2017 IL App (1st) 160277WC-U

Workers' Compensation
Commission Division
Order Filed: March 3, 2017

No. 1-16-0277WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LENE WASHINGTON,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	No. 14 L 50815
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Kay Marie Hanlon
(Board of Education of the City of Chicago, Appellee).	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The decision of the Illinois Workers' Compensation awarding the claimant $10,051.59 of additional medical expenses under section 8(a) of the Workers' Compensation Act (820 ILCS 305/8(a) (West 2012)), and denying all other relief requested by her is not against the manifest weight of the evidence. We, therefore, affirm the judgment of the circuit court which confirmed that decision.

¶ 2 The claimant, Lene Washington, appeals from an order of the circuit court confirming a decision of the Illinois Workers' Compensation Commission (Commission) awarding her additional medical expenses under section 8(a) of the Workers' Compensation Act (Act) (820

ILCS 305/8(a) (West 2012)) and denying all other relief which she requested. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following recitation contains the procedural history of this case which is necessary to an understanding of our resolution of this appeal.

¶ 4 The claimant filed an application for adjustment of claim seeking benefits under the Act for injuries which she sustained to her neck and back on August 23, 1999, while working for the Board of Education of the City of Chicago (Board). Following an arbitration hearing, the arbitrator issued a corrected decision on August 4, 2005, awarding the claimant 222 5/7 weeks of temporary total disability (TTD) benefits; $50,052.97 in medical expenses; and 375 weeks of permanent partial disability (PPD) benefits, representing 75% loss of a person as a whole. Neither party sought a review of the arbitrator's decision before the Commission.

¶ 5 On February 8, 2007, the claimant, acting *pro se*, filed a petition which she identified as having been brought pursuant to sections 8(a) and 19(b) of the Act (820 ILCS 305/8(a), 19(b) (West 2006)). On April 3, 2007, she filed a second petition which she identified as having been brought pursuant to sections 8(a) and 19(h) of the Act (820 ILCS 305/8(a), 19(h) (West 2006)). And, on August 17, 2007, the claimant filed a third petition which she identified as having been brought pursuant to sections 19(b), 19(k) and 19(*l*) of the Act (820 ILCS 305/19(b), 19(k), 19(*l*) (West 2006)). Hearings were held before a commissioner on the claimant's petitions. On August 11, 2011, the Commission issued a unanimous decision awarding the claimant $32,921 of additional medical expenses pursuant to section 8(a) of the Act. The Commission denied the claimant relief under section 19(b) of the Act, finding that the petitions under that section had been filed in error; denied her relief under section 19(h) of the Act, finding that she failed to prove a material increase in her disability; and denied her relief under sections 19(k) and 19(*l*) of

the Act, finding that the Board's delay in paying for additional medical expenses was neither unreasonable nor vexatious.

¶ 6 The claimant sought a judicial review of the Commission's August 11, 2011, decision in the circuit court of Cook County. On March 13, 2012, the circuit court granted the Board's motion to dismiss the claimant's petition for review as untimely, and dismissed the claimant's review action for want of jurisdiction. Thereafter, the claimant filed a motion to vacate the order of March 13 which the circuit court denied on April 5, 2012.

¶ 7 On April 12, 2012, the claimant filed a notice of appeal from the circuit court's orders of March 13 and April 5, 2012. On December 13, 2012, this court entered an order dismissing the claimant's appeal for want of prosecution by reason of her failure to file a brief within the time prescribed by Illinois Supreme Court Rule 341(a) (eff. July 1, 2008) and the extensions thereof granted by his court on August 13, 2012, and September 19, 2012.

¶ 8 Undaunted, the claimant filed a new petition before the Commission on February 25, 2013, which she identified as having been brought pursuant to sections 8(a), 8e, 16, 19(b-1), 19(b), 19(g), 19(h), 19(k) and 19(*l*) of the Act (820 ILCS 305/8(a), 8e, 16, 19(b-1), 19(b), 19(g), 19(h), 19(k), 19(*l*) (West 2012)) and sections 7090.10 and 7090.20 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission (Practice Rules) (50 Ill. Adm. Code 7090.10, 7090.20 (1997)). On October 6, 2014, the Commission issued a unanimous decision awarding the claimant $10,051.59 of additional medical expenses pursuant to section 8(a) of the Act. The Commission denied the claimant relief under sections 19(b) and 19(b-1) of the Act, finding that the petition under those sections had been filed in error as her underlying claim had been fully adjudicated and was final; denied her relief under section 8e of the Act, finding that it was unable to discern the relief sought under that section of the Act; denied the

claimant relief under section 19(g) of the Act, finding that the claimant failed to introduce any evidence in support of an award under that section of the Act; denied the claimant relief under section 16 of the Act as she was not represented by counsel and was appearing *pro se*; denied the claimant relief under sections 19(k) and 19(*l*) of the Act, finding that the Board's delay in paying for additional medical expenses was neither unreasonable nor vexatious; and denied the claimant relief under section 19(h) of the Act, finding that it lacked jurisdiction to grant relief under that section of the Act as the claimant's petition had been filed more than 30 months after her award became final. In addition, the Commission denied the claimant relief under its Practice Rules. The Commission denied relief under section 7090.20, finding that the claimant made no allegations of unfairness in the handling or processing of her claim by an insurer. As to her claim under section 7090.10 of its Practice Rules, the Commission noted that the improper conduct which the claimant asserted against the Board's attorneys and her prior attorneys related to matters which occurred during a union grievance in 2006 and matters occurring during the pendency of her review action in the circuit court. In the absence of any improper conduct by the attorneys during the proceedings before it, the Commission denied the claimant relief under section 7090.10 of its Practice Rules.

¶ 9 On October 24, 2014, the claimant filed a petition in the circuit court of Cook County, seeking a judicial review of the Commission's October 6, 2014, decision. In the pleadings which the claimant filed before the circuit court, she appears to argue that the arbitrator erred in awarding her PPD benefits as opposed to additional TTD benefits. In a reply memorandum, she also argues that the arbitrator erred in failing to award her permanent total disability (PTD) benefits on an odd-lot theory and that she should have been given a continuance of a hearing before Commissioner Donohoo on December 17, 2014. On January 6, 2016, the circuit court

issued its decision confirming the Commission's decision, finding that the only issue before it was the award of medical expenses under section 8(a) and that the Commission's resolution of that issue is not against the manifest weight of the evidence.

¶ 10 On February 2, 2016, the claimant filed her notice of appeal from the circuit court's order of January 6, 2016. In her brief on appeal, the claimant raises 15 issues for review. We have no inclination to enumerate those issues as they relate, in many cases, to matters that were not, and could not have been, before the circuit court on judicial review of the Commission's October 6, 2014, decision. It appears that the claimant is unwilling to accept the finality of the arbitrator's decision of August 4, 2005, and the Commission's decision of August 11, 2011, and persists in attempting to relitigate the nature and extent of her injuries. We have attempted, as best we can, to discern the issues raised by the claimant that are not barred by the doctrine of *res judicata* and over which the Commission or the circuit court had jurisdiction. Our task has been made difficult by the claimant's failure to concisely relate her factual averments to the stage in this proceeding to which those facts relate. We are again required to remind a litigant that we are not a depository into which an appellant may dump the burden of argument and research. *Stapleton v. Industrial Comm'n*, 282 Ill. App. 3d 12, 17 (1996).

¶ 11 The Board argues that the only issue presented by the claimant before the circuit court was whether the arbitrator erred in failing to award TTD and PTD benefits. As a consequence, it argues that every other issue asserted by the claimant on appeal has been forfeited. *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 1109 (2006) (arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal).

¶ 12 The claimant's issues addressed to the arbitrator's failure to award additional TTD and PTD benefits are barred under the doctrine of *res judicata.* The arbitrator's decision of August 4,

2005, became the final decision of the Commission when no review was sought within 30 days of receipt of that decision. 820 ILCS 305/19(b) (West 2004). In this case, neither party sought a review of the arbitrator's August 4, 2005, decision. As a consequence, the claimant is barred from relitigating issues that were decided, or could have been decided, in the proceedings resulting in the arbitrator's decision of August 4, 2005. *Hughey v. Industrial Comm'n*, 76 Ill. 2d 577, 580 (1979).

¶ 13 In addition to having forfeited all issues other than TTD and PTD, many of the forfeited issues involve matters outside the jurisdiction of the Commission or the circuit court on review of the Commission's decision of October 6, 2014.

¶ 14 The Commission, as an administrative agency, is without general or common law powers. See *Daniels v. Industrial Comm'n*, 201 Ill. 2d 160, 165 (2002). The only power which the Commission possesses is that power which has been granted to it in the Act. The circuit court on a petition for judicial review of a workers' compensation award exercises special statutory jurisdiction (*Jones v. Industrial Comm'n*, 188 Ill. 2d 314, 320 (1999)), and its subject matter jurisdiction in such a case is limited by statute (*Boalbey v. Industrial Comm'n*, 66 Ill. 2d 217, 218 (1977)). The circuit court's jurisdiction in matters relating to the review of a Commission's decision is limited to questions of law and fact presented in the record before the Commission. 820 ILCS 305/19(f)(1) (West 2012).

¶ 15 In this case, the Commission had no jurisdiction to address the claimant's entitlement to relief under section 19(h), as her petition of February 25, 2013, was filed more than 30 months after the entry of the final award on August 4, 2005. See 820 ILCS 5/19(h) (West 2004). In addition, neither the circuit court nor the Commission possessed jurisdiction in the instant case to review matters relating to: (1) accusations of judicial impropriety and attorney misconduct that

are alleged to have occurred during the proceedings before the arbitrator, the Commission during its consideration of the claimant's 2007 petitions, and the circuit court hearings which led to the dismissal of her untimely review of the Commission's August 11, 2011, decision (see 820 ILCS 305/19(e), 19(f)(1) (West 2012)); (2) the grievance proceeding between the claimant and the Board conducted pursuant to a union contract; and (3) her common law claims of fraud, breach of contract and intentional infliction of emotional distress.

¶ 16 The circuit court noted in its order of January 6, 2016, that the only issue properly before it on judicial review of the Commission's October 6, 2014, order was the issue of the claimant's entitlement to additional medical expenses under section 8(a) of the Act. The Commission had before it a report issued by the claimant's treating physician, Dr. Michael Harris, attesting to the claimant's physical condition, and her medical care since 1999 which he found to be causally related to her work accident of August 23, 1999. The Board submitted a report of a records review conducted by Dr. Julie Wehner. In addition, Dr. Wehner testified before Commissioner Donohoo. The doctor testified that some of the medication prescribed for the claimant was either unrelated to her work injuries or inappropriate for a cervical injury. In addition, Dr. Wehner testified that several of the bills submitted by the claimant for medical services, tests, and lab fees were for conditions unrelated to her work injury. Dr. Wehner also found that the physical and occupational therapy which the claimant underwent was not medically necessary for her cervical condition. Finally, Dr. Wehner testified that, in her opinion, the treatment which the claimant received for depression was unrelated to her work injury.

¶ 17 The Commission found the opinions of Dr. Wehner more credible than those of Dr. Harris and awarded the claimant $10,051.59 of additional expenses under section 8(a) of the Act and enumerated the expenses for which it made that award. In her brief before this court, the

claimant argues only that the medical expenses which the Commission disallowed were ordered by her treating physicians. Yet, she fails to provide any factual basis, other than Dr. Harris's report, from which one could conclude that the disallowed expenses were for medical services related to the injuries she suffered while working for the Board on August 23, 1999.

¶ 18 The issue of whether medical services rendered to an injured employee are related to her work accident is a question of fact. In resolving the issue, it is the function of the Commission to judge the credibility of the witnesses, determine the weight to be accorded their testimony, and to resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). The Commission's finding on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009). Whether this court might reach the same conclusions is not the test of whether the Commission's determinations are against the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's decision. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 19 In this case, the Commission found the opinions of Dr. Wehner more credible than those of Dr. Harris and awarded her $10,051.59 in additional medical expenses. Based upon the record before us, we are unable to find that the Commission's decision in that regard is against the manifest weight of the evidence. We also note that the claimant argued in a reply brief, which she filed with the circuit court, that Commissioner Donohoo erred in not granting her a continuance of the December 17, 2014. We examined the transcript of those proceeding and find that the claimant never requested a continuance of that hearing.

¶ 20 We, therefore, affirm the judgment of the circuit court which confirmed the Commission's decision.

¶ 21 Affirmed.