show good cause for failing to attend a scheduled fact-finding conference or respond to requests for review of notices of default. The Illinois Human Rights Commission (Commission) consolidated the two charges and then referred the matter to an administrative law judge (ALJ) for a damages hearing.

¶ 4 The ALJ conducted an administrative evidentiary hearing on the issue of damages and afterwards issued a recommended order and decision recommending that respondent be awarded certain enumerated damages. The Commission adopted the ALJ's recommended order and decision in its entirety.

¶ 5 On January 20, 2009, petitioners filed a petition with our court for direct administrative review of the Commission's decision.

¶ 6 On March 5, 2010, our court issued an unpublished order in which we affirmed in part and reversed in part the Commission's decision. *Novak v. Illinois Human Rights Comm'n*, No. 1-09-0119 (2010) (unpublished order under Supreme Court Rule 23). We affirmed an award of \$102,089.80 in back pay to respondent; reversed an award of \$100,000 in emotional distress damages for insufficient evidence and remanded the matter for another evidentiary hearing limited to that issue; we also rejected petitioners' argument that the hearing on damages had been conducted in an unfair or biased manner and held that respondent's charges were timely filed. *Id.*

¶ 7 The case now returns to us following our remand to the Commission. Petitioners appeal the portion of the Commission's order adopting the respondent's calculation of damages and interest. For the reasons that follow, we affirm.

¶ 8 **BACKGROUND**

¶ 9 The factual background of this case is detailed in our prior Rule 23 Order and the parties are familiar with the facts. Therefore, we recite only those facts necessary to a resolution of the issues raised on appeal.

¶ 10 In November 2010, following our remand, respondent requested the Commission to schedule an evidentiary hearing concerning her claim for emotional distress damages. However, before such hearing was scheduled, respondent voluntarily withdrew the claim. Respondent suggested instead that since the only remaining issue in the matter pertained to damages for emotional distress, the Commission should simply issue a final order reiterating that she was entitled to all amounts awarded to her other than those for emotional distress damages and also award her interest on those amounts.

¶ 11 In response, petitioners argued that the Commission's award of \$730 for out-of-pocket expenses respondent incurred for professional treatment related to her claim for alleged emotional distress damages should be vacated in light of the fact that upon remand she had voluntarily abandoned the claim. Petitioners also argued that respondent was not entitled to interest on the awards for attorney's fees, costs, or travel expenses. Finally, petitioners argued they should not be obligated to pay interest for the ten-month period in 2008, between the time the Commission issued its order denying their petition for rehearing and when that order was actually served on them.

¶ 12 In August 2011, the ALJ issued a supplemental recommended order and decision. The judge rejected petitioners' request to vacate the Commission's award to respondent for the out-of-pocket amounts she paid to her psychologists for treating her emotional distress. The judge noted that in our unpublished order we had not reversed the Commission's finding that respondent suffered emotional distress causing her to seek treatment; rather, we questioned whether the evidence supported the amount of damages awarded for the emotional distress.

¶ 13 In regard to the proper amount of interest to be awarded, the judge determined that interest was not available on the attorney's fees or costs of litigation, but found that respondent was entitled to interest on the award for back pay, her unreimbursed business expenses, her medical insurance reimbursement, the out-of-pocket treatment expenses related to emotional distress, and her out-of-pocket travel expenses to attend a cancelled fact-finding conference.

¶ 14 The judge rejected petitioners' argument that no interest should be paid during the ten-month period attributable to the Commission's delay in serving them with its order denying their petition for rehearing. The judge explained that respondent could not be deprived of interest

owed to her because of an administrative error made by the Commission, citing for support of this proposition *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

¶ 15 In September 2011, petitioners filed exceptions to the judge's supplemental recommended order and decision. The exceptions largely reiterated arguments petitioners previously made in their response to respondent's voluntary motion to withdraw her claim for emotional distress damages.

¶ 16 On August 20, 2013, the Commission issued an order notifying the parties that it was declining further review of the matter. The Commission further notified them that the judge's supplemental recommended order and decision had become the order of the Commission. Petitioners responded by filing a petition seeking a rehearing before the Commission.

¶ 17 On August 21, 2014, the Commission issued an order denying the petition for rehearing and served petitioners with notice of that order on September 8, 2014. On October 8, 2014, petitioners filed a petition with our court for direct administrative review of the Commission's orders of August 20 and 21, 2014.

¶ 18 ANALYSIS

¶ 19 Petitioners first contend that the award of \$730 for out-of-pocket expenses respondent incurred in obtaining treatment from psychologists for her alleged emotional distress should be vacated in light of the fact that upon remand she voluntarily abandoned her claim for emotional distress damages. Petitioners argue it was error to grant such an award in the absence of an actual claim for emotional distress damages.

¶ 20 "The amount of damages awarded to a prevailing claimant by the Commission will not be disturbed on review absent an abuse of discretion." *Windsor Clothing Store v. Castro*, 2015 IL App (1st) 142999, ¶ 48; see also *Szkoda v. Illinois Human Rights Comm'n*, 302 Ill. App. 3d 532,

544-45 (1998) ("The amount of damages awarded to a prevailing complainant under the Human Rights Act must be affirmed on review absent an abuse of discretion"). "An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable or when no reasonable person would take the same view." *Jones v. Rallos*, 384 Ill. App. 3d 73, 89 (2008).

¶ 21 We do not believe the Commission abused its discretion by ordering petitioners to reimburse respondent for the expenses she incurred in obtaining psychological treatment for her emotional distress. First, we note that the overarching issue of the petitioners' liability for respondent's emotional distress was decided in favor of respondent in the previous appeal of this case and therefore remains conclusive under the law of the case doctrine. This doctrine bars relitigation of an issue that has already been decided in the same case such that resolution of the issue in a prior appeal is binding and will control upon remand and in a subsequent appeal before the appellate court. See *Perik v. JPMorgan Chase Bank, N.A.*, 2015 IL App (1st) 132245, ¶ 30.

¶ 22 In this case, following remand, respondent voluntarily withdrew her claim for noneconomic damages for emotional distress. Noneconomic damages seek to compensate plaintiffs for intangible injuries such as claims for pain and suffering, mental anguish, disability, disfigurement, loss of consortium, and loss of society. *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 475 (1997). However, respondent did not abandon her claim for economic damages related to the claim. Economic damages include past and future medical expenses, loss of income or earning capacity, and other such losses. *Id.* The expenses respondent incurred in obtaining treatment for her emotional distress qualify as economic payments or damages, as distinguished from noneconomic ones.

¶ 23 Following remand, in light of the finding on liability in respondent's favor regarding her claim of emotional distress, respondent sought and received economic damages to compensate

her for expenses related to treatment she received for her emotional distress. In support of the request for these damages, respondent gave un rebutted testimony regarding the number of sessions she attended with the psychologists and the amounts she paid them for each session. Under these circumstances we do not believe the Commission abused its discretion by accepting respondent's un rebutted testimony as proof of her economic damages. See *Lake Point Tower, Ltd. v. Illinois Human Rights Comm'n*, 291 Ill. App. 3d 897, 908 (1997) (complainant's testimony sufficient to establish damages).

¶ 24 Next, we reject petitioners' argument that the Commission abused its discretion in awarding respondent postjudgment interest on \$516 in travel expenses she incurred. Respondent incurred these expenses when she traveled to a damages hearing and scheduled fact-finding conference that was subsequently cancelled due to the petitioners' failure to attend. Respondent was awarded this interest pursuant to section 8A-104(J) of the Act which allows for an award of interest to make a complainant whole for lost use of her money. 775 ILCS 5/8A-104(J) (West 2008). Section 8A-104(J) of the Act empowers the Commission, upon a finding of discrimination, to take such action as may be necessary to make a complainant whole. See *City of Chicago v. Human Rights Comm'n*, 264 Ill. App. 3d 982, 985 (1994).

¶ 25 Section 8A-104(J) does not specifically address an award of postjudgment interest. However, it does state that "[w]ith respect to all charges for which complaints were filed with the Commission prior to December 1, 1987, make whole relief shall be awarded pursuant to this subsection as it existed prior to revision by the amendatory Act of 1987." 775 ILCS 5/8A-104(J) (West 2008). In *Johnson v. Human Rights Comm'n*, 173 Ill. App. 3d 564, 568-69 (1988), the reviewing court determined that section 8A-104(J) of the Act did not provide the Commission with the authority to award postjudgment interest in cases where the complaint was filed prior to

December 1, 1987. In the instant case, respondent filed her complaint in June 2003, and therefore the statute did not prohibit the Commission from awarding her postjudgment interest on her travel expenses.

¶ 26 Petitioners acknowledge that section 8A-104(J) of the Act authorizes the Commission to take such action as may be necessary to make a complainant whole. However, they argue, without citation to any authority, that since the judge refused to award respondent interest on her attorney fees and costs, the judge should have likewise refused to award interest on her travel expenses and that the judge erred in refusing to do so. We disagree.

¶ 27 Respondent incurred the travel expenses at issue in 2004 and 2005, and has not been reimbursed for these expenses. The purpose of awarding postjudgment interest is to preserve the value of the judgment for the prevailing party. See *Overlin v. Windmere Cove Partners, Inc.*, 325 Ill. App. 3d 75, 78 (2001) ("The purpose of awarding interest on a judgment until it is paid is to make the successful plaintiff whole because prior to payment he was denied access to the funds defendant owed him"). Here, over the last ten years respondent could have invested the \$516 and earned interest on it. In awarding respondent postjudgment interest on the travel expenses she incurred, the Commission merely made her whole for her loss of the use of these funds which she would not have incurred but for the sexual harassment committed by petitioner Novak.

¶ 28 Finally, we reject petitioners' argument that the Commission abused its discretion by awarding respondent accrued interest during the ten-month period the Commission delayed in serving petitioners with its order denying their petition for rehearing. The delay was due to administrative oversight by the Commission.

¶ 29 In *Logan v. Zimmerman Brush Company*, 455 U.S. 422, 428-38 (1982), the United States Supreme Court held that the Illinois Fair Employment Commission's refusal to process a discrimination claim, solely because the Commission failed to act on the claim within a statutory deadline provided by state law, deprived a claimant of his property without due process. And our supreme court recognized that an aggrieved party who has suffered discrimination should not be deprived of the benefits of the Act because of an administrative error. *Springfield-Sangamon County Regional Plan Comm'n v. Fair Employment Practices Comm'n*, 71 Ill. 2d 61, 73 (1978).

¶ 30 The rationale of these cases applies here as well. Respondent should not have the accrued interest she is owed by petitioner Sokol reduced or extinguished because of an administrative oversight by the Commission, a third party over which she had no control. Moreover, petitioners set forth no explanation as to why they did not check the status of their petition for rehearing during the ten-month period at issue. Petitioners clearly had some responsibility to follow up on the status of their petition for rehearing, especially in light of the fact that interest continued to accrue until payment specified by the Commission had been made. See 56 Ill. Adm. Code § 5300.1145(e) (1992).

¶ 31 For the foregoing reasons, we affirm the Commission's decision on remand.

¶ 32 Affirmed.