

2018 IL App (1st) 170927WC-U
No. 1-17-0927WC
Order filed: May 18, 2018

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 DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

HABIB FAZAL and R&S AUTO d/b/a CITGO,)	Appeal from the Circuit Court of Cook County.
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 16-L-50057
)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION,)	
)	
(Illinois State Treasurer, as <i>ex officio</i> custodian of the Injured Workers' Benefit Fund, and Jesus Perez, Appellees).)	Honorable Carl Anthony Walker, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Harris, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Employer timely filed petition for review from the arbitrator's decision, thereby vesting the Illinois Workers' Compensation Commission with jurisdiction to review said decision; but (2) judgment of the circuit court would be vacated and the cause would be remanded to the circuit court with directions to conduct an evidentiary hearing to determine whether employee filed his written request for summons within 20 days of receiving notice of the decision of the Illinois Workers' Compensation Commission.

¶ 2 Claimant, Jesus Perez, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) alleging that he injured his right hand on November 23, 2011, while working for respondent, R&S Auto Service d/b/a Citgo (R&S Auto).¹ Because R&S Auto did not have workers' compensation insurance, claimant named the Illinois State Treasurer (Treasurer), as *ex-officio* custodian of the Injured Workers' Benefit Fund, as an additional party in interest. Following a hearing, the arbitrator determined that claimant sustained an accidental injury arising out of and in the course of his employment and that his condition of ill-being was causally related to the accident. The arbitrator awarded claimant 11-1/7 weeks of temporary total disability benefits, reasonable and necessary medical expenses, and 175 weeks of permanent partial disability (PPD) benefits (representing a 35% loss of the person as a whole). The Treasurer and Fazal sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). The Commission reduced the PPD award to 100 weeks of benefits (representing a 20% loss of the person as a whole), but otherwise affirmed and adopted the decision of the arbitrator. Thereafter, claimant sought judicial review of the Commission's decision in the circuit court of Cook County. The circuit court confirmed the decision of the Commission. Fazal then appealed to this court.

¶ 3 On appeal, Fazal argues the Commission's finding that claimant sustained an injury arising out of and in the course of his employment was against the manifest weight of the evidence. Both claimant and the Treasurer disagree. As a preliminary matter, however, the Treasurer questions whether the circuit court or the Commission possessed subject matter

¹ R&S Auto is no longer in business. In this appeal, Habib Fazal, the former owner of the auto shop, is proceeding *pro se*.

jurisdiction to enter their decisions. Specifically, the Treasurer asserts that it is not clear from the record whether claimant timely commenced proceedings for judicial review by filing a written request for summons within 20 days of receiving notice of the Commission's decision as required by section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2014)). The Treasurer also questions whether Fazal complied with section 19(b) of the Act (820 ILCS 305/19(b) (West 2014)), which requires a party to file with the Commission a petition for review within 30 days after receipt of the arbitrator's decision. The Treasurer asks this court to vacate the judgment of the circuit court and remand the matter to the circuit court with directions to conduct an evidentiary hearing to determine whether it and the Commission had subject matter jurisdiction.

¶ 4 At the outset, we note that the Treasurer raises the jurisdictional issue for the first time in this appeal. Nevertheless, we may address the matter, for the lack of subject-matter jurisdiction may be raised at any time. *Millennium Knickerbocker Hotel v. Illinois Workers' Compensation Comm'n*, 2017 IL App (1st) 161027WC, ¶ 17; *Jones v. Industrial Comm'n*, 335 Ill. App. 3d 340, 343 (2002); *Campbell v. White*, 187 Ill. App. 3d 492, 504 (1989). We first address whether the Commission had jurisdiction to review the arbitrator's decision.

¶ 5 Under section 19(b) of the Act, an arbitrator's decision becomes the decision of the Commission and, in the absence of fraud, is conclusive unless a petition for review is filed by either party within 30 days after the receipt by such party of a copy of the arbitrator's decision. 820 ILCS 305/19(b) (West 2014); *Eddards v. Illinois Workers' Compensation Comm'n*, 2017 IL App (3d) 150575WC, ¶ 11. Absent the filing of a timely petition for review, the Commission is without jurisdiction to review the arbitrator's decision. See *Wiscons v. Industrial Comm'n*, 176 Ill. App. 3d 898, 899 (1988). The Treasurer argues that it is not clear from the record whether Fazal's petition for review of the arbitrator's decision was timely filed with the Commission.

We disagree. The arbitrator's decision was filed on September 4, 2014. In his petition for review, Fazal states that he received the arbitrator's decision on October 6, 2014. Fazal therefore had 30 days after October 6, 2014, or until November 5, 2014, to file his petition for review. Fazal's petition for review was file stamped by the Commission on October 17, 2014, well within the 30-day time frame. Accordingly, we conclude that Fazal's petition for review was timely filed and the Commission had jurisdiction to address Fazal's request for review of the arbitrator's decision.

¶ 6 We next turn to whether the circuit court had subject matter jurisdiction to review the Commission's decision. Section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2014)) sets forth the requirements for seeking judicial review of a decision of the Commission. To perfect jurisdiction in the circuit court under section 19(f)(1), the party seeking review must file a written request for summons within 20 days of the receipt of notice of the Commission's decision. 820 ILCS 305/19(f)(1) (West 2014); *Jones v. Industrial Comm'n*, 188 Ill. 2d 314, 320 (1999); *Esquivel v. Illinois Workers' Compensation Comm'n*, 402 Ill. App. 3d 156, 159-60 (2010). Strict compliance with the provisions of the Act is necessary to vest the circuit court with jurisdiction to review a decision of the Commission and must affirmatively appear in the record. *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418, ¶ 15.

¶ 7 The Treasurer argues that it is not clear from the record that the jurisdictional requirements of section 19(f)(1) were satisfied. We agree. The Commission issued its decision in this case on December 23, 2015. Claimant—the only party to seek judicial review—filed his written request for summons on February 1, 2016, which is more than 20 days after the issuance of the decision of the Commission. Further, we find no evidence of record showing when

claimant received notice of the Commission's decision. The issue whether claimant filed his written request for summons within 20 days of the receipt of notice of the decision of the Commission is generally a question of fact. See *Freeman United Coal Mining Co. v. Industrial Comm'n*, 308 Ill. App. 3d 578, 585 (1999) ("Unless the facts are undisputed, no issue of credibility exists, and only one inference can be drawn from the undisputed facts, the questions of whether the applicable statute of limitations had begun to run and the timeliness of the action are questions of fact."). By waiting until it filed its brief in this appeal to assert a challenge to the circuit court's jurisdiction based on the record's failure to affirmatively show that claimant filed his written request for summons within the requisite 20-day period, the Treasurer has effectively prevented an interested party from introducing evidence on the issue. Under these circumstances, we believe that the parties should be afforded an opportunity to establish compliance after the issue has been raised. Accordingly, we vacate the circuit court's order of March 9, 2017, confirming the decision of the Commission and remand the matter back to the circuit court for a hearing on the issue of whether claimant filed his written request for summons within 20 days of receiving notice of the Commission's decision. In the event that the circuit court determines that claimant's written request for summons was not timely filed, it is directed to dismiss claimant's action for judicial review. Conversely, if the evidence presented at the evidentiary hearing establishes that claimant complied with the 20-day requirement, the circuit court is directed to reinstate its order confirming the Commission's decision of December 23, 2015.

¶ 8 Having vacated the circuit court's judgment of March 9, 2017, which confirmed the decision of the Commission and remanded the matter back to the circuit court for a hearing on a

jurisdictional matter raised by the Treasurer, we have not addressed the merits of the issues raised in Fazal's appeal.

¶ 9 Vacated and remanded with directions.²

² Since claimant was the only party to seek judicial review, the issue whether claimant's request for written summons was timely impacts our jurisdiction to consider any appeal from the circuit court, including that of Fazal. See *Supreme Catering v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 111220WC, ¶ 7 ("Subject matter jurisdiction either exists or it does not, and it cannot be waived, stipulated to, or consented to by the parties."). Of course, Fazal's decision not to seek judicial review of the Commission's decision raises another potential barrier—whether his failure to seek judicial review precludes him from challenging the Commission's decision before this court where the circuit court confirmed the decision of the Commission in its entirety. We leave resolution of this issue to another day, however, given that it was not briefed in this court by the parties and the outcome of the evidentiary hearing may render the issue moot.