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2016 IL App (4th) 150319WC-U

Order filed: October 25, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

ALVIA DYSON,)	Appeal from the Circuit Court
)	of the Sixth Judicial Circuit,
)	Champaign County, Illinois
Appellant,)	
)	
v.)	Appeal No. 4-15-0319WC
)	Circuit No. 14-MR-80
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION, <i>et al.</i> , (Canterbury Ridge,)	Thomas J. Difanis,
Appellees).)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The Commission did not violate Commission Rule 7020.90(a) by dismissing the claimant's claim for want of prosecution without previously notifying the claimant that her case had been put back on the docket after the arbitrator had reinstated the claim following a prior dismissal; (2) the Commission did not violate Commission Rule 7030.20(c) by dismissing the claimant's claim before it had been set for a trial date; and (3) the Commission did not abuse its discretion or violate Commission Rule 7020.90(a) by denying the claimant's motion to reinstate without sending the claimant prior notice that her case had been dismissed 22 months earlier.

¶ 2 In 2004, the claimant, Alvia Dyson, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)) seeking benefits for injuries she allegedly sustained while working for the respondent, Canterbury Ridge (employer). On April 22, 2010, an arbitrator dismissed the claimant's claim for want of prosecution. The claimant filed a petition to reinstate the claim, which the arbitrator granted on August 18, 2010. When the claimant's counsel failed to appear at the next status hearing November 17, 2010, the arbitrator again dismissed the claimant's claim for want of prosecution. On September 11, 2012, the claimant filed a petition to reinstate the claim. Following a hearing, the arbitrator denied the claimant's petition.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission), which unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The claimant then sought judicial review of the Commission's decision in the circuit court of Champaign County, which confirmed the Commission's ruling.

¶ 5 This appeal followed.

¶ 6 **FACTS**

¶ 7 On May 5, 2004, the claimant filed her Application for Adjustment of Claim with the Commission, seeking benefits for a work-related injury she allegedly sustained on August 31, 2003. In 2007, the claimant's case went above the Commission's so-called "red line," meaning that it became subject to certain Commission rules applicable to cases that have been on file with the Commission for three years or more. One of those rules was Commission Rule 7020.60(b)(2)(C)(i), which required either the claimant or her attorney to attend each status call on which the case appeared. 50 Ill. Adm. Code 7020.60(b)(2)(C)(i) (2006), recodified to 50 Ill.

Adm. Code 9020.60(b)(2)(C)(i) (eff. December 4, 2012). Thereafter, if both the claimant and her attorney failed to appear at a status call upon which the case appeared, the case would be dismissed for want of prosecution “except upon a showing of good cause.” 50 Ill. Adm. Code 7020.60(b)(2)(C)(ii) (2006), recodified to 50 Ill. Adm. Code 9020.60(b)(2)(C)(i) (eff. December 4, 2012).

¶ 8 On February 17, 2010, neither the claimant nor her attorney appeared at a status call. Accordingly, the arbitrator dismissed the claim for want of prosecution. On April 22, 2010, the arbitrator again dismissed the claimant’s claim for want of prosecution because the claimant had failed to appear at a status call.¹ The Commission sent a written notice of dismissal to the employer’s counsel, which the employer received on May 24, 2010. However, the Commission did not notify the claimant’s counsel that his client’s claim had been dismissed. The employer’s counsel notified the claimant’s counsel of the dismissal.

¶ 9 On May 26, 2010, the claimant filed a motion to reinstate her claim before the arbitrator. In her motion, the claimant stated that she had not received notice that the case was dismissed on April 22, 2010.² The claimant noted that the Commission’s website listed the employer’s attorney as counsel for both the employer and the claimant. The claimant characterized this as an “obvious clerical error” on the Commission’s part, and speculated that this error was the

¹ The record does not reflect that the claimant’s claim was reinstated after the February 17, 2010, dismissal. Thus, it is unclear why the April 22, 2010, status hearing took place and why the arbitrator dismissed the claim again on that date.

² The claimant later claimed that she was not notified of the February 17, 2010, dismissal, either, and that she learned of that dismissal for the first time during the September 2012 hearing on her motion to reinstate.

reason her counsel never received notice of the dismissal from the Commission. The claimant argued that her case should not have been dismissed because her attorney “had sent proper written notification to the Arbitrator of the reason for the case needing to be continued every time it has been on the call and the case has been continued.” The claimant argued that the dismissal was issued “due to a clerical error.”

¶ 10 On August 18, 2010, the arbitrator granted the claimant’s motion to reinstate her claim. The arbitrator subsequently scheduled a status hearing for November 17, 2010. The Commission did not notify the claimant’s counsel that the November 17, 2010, hearing had been scheduled. When neither the claimant nor her counsel appeared at that hearing, the arbitrator again dismissed the claimant’s claim for want of prosecution. Once again, the Commission failed to notify the claimant’s counsel of the dismissal. On January 18, 2011, the employer’s counsel received a written notice from the Commission that the claimant’s claim had been dismissed on November 17, 2010. This time, however, the employer’s counsel did not immediately notify the claimant’s counsel of the dismissal.

¶ 11 On September 11, 2012, the claimant filed a motion to reinstate her claim before the arbitrator. A hearing on the claimant’s motion was held on September 19, 2012. During the hearing, the claimant’s counsel stated that he never received notice from the Commission that the claimant’s claim had been “placed back on the docket” after it was reinstated in August 2010. Nor did he receive notice that the claim was dismissed in November 2010. Counsel stated that the attorney who represented the employer at the time of the November 2010 dismissal, a Mr. Lopez, did not inform him of the dismissal, even though Lopez continued to discuss the case with him “well into 2011.” Lopez subsequently left the law firm that represented the employer. The claimant’s counsel stated that, “at some point” thereafter, he had a conversation with another

attorney at that law firm who told him that she had received notice that the claimant's case had been dismissed. Upon learning this, the claimant's counsel searched his office to see if he had received a notice of case dismissal and overlooked it. When he found nothing, claimant's counsel assumed that "the Commission just had not put the case back on the docket." Counsel stated that, in his experience, "this happens at times when there's a reinstatement."

¶ 12 The claimant's counsel stated that he "couldn't figure out really what had happened" until, approximately one week prior to the September 19, 2012, hearing, he checked the case status on the computer and saw that the law firm representing the employer was also listed as the claimant's attorney. At that point, he realized that the Commission never sent him notice of the case dismissal "because of that." The claimant's counsel argued that, because he never received notice of the dismissal, as required by the Commission's rules, the case "can't really actually be dismissed."

¶ 13 The employer's counsel argued that the claimant's counsel knew that the Commission had erroneously listed the employer's counsel as the claimant's counsel as early as May 2010, when he filed a motion to reinstate the case after the April 2010 dismissal. Thus, he argued, the claimant's counsel "had many opportunities to correct any clerical error at the Commission" and "the burden [was] up to him to correct anything at the Commission." As to the claimant's counsel's claim that he did not know that the case had been placed back on the docket, the employer's counsel argued that the claimant's counsel knew that the case was still "alive" after the May 2010 reinstatement. The employer's counsel further noted that the claimant's claim was filed in 2004, and had been above the Commission's red line for many years.

¶ 14 The arbitrator denied the claimant's motion to reinstate the claimant's claim. The arbitrator found that the claimant's counsel was aware that the claimant's case had been

dismissed when he spoke with an unidentified attorney at the employer's law firm "back in the middle of 2011." Nevertheless, the claimant's counsel did not file a petition to reinstate the claim until September of 2012. The arbitrator noted that "I think that the law requires you to be diligent when you come upon that information, and that's why we have the 60-day rule [for filing reinstatement petitions]". The arbitrator acknowledged that "the 60-day rule deals with the specific instance where you receive actual written notice [of dismissal]," and that the claimant's counsel had not received any such notice from the Commission. However, the arbitrator ruled that because the claimant's counsel had knowledge of the dismissal in 2011, and because he "knew that it had happened before," he was required to "do something in a diligent manner sooner than eight days ago."

¶ 15 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Champaign County, which confirmed the Commission's ruling.

¶ 16 This appeal followed.

¶ 17 ANALYSIS

¶ 18 The claimant asks us to reverse the Commission's denial of her petition to reinstate on three grounds. First, she argues that the Commission violated Commission Rule 7020.90(a) by dismissing her claim for want of prosecution on November 17, 2010, without previously notifying her that her case had been placed back on the docket after the arbitrator reinstated her claim in August 2010. Second, she maintains that the Commission violated Commission Rule 7030.20(c) by dismissing the claimant's claim before it had been set for a trial date. Third, she argues that the Commission abused its discretion and violated Commission Rule 7020.90(a) by

denying her petition to reinstate even though the Commission had never sent her notice of the November 17, 2010, dismissal. We find none of these arguments persuasive.

¶ 19 On a petition to reinstate before the Commission, the burden is on the claimant to allege and prove facts justifying reinstatement. *Bromberg v. Industrial Comm'n*, 97 Ill. 2d 395, 401 (1983); *Banks v. Industrial Comm'n*, 345 Ill. App. 3d 1138, 1140 (2004). Whether to grant or deny a petition to reinstate rests within the sound discretion of the Commission, and we review such decisions for abuse of discretion. *Bromberg*, 97 Ill. 2d at 402; *Banks*, 345 Ill. App. 3d at 1140, 1143; *Conley v. Industrial Comm'n*, 229 Ill. App. 3d 925, 930, 932 (1992).

¶ 20 The Commission's rules provide that written notices will be sent to the parties only for the initial status call setting on arbitration. 50 Ill. Adm. Code 7020.60(a) (2010), recodified to 50 Ill. Adm. Code 9020.60(a) (eff. December 4, 2012). Thereafter, the cases are continued at three-month intervals until the case has been on file with the Commission for three years, set for trial, or otherwise disposed of. *Id.* When a case has been on file with the Commission for three years or more, the parties or their attorneys must be present at each status call on which the case appears. 50 Ill. Adm. Code 7020.60(b)(2)(C)(i) (2010), recodified to 50 Ill. Adm. Code 9020.60(b)(2)(C)(i) (eff. December 4, 2012). The failure of the claimant or her attorney to appear at a status call upon which the case appears “*shall result in the case being dismissed for want of prosecution, except upon a showing of good cause.*” (Emphasis added.) 50 Ill. Adm. Code 7020.60(b)(2)(C)(ii) (2010), recodified to 50 Ill. Adm. Code 9020.60(b)(2)(C)(i) (eff. December 4, 2012).

¶ 21 After a case has been dismissed from the arbitration call for want of prosecution, “[n]otices of dismissal shall be sent to the parties.” 50 Ill. Adm. Code 7020.90(a) (2010), recodified to 50 Ill. Adm. Code 9020.90(a) (eff. December 4, 2012). A party may petition to

reinstate the case within 60 days of receiving the dismissal order. *Id.* The petition must “set forth the reason the cause was dismissed and the grounds relied upon for reinstatement.” 50 Ill. Adm. Code 7020.90(b) (2010), recodified to 50 Ill. Adm. Code 9020.90(b) (eff. December 4, 2012). The parties are permitted to present evidence in support of, or in opposition to, the petition. 50 Ill. Adm. Code 7020.90(c) (2010), recodified to 50 Ill. Adm. Code 9020.90(c) (eff. December 4, 2012). In ruling on a petition to reinstate, the arbitrator “shall apply standards of fairness and equity *** and shall consider the grounds relied on by Petitioner, the objections of Respondent and the precedents set forth in Commission decisions.” *Id.*

¶ 22 The Commission properly applied these standards in denying the claimant's petition to reinstate in this case. Contrary to the claimant’s argument, the Commission was not required to notify her that it had “placed her claim back on the docket” after it granted her prior petition to reinstate in August 2010. As noted above, the Commission’s rules provide that written notices will be sent to the parties “only for the initial status call setting on arbitration.” 50 Ill. Adm. Code 7020.60(a) (2010), recodified to 50 Ill. Adm. Code 9020.60(a) (eff. December 4, 2012).

Moreover, when a case has been on file with the Commission for three years or more, as the claimant’s case was in 2010, the parties or their attorneys must be present at each status call on which the case appears. 50 Ill. Adm. Code 7020.60(b)(2)(C)(i) (2010), recodified to 50 Ill. Adm. Code 9020.60(b)(2)(C)(i) (2010) (eff. December 4, 2012). The failure of the claimant or her attorney to appear at a status call upon which the case appears “*shall result* in the case being dismissed for want of prosecution, except upon a showing of good cause.” (Emphasis added.) 50 Ill. Adm. Code 7020.60(b)(2)(C)(ii) (2010), recodified to 50 Ill. Adm. Code 9020.60(b)(2)(C)(ii) (2010) (eff. December 4, 2012). These rules make it clear that: (1) it was the claimant’s responsibility to monitor her case for upcoming hearing dates and to attend any such hearings;

and (2) if neither she nor her counsel attended a status hearing, the arbitrator was *required* by the Commission's rules to dismiss the case for want of prosecution "except for good cause shown." Accordingly, the fact that the arbitrator dismissed the claimant's claim during the November 2010 status hearing when no one appeared on the claimant's behalf should have come as no surprise.

¶ 23 The Commission's dismissal of the claimant's claim in November 2010 was the inevitable, yet entirely avoidable, consequence of the claimant's and her counsel's failure to monitor the case. The claimant knew that the case remained pending after the arbitrator granted her initial petition to reinstate in August 2010. She was not entitled to any further notice that her case had been "placed back on the docket" at that time, or at any time thereafter. Moreover, by May 2010, the claimant's counsel was aware that the Commission had an incorrect name and address on file for the claimant's counsel. Nevertheless, counsel never filed a corrected appearance nor made any effort to check the status of the case until September 2012. Counsel simply ignored the case at a time when the Commission's rules provided for mandatory dismissal of his client's claim if both she and her attorney failed to appear at any future status hearing.

¶ 24 Moreover, contrary to the claimant's argument, the Commission did not violate Commission Rule 7030.20 by dismissing her claim before it had been set for a trial date. The claimant correctly notes that Rule 7030.20 provides that an arbitrator may dismiss a case that has been properly set for trial if the claimant fails to appear on the trial date. 50 Ill. Adm. Code 7030.20(e) (2010), recodified to 50 Ill. Adm. Code 9030.20(e) (eff. December 4, 2012). However, Rule 7030 does not suggest that this is the *only* circumstance in which an arbitrator may dismiss a claim. Any such suggestion would directly contradict other Commission rules. For example, as noted above, Commission Rule 7020.60 *requires* the arbitrator to dismiss a

claim if the case has been filed with the Commission for three years or more and neither the claimant nor her counsel appears at a status hearing. 50 Ill. Adm. Code 7020.60(b)(2)(C)(i) (2010), recodified to 50 Ill. Adm. Code 9020.60(b)(2)(C)(i) (eff. December 4, 2012).

¶ 25 Nor did the Commission abuse its discretion or violate Commission Rule 7020.90(a) by denying the claimant's motion to reinstate without sending her prior notice of the November 17, 2010, dismissal. The claimant notes, correctly, that the Commission was required under Rule 7020.90(a) to send the claimant a written notice of dismissal. 50 Ill. Adm. Code 7020.90(a) (2010), recodified to 50 Ill. Adm. Code 9020.90(a) (eff. December 4, 2012). The claimant argues that, because the Commission did not fulfil that requirement in this case, its dismissal of his claim on November 17, 2010, was "never effectuated." In other words, the claimant appears to suggest that sending a written notice was a condition precedent for the arbitrator's authority to dismiss the case. The claimant is mistaken. Commission Rule 7020.90(a) merely provides that, *after a case has been dismissed*, the Commission shall send written notice of dismissal to the parties. See 50 Ill. Adm. Code 7020.90(a) (2010) (providing that "[w]here a cause has been dismissed from the arbitration call for want of prosecution *** [n]otices of dismissal shall be sent to the parties"). Although the Rule ties the time limit for filing a reinstatement petition to the parties' receipt of such notice, it does not suggest that the dismissal itself is somehow voided by the Commission's failure to send a notice of dismissal. Here, the dismissal of the claimant's claim was warranted under Commission Rule 7020.60(b)(2)(C)(i) and it was not vitiated by the Commission's failure to send written notice of the dismissal. The claimant might have had cause to complain if the Commission had barred his motion to reinstate as untimely under Rule 7020.90(a) (*i.e.*, if the arbitrator had denied the motion to reinstate because it was filed more than

60 days after the claimant received notice of dismissal). But that is not what happened.³ Rather, the arbitrator denied reinstatement because it found that the claimant had not been sufficiently diligent in monitoring her case and in pursuing her claim before the Commission. We find no abuse of discretion in that ruling.

¶ 26 “A party must exercise due diligence in pursuing his or her claim before the Commission” (*Banks*, 345 Ill. App. 3d at 1143; see also *Contreras v. Industrial Comm'n*, 306 Ill. App. 3d 1071, 1076 (1999)), and it is counsel’s responsibility to monitor the status of his client’s case by checking for upcoming status hearing dates (see *Bromberg*, 97 Ill. 2d at 401-02). Here, the claimant filed her claim in May 2004, approximately eight years before she filed her petition for reinstatement. Nevertheless, although the case had been above the Commission’s ‘red line’ for several years (which made it subject to automatic dismissal if the claimant failed to appear at a status hearing), the claimant’s counsel did not check the status of the case for more than two years after it was reinstated in August 2010. Counsel’s failure to monitor the case is particularly surprising given his admission that, “at some point” prior to the September 2012 hearing, one of the employer’s attorneys told him that she had received notice that the case had been dismissed in November 2010. After receiving this information, the claimant’s counsel searched his office for a dismissal notice, but he did not immediately check the status of the case on his computer. Instead, when he found no written dismissal notice, he simply assumed that “the Commission just had not put the case back on the docket.” That assumption was unwarranted given counsel’s knowledge that the Commission had previously failed to send him notice of the April 22, 2010, dismissal because it did not have him listed as the claimant’s attorney.

³ The arbitrator allowed the claimant to file her motion to reinstate approximately 22 months after the November 2010 dismissal.

¶ 27 The claimant also suggests in passing that reinstatement of the case would not prejudice the employer. As an initial matter, the Commission was not required to find prejudice to the employer in dismissing the claimant’s claim or in denying reinstatement. However, to the extent that the claimant is arguing that the equities favor reinstatement, we disagree. The claimant filed this case on May 5, 2004. By the time it was dismissed in November 2010, the case had been pending for six and one-half years. The claimant did not file her petition to reinstate until September 2012, more than eight years after the case was filed. Under these circumstances, the Commission could have reasonably concluded that the equities favored dismissal and that reinstatement would be unfair or unduly prejudicial to the employer. See, e.g., *Banks*, 345 Ill.App.3d at 1141–42 (affirming Commission's denial of petition to reinstate case that had been pending for five and one-half years when it was dismissed, and noting that “[a]fter a lengthy delay * * * witnesses may be unavailable or their ability to recall the incident may be diminished” and that “as the delays mounted, the potential for prejudice to employer increased”).⁴

¶ 28 Accordingly, the Commission’s refusal to reinstate the case due to counsel’s lack of diligence was not an abuse of discretion.

⁴ The claimant also baldly asserts that the Commission’s dismissal of her claims and its denial of her petition to reinstate deprived her of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution. However, she provides no citations to authority in support of this assertion. Accordingly, she has forfeited any argument under the Fourteenth Amendment. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208 (2009) (arguments on appeal are forfeited when a party fails to support them with citation to authority).

¶ 29

CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Champaign County, which confirmed the Commission's decision.

¶ 31 Affirmed.