

Order filed: May 30, 2019

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 by Rule 23(e)(1).

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

CAPTAIN D'S, LLC,)	Appeal from the
)	Circuit Court of
Appellant,)	St. Clair County.
)	
v.)	No. 17-MR-148
)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION <i>et al.</i>)	Honorable
)	Stephen P. McGlynn,
(Tyler Reaka, Appellee).)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Cavanagh concurred in the judgment.

ORDER

- ¶ 1 *Held:* We vacated the circuit court's judgment confirming the Commission's decision on remand where the circuit court lacked subject matter jurisdiction.

- ¶ 2 The claimant, Tyler Reaka, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2002)), alleging that he fell from a ladder, sustaining injuries to his back, neck, right shoulder, left leg, and left knee on

January 3, 2001, while working for respondent, Captain D's, LLC (employer). After a hearing, the arbitrator found that the claimant's left knee injury was causally related to the work accident, but that the claimant's cervical spine condition was unrelated to the accident. Accordingly, the arbitrator awarded the claimant benefits only in relation to his left knee injury. The Illinois Workers' Compensation Commission (Commission) later unanimously adopted and affirmed the arbitrator's decision.

¶ 3 On review, the circuit court set aside the portion of the Commission's decision denying benefits for the claimant's cervical spine condition. The court remanded the matter to the Commission to enter a decision consistent with its ruling. On remand, the Commission entered a decision awarding benefits for the claimant's cervical spine condition in compliance with the court's order. The employer then filed for judicial review of the Commission's decision.

¶ 4 While review was pending, the claimant filed a motion to quash summons and dismiss judicial review, asserting that the circuit court lacked subject matter jurisdiction because the employer had failed to strictly comply with the procedural requirements for review under section 19(f)(1) of the Act. 820 ILCS 305/19(f)(1) (West 2016). The court denied the claimant's motion and confirmed the Commission's decision. The employer appeals.

¶ 5 I. BACKGROUND

¶ 6 On January 3, 2001, the claimant was working as an area supervisor for the employer when he fell from a ladder while putting up an outdoor marketing sign at one of the employer's restaurants. The claimant filed an application for adjustment of claim pursuant to the Act, alleging that he sustained injuries to his back, neck, right shoulder, left leg, and left knee in the January 3, 2001, fall.

¶ 7 On March 24, 2011, following a hearing, the arbitrator entered a decision finding that the claimant had sustained an accident that arose out of and in the course of his employment. The arbitrator awarded benefits for the left knee injury, which he found causally related to the accident. However, the arbitrator did not award benefits for the cervical spine condition because he found that it was the result of degenerative disc disease and was unrelated to the accident.

¶ 8 On April 27, 2011, the claimant filed a petition for review of the arbitrator's decision with the Commission, challenging only the arbitrator's denial of benefits relating to his cervical spine condition. On February 2, 2012, the Commission unanimously adopted and affirmed the arbitrator's decision.

¶ 9 On February 28, 2012, the claimant sought judicial review of the Commission's decision in the circuit court. On September 9, 2015, the court set aside the portion of the Commission's decision denying benefits for the claimant's cervical spine condition and remanded the matter for entry of an award of benefits, including additional medical expenses, penalties, and fees, consistent with the court's decision.

¶ 10 On April 4, 2017, the Commission entered its decision on remand as directed by the circuit court but expressed that it found "no basis in law or fact for the [c]ircuit [c]ourt's award of benefits." After receiving the Commission's decision on April 7, 2017, the employer sought judicial review.

¶ 11 On April 24, 2017, the employer mailed a completed IC-25 form (notice of intent to file for judicial review) to the Commission via certified mail. The form was received by the Commission on April 28, 2017.

¶ 12 On April 27, 2017, the employer filed for review of the Commission's April 4, 2017, decision with the circuit court. Also on that date, the employer showed the circuit clerk a letter

addressed to the Commission, dated April 27, 2017, which stated that the matter was “being appealed to the Twentieth Judicial Circuit St. Clair County” and that a check for \$35 “for the probable cost of the record to be filed as return to summons” was enclosed with the letter. In addition, the employer filed with the clerk a request for summons and an affidavit of counsel, Kevin Adrian, stating: “On April 27, 2017, I sent a firm check in the amount of \$35.00 for the probable cost of the record to be filed as return to summons, payable to the Illinois Workers Compensation Commission to be deposited with the office of the Secretary of the Commission.”

¶ 13 On May 17, 2017, the claimant filed a motion to quash summons and dismiss judicial review, alleging that the circuit court lacked jurisdiction to review the April 4, 2017, decision based on the employer’s failure to comply with sections 19(f)(1) and 19(f)(2) of the Act (820 ILCS 305/19(f)(1), (f)(2) (West 2016)). Specifically, the claimant alleged that the employer violated section 19(f)(1) of the Act by failing to (1) file a notice of intent to file judicial review with the Commission; (2) exhibit proof of filing the notice of intent with the Commission to the circuit court; or (3) file an attorney’s affidavit averring that notice of intent to file for judicial review has been given in writing to the Commission. Additionally, the claimant alleged that the employer violated section 19(f)(2) of the Act by failing to file a legal bond.

¶ 14 On June 12, 2017, the employer filed a response to the claimant’s May 17, 2017, motion, arguing that it had fully, or, in the alternative, substantially complied with the “plain-meaning” of the requirements set forth in sections 19(f)(1) and 19(f)(2) (820 ILCS 305/19(f)(1), (f)(2) (West 2016)). In support, the employer attached an affidavit, dated June 7, 2017, of the employer’s counsel, Dan Sanchez, (Exhibit B), who averred that he had exhibited to the clerk of the circuit court a letter (Exhibit A) addressed to the Commission when he filed for judicial review on April 27, 2017, and that a copy of the notice of intent to file for judicial review

(Exhibit D) had been mailed to the Commission on April 24, 2017. The April 27, 2017, letter identified Kevin Adrian as the employer's counsel and purported that the matter was being appealed to the circuit court and that a check was enclosed for the probable cost of the record. The employer also attached the affidavit of Kevin Adrian (Exhibit C), which was filed on April 27, 2017, attesting that a check in the amount of \$35 had been sent to the Commission. The employer further argued that the bond was sufficient because it clearly showed the amount, principal, and surety.

¶ 15 On November 13, 2017, the circuit court entered an order denying the claimant's motion to quash summons and dismiss judicial review. In doing so, the court found sufficient compliance with the Act to perfect jurisdiction where the employer had "exhibited" the April 27, 2017, letter to the circuit clerk, as proof of notice of intent to file for judicial review. On April 26, 2018, the court entered an order confirming the Commission's decision.

¶ 16 The employer filed a timely notice of appeal, and the claimant subsequently filed with this court a motion to dismiss the employer's appeal, alleging that the circuit court lacked jurisdiction to review the Commission's decision. The claimant raised the same arguments contained in his May 17, 2017, motion to quash summons and dismiss judicial review, asserting that the employer's exhibition of the April 27, 2017, letter to the circuit clerk was insufficient proof of filing notice with the Commission because there was no proof of service attached, as required by Illinois Supreme Court Rules 12 and 373 (eff. Nov. 1, 2016). In response, the employer asserts that the affidavit filed with the circuit clerk on April 27, 2017, evidenced that the letter was mailed that day, and, thus, it had sufficiently complied with the statutory requirements.

¶ 17 On July 27, 2018, this court ordered that the claimant’s motion to dismiss be taken with the case.

¶ 18

II. ANALYSIS

¶ 19 On appeal, the employer argues that the Commission’s original decision denying the claimant benefits for his cervical spine condition was not against the manifest weight of the evidence. However, we must first address the jurisdictional issues raised by the claimant in his motion to dismiss. In his motion, the claimant argues that the employer failed to comply with the statutory requirements necessary to confer subject matter jurisdiction on the circuit court to review the Commission’s April 4, 2017, decision. On that basis, the claimant argues that the April 26, 2018, order confirming the Commission’s decision is void and should be vacated. We agree.

¶ 20 Illinois circuit courts are courts of general jurisdiction and, therefore, “enjoy a presumption of subject matter jurisdiction.” *Illinois State Treasurer v. Illinois Workers’ Compensation Comm’n*, 2015 IL 117418, ¶ 14. This presumption, however, does not apply to workers’ compensation proceedings. *Springfield Coal Co. v. Illinois Workers’ Compensation Comm’n*, 2016 IL App (4th) 150564WC, ¶ 9. Rather, circuit courts may review an agency’s action only “as provided by law.” Ill. Const. 1970, art. VI, § 9. A circuit court’s jurisdiction “is limited by the language of the act conferring it,” and 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*, 2015 IL 117418, ¶¶ 14, 15.

¶ 21 Section 19(f)(1) of the Act provides the party commencing judicial review with the procedural requirements to confer the circuit court with subject matter jurisdiction. *People ex rel.*

Director of Corrections v. Booth, 215 Ill. 2d 416, 423 (2005). “[A] request for summons under section 19(f) is how one commences an appeal of the Commission’s decision to the circuit court.” *Gruszczyka v. Illinois Workers’ Compensation Comm’n*, 2013 IL 114212, ¶ 23. Under section 19(f)(1), “[a] proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission” (820 ILCS 305/19(f)(1) (West 2016)), and “every provision in section 19(f)(1) ‘traces back’ to the statutory 20-day period.” *Esquivel v. Illinois Workers’ Compensation Comm’n*, 402 Ill. App. 3d 156, 159 (2010) (citing *Beasley v. Industrial Comm’n*, 198 Ill. App. 3d 460, 466 (1990)). To perfect jurisdiction in the circuit court, compliance with the statutory requirements for issuance of summons must appear in the record. *Bracy v. Industrial Comm’n*, 338 Ill. App. 3d 285, 286 (2003). A summons erroneously issued by the clerk of the circuit court does not excuse the failure to follow the statutory prerequisites. *Bracy*, 338 Ill. App. 3d at 286.

¶ 22 It is well established that issues involving questions of subject matter jurisdiction under the Act present questions of law and are reviewed *de novo*. *Illinois State Treasurer*, 2015 IL 117418, ¶ 13. *De novo* review on this issue is also appropriate because our resolution of the jurisdictional question turns, in part, on the statutory construction of section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2016)), which likewise presents a question of law. *People ex rel. Director of Corrections*, 215 Ill. 2d at 423.

¶ 23 The claimant asserts that the employer failed to comply with the statutory requirements because the April 27, 2017, letter and counsel’s affidavit were insufficient to show the circuit clerk that the employer had given notice to the Commission of its intent to file for judicial review within the 20-day time period. The claimant argues that this is especially true, given that the

letter did not contain a proof of service in compliance with Illinois Supreme Court Rules 12 and 373 (eff. Nov. 1, 2016).

¶ 24 The employer contends that it complied with section 19(f)(1) within the 20-day period by exhibiting the April 27, 2017, letter to the circuit clerk and by filing Kevin Adrian’s affidavit which also contained sufficient information to satisfy the statutory requirements. The employer further argues that the letter and affidavit contained the same information required to complete the Commission’s IC-25 form, and, therefore, the clerk could reasonably infer that the Commission had received written notice of intent to file for review in the circuit court.

¶ 25 As an initial matter, we note that the letter and Adrian’s affidavit signifies the employer’s procedural compliance with the previous version of section 19(f)(1) of the Act, which stated in pertinent part:

“In its decision on review the Commission shall determine in each particular case the amount of the probable cost of the record to be filed as a part of the summons in that case and no request for a summons may be filed and no summons shall issue unless the party seeking to review the decision of the Commission shall exhibit to the clerk of the Circuit Court proof of payment by filing a receipt showing payment or an affidavit of the attorney setting forth that payment has been made of the sums so determined ***.” 820 ILCS 305/19(f)(1) (West 2008), amended by Pub. Act 98-40 (eff. June 28, 2013).

Under the current version of section 19(f)(1) of the Act, which was in effect when the employer filed for judicial review in the instant case, exhibiting proof of payment of the probable cost of the record is no longer required. Instead, section 19(f)(1) states in pertinent part:

“No request for a summons may be filed and no summons shall issue unless the party seeking to review the decision of the Commission shall exhibit to the clerk of the

Circuit Court proof of filing with the Commission of the notice of the intent to file for review in the Circuit Court or an affidavit of the attorney setting forth that notice of intent to file for review in the Circuit Court has been given in writing to the Secretary or Assistant Secretary of the Commission.” 820 ILCS 305/19(f)(1) (West 2016).

¶ 26 In other words, a party seeking judicial review of the Commission’s decision may not file a request for summons unless the party exhibits to the clerk (1) proof of filing with the Commission of the notice of the intent to file for judicial review or (2) an affidavit of the attorney indicating that notice of intent to file for judicial review has been given to the Commission in writing. Thus, we consider whether the employer complied with either of these provisions within the 20-day time period.

¶ 27 A party may satisfy the first provision by filing, or exhibiting to the clerk, a copy of a completed IC-25 form filed with the Commission, which contains a preprinted statement that a notice of intent to file for review in the circuit court was filed with the Commission. Here, however, the employer mailed the completed IC-25 form to the Commission on April 24, 2017, and had not yet received a returned copy showing that the form had been received by the Commission before filing its request to issue summons on April 27, 2017, the last day of the 20-day period. Thus, the employer was unable to satisfy the first provision.

¶ 28 A party may satisfy the second provision by filing, or exhibiting to the clerk, an attorney’s affidavit, which sets forth that a written notice of intent to seek judicial review has been given to the Commission. Here, the employer exhibited to the clerk the letter and Adrian’s affidavit. However, unlike the IC-25 form, neither the letter nor Adrian’s affidavit includes a statement that a notice of intent to file for judicial review was filed in writing with the Commission. Rather, viewed together, the April 27, 2017, letter and Adrian’s affidavit state only

that the matter was being appealed and the probable cost of the record on appeal had been mailed to the Commission on that date. Consequently, we find these documents insufficient to satisfy either provision.

¶ 29 While we recognize that Sanchez’s affidavit states that a notice of intent to file for judicial review had been mailed to the Commission on April 24, 2017, this affidavit was filed well after the expiration of the 20-day limitation period. Again, as referenced above, “every provision in section 19(f)(1) ‘traces back’ to the statutory 20-day period.” *Esquivel*, 402 Ill. App. 3d at 159 (citing *Beasley*, 198 Ill. App. 3d at 466); see also *Jones v. Industrial Comm’n*, 188 Ill. 2d 314, 316 (1999) (although the claimant exhibited proof of payment for the probable cost of the record after filing his request for summons, all of the required documents under section 19(f)(1) were filed within the required 20-day period). Thus, the employer failed to perfect jurisdiction in the circuit court by filing Sanchez’s affidavit after the 20-day time period had elapsed.

¶ 30 Based on the foregoing, we find that the employer failed to strictly comply with the procedural requirements set forth in section 19(f)(1) of the Act and, thus, failed to confer the circuit court with subject matter jurisdiction. Therefore, we hold that the circuit court’s April 26, 2018, order confirming the Commission’s decision on remand is void.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated above, the circuit court’s April 26, 2018, order confirming the Commission’s decision on remand is vacated.

¶ 33 Vacated.