



Workers' Compensation Report

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Jurisdictional Concerns in Workers' Compensation Appeals From the Circuit to Appellate Court

Most attorneys practicing workers' compensation law have read countless articles concerning the potential traps and pitfalls associated with filing a judicial review of a workers' compensation decision from the Illinois Workers' Compensation Commission to the circuit court. The strict procedures set forth in section 19(f) of the Workers' Compensation Act, 820 ILCS 305/19(f), are, in many cases, unforgiving and can lead to dismissal of the appeal. Caution and adherence to the rules are always advised when filing a judicial review.

But equally perplexing are situations that arise in appeals from the circuit court to the appellate court. Typically, three areas of concern arise: (1) non-final orders issued by the circuit court; (2) the failure to file a timely notice of appeal or cross appeal; and (3) jurisdictional issues that surface from the circuit court review.

The purpose of this column is to highlight the areas where jurisdictional issues most frequently arise in circuit court appeals and to offer some guidance on how to avoid these issues, thereby avoiding a dismissal of your case on appeal. Moreover, these same issues can frequently serve as grounds for your own motion to dismiss your opponent's appeal on jurisdictional grounds.

Appeals From the Circuit Court to the Appellate Court

As noted above, there are three primary areas where jurisdictional issues arise when dealing with an appeal from the circuit court to the Illinois Appellate Court, Workers' Compensation Commission Division. Each of these are discussed below. Because many of the rulings addressing jurisdictional issues are unpublished, most of the cases referenced below are Rule 23 orders. Nevertheless, they provide valuable insight into the jurisdictional issues discussed.

Non-final Orders & Remands

Under section 19(f), a circuit court has limited powers of review and "may confirm or set aside the decision of the Commission." 820 ILCS 305/19(f)(2). If the circuit court upholds the Commission's decision, it should state expressly that it is confirming the Commission's decision. *Bailie v. Illinois Workers' Compensation Comm'n*, 2017 IL App (5th) 160536WC-U, ¶ 27 (order stating that Commission's decision is not against the manifest weight of the evidence implicitly states that the Commission's decision was confirmed).

“If the decision is set aside and the facts found in the proceedings before the Commission are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the Commission for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper.” 820 ILCS 305/19(f)(2). When a circuit court reverses a decision of the Commission and then remands the matter for further proceedings involving the resolution of questions of law or fact, the order is interlocutory and not appealable. *A.O. Smith Corp. v. Industrial Comm’n*, 109 Ill. 2d 52, 54 (1985). However, if the Commission on remand only has to act in accordance with the circuit court’s directions by conducting proceedings on uncontroverted incidental matters or merely making mathematical calculations, then the order is final for purposes of appeal. *Edmonds v. Illinois Workers’ Compensation Comm’n*, 2012 IL App (5th) 110118WC, ¶ 19.

The bulk of jurisdictional difficulty in circuit court appeals arises from the circuit court’s decision to reverse and remand. For example, in *Webb v. Illinois Workers’ Compensation Comm’n*, 2018 IL App (3d) 170859WC-U, the circuit court reversed the Commission’s decision to deny benefits based on a failure to establish an accident arising out of the employment, and remanded the matter to the Commission for further proceedings consistent with the court’s order. Accordingly, “the Commission was tasked with determining the extent amount of reasonable and necessary medical expenses, and whether the claimant was entitled to other benefits as a result of the claimant’s low back injury following the July 9, 2007, accident.” *Webb*, 2018 IL App (3d) 170859WC-U, ¶ 6. Thus, “the Commission was required to resolve factual questions necessary to appropriately address incidental matters, not just merely make mathematical calculations.” *Id.* The appellate court stated, “[b]ecause the circuit court’s judgment does not fully and finally dispose of the rights of the parties but remands the cause to the Commission for further resolution of questions of law and fact, the court’s December 1, 2017, order was not final and appealable.” *Id.* ¶ 7.

In *Agency for Community Transit v. Illinois Workers’ Compensation Comm’n*, 2018 IL App (5th) 170041WC-U, the Commission reversed the arbitrator’s award, which found the accident compensable and awarded benefits under the Act. The Commission’s decision found the petitioner failed to prove a repetitive trauma injury and failed to prove causation.

The circuit court, on judicial review, reversed, but did not reinstate the Commission’s decision and did not remand the matter back to the Commission for further proceedings. The employer appealed to the appellate court, which on its own motion, dismissed the appeal for lack of jurisdiction. According to the appellate court, the circuit court’s order was interlocutory and non-final. The court observed, “[t]he [circuit] court reversed the Commission’s decision, although a remand to the Commission should have also occurred.” *Agency for Community Transit*, 2018 IL App (5th) 170041WC-U, ¶ 10. “Based on the court’s failure to do so, this cause must be remanded to the court with directions to remand the matter to the Commission to review the propriety of the TTD and PPD awards.” *Id.* See also, *Copper v. Illinois Workers’ Compensation Comm’n*, 2018 IL App (5th) 170042WC-U (circuit court reversed, in part, but did not include remand language).

However, in *Charter Dura-Bar, Inc. v. Illinois Workers’ Compensation Comm’n*, 2016 IL App (2d) 141240WC-U, ¶ 10, the circuit court confirmed the Commission’s award of medical expenses and a credit to the employer and also remanded the case back to the Commission with instructions that it “[r]evise the amount [the employer] owe[d] for medical expenses to \$6,477.84,” which was a reduction from the \$24,523.03 amount awarded by the Commission based on the employer’s credit. *Charter Dura-Bar*, 2016 IL App (2d) 141240WC-U, ¶ 23. The employer filed its appeal from the circuit court’s order and did not seek a remand.

On appeal, one of the issues addressed by the appellate court was whether the remand language contained in the circuit court’s order meant it was non-final. In that event, the case would have to first return to the Commission and the



timeliness issue respecting the filing of the employer's notice of appeal would be moot. According to the appellate court, while a circuit court order that reverses a decision of the Commission and remands the matter to the Commission is typically interlocutory and not appealable, the circuit court in the case before it remanded solely for the Commission to enter a mathematical calculation. In that event, the order is final for the purposes of appeal. *Id.* ¶ 22. Thus, the remand language did not impact the finality of the circuit court's order and did not make it interlocutory.

As these cases show, a circuit court order reversing and remanding to the Commission must be closely examined. If any matter is subject to further factual findings, the circuit court's order is most likely non-final and thus, not appealable. However, as was the case in *Dura-Bar*, there are circumstances where a remand is not truly a remand. If the circuit court's remand is for a perfunctory task, the circuit court order may nevertheless be final. Moreover, if the circuit court exceeds its authority to rule on a matter before it, that ruling, too, may be final and appealable. If in doubt, file a notice of appeal and proceed as outlined below to bring the issue to the appellate court's attention.

How to Get an Interlocutory Ruling Before the Appellate Court

When a circuit court enters an order setting aside the Commission's decision and remanding the matter back for further factual findings, counsel should consider an interlocutory appeal. For example, assume the Commission rules in favor of the employer and denies a section 19(b) petition. Suppose the Commission affirms on appeal and the circuit court reverses, remanding the case for findings on benefits. At this point, the circuit court order is interlocutory or non-final and cannot be appealed under Supreme Court Rule 301 and 303. Ill. S. Ct. R. 301, 303. Allowing the case to return to the Commission may be expensive and require a long litigation process.

Options are available that give counsel an opportunity to convince the appellate court to accept the case on a discretionary interlocutory appeal.

Rule 306(a) Applies to Certain Orders

Illinois Supreme Court Rule 306(a)(6) provides an interlocutory remedy for certain circuit court orders that remand a proceeding for a hearing *de novo* before an administrative agency. Ill. S. Ct. R. 306(a)(6). *See Trunek v. Industrial Comm'n*, 345 Ill. App. 3d 126 (1st Dist. 2003). Thus, a party seeking interlocutory review must file a petition for leave to appeal with the appellate court within 30 days of the circuit court's order. If granted, the appellate court will issue a briefing schedule and address the appeal on its merits. If denied, a Rule 315(a) petition for leave to appeal may be filed, subject to the requirement that at least two members of the appellate court must issue a statement in writing that the case "involves a substantial question which warrants consideration by the Supreme Court." Ill. S. Ct. R. 315(a).

Rule 308(a) Applies to Questions of Law

Although less common in a workers' compensation appeal, if the argument before the circuit court seems at an impasse over a legal question, counsel may request entry of a certified question of law and present that to the appellate court on application for leave to appeal under Rule 308(a). In such a case, the circuit court first must be petitioned to enter an order under Rule 308(a) finding that the case involves a question of law as to which there are substantial grounds

for difference of opinion and that immediate appeal will substantially advance the ultimate termination of the case. Here, the party seeking review has 30 days from the issuance of the certified question order to file the discretionary application with the appellate court. *Hydraulics, Inc. v. Industrial Comm'n*, 329 Ill. App. 3d 166 (2d Dist. 2002); *PPG Industries v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130698WC.

The denial of a Rule 308(a) application by the appellate court is addressed in the same manner as the denial of a Rule 306(a)(6) petition for leave to appeal.

Faulty Notices of Appeal

Illinois Supreme Court Rules require a party seeking to appeal to the appellate court to file a notice of appeal with the circuit court. In *Valdez v. Illinois Workers' Compensation Comm'n*, 2018 IL App (2d) 170716WC-U, the petitioner, who had lost at the Commission and circuit court levels, filed a notice of appeal within the required 30 days, but wrongly filed it in the appellate court. The filing was rejected and returned to the petitioner, with an explanation that it lacked a circuit court file-mark and instructions to file the document with the circuit court. The petitioner attempted to refile the notice of appeal with the appellate court, which was again denied. In late August, more than 30 days after the circuit court's order was entered, the petitioner finally filed a notice of appeal with the circuit court. The appellate court dismissed the appeal for lack of jurisdiction for failure to timely file the notice of appeal with the circuit court.

Of interest, the appellate court pointed out that “[a]n appellant who fails to file a timely notice of appeal in the circuit court is not entirely without recourse.” *Valdez*, 2018 IL App (2d) 170716WC-U, ¶ 13. The court observed, Rule 303(d) permits, in certain circumstances, an extension of time to file a notice of appeal, if good cause can be shown. While the petitioner in *Valdez* had filed a motion to file notice of appeal late or relation back to attempted filing of July 12, the appellate court noted that it, too, was filed late. The motion should have been filed within 30 days after the expiration of the time for filing the notice of appeal. The petitioner's motion was filed some 80-plus days afterwards.

In *Eiler v. Illinois Workers' Compensation Comm'n*, 2017 IL App (1st) 152282WC-U, the appellate court held that a claimant's notice of appeal, filed after the circuit court's judgment, but prior to the court's disposition of the claimant's post-judgment motion to reconsider, was premature and did not confer jurisdiction on the appellate court. Here, while the appeal was found premature, the claimant was free to file a new notice of appeal once the circuit court ruled upon the pending motion to reconsider.

Jurisdiction Defects From the Circuit Court Review

In some instances, a jurisdictional flaw from the circuit court judicial review is missed and is discovered during the appeal to the appellate court. Subject matter jurisdiction, however, may be raised at any time and is not considered waived. *Millennium Knickerbocker Hotel v. Illinois Workers' Compensation Comm'n*, 2017 IL App (1st) 161027WC, ¶ 17. In such an instance, the appellate court will first address the circuit court's jurisdiction before considering the issues on the merits raised by the appeal.

In *Fazal v. Illinois Workers' Compensation Comm'n*, 2018 IL App (1st) 170927WC-U, a question arose on appeal to the appellate court as to whether the petitioner timely filed his petition for judicial review from the Commission's decision to the circuit court. According to the court, the written request for judicial review was filed on February 1, 2016, which was more than 30 days beyond the issuance of the Commission's decision on December 23, 2015. The court noted

there was no evidence in the record as to when the petitioner received the Commission's decision. However, rather than dismissing the appeal for lack of jurisdiction at that time, the appellate court remanded the case to the circuit court for a hearing on when the petitioner received the Commission's decision.

Because the issue was first raised on appeal and not before the circuit court, the court found remand appropriate, stating:

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 [employer] has effectively prevented an interested party from introducing evidence on the issue [of timeliness].

Fazal, 2018 IL App (1st) 170927WC-U, ¶ 7. “[W]e believe that the parties should be afforded an opportunity to establish compliance after the issue has been raised.” *Id.* Accordingly, the appellate court vacated the circuit court's order confirming the Commission's decision on the merits and remanded the case for a hearing to determine compliance with section 19(f).

In *Eddards v. Illinois Workers' Compensation Comm'n*, 2017 IL App (3d) 150757WC, the court, *sua sponte*, raised the question of its jurisdiction and pointed to the employer's failure to file a petition for review from the arbitrator's corrected decision. Because the employer failed to file a petition for review to the Commission within 30 days after the arbitrator issued his corrected decision, “the Commission lacked jurisdiction to consider respondent's petition for review and the arbitrator's corrected decision became the decision of the Commission.” *Eddards*, 2017 IL App (3d) 150757WC, ¶ 22. Accordingly, the appellate court reversed the judgment of the circuit court, vacated the decision of the Commission, and reinstated the corrected decision of the arbitrator.

What to Do When Jurisdiction Seems Questionable

One of the first items that should be examined when beginning work on a brief is jurisdiction. If lacking, or if it appears questionable, a motion should be filed immediately, pointing out the perceived deficiency and citing relevant authority supporting dismissal. In certain situations, an appellant may believe that jurisdiction is questionable and file a judicial review or appeal out of an abundance of caution. Admittedly, the finality of certain orders is, occasionally, ambiguous and to protect all rights a party in doubt should file an appeal and then ask the reviewing court to immediately address jurisdiction. This is often an awkward situation for the party filing the appeal, but there are times when clarity is needed and the only real answer can come from the reviewing court once the appeal is filed.

In those circumstances, the best practice is to file a motion for clarification of jurisdiction, setting forth the ruling in question and advising the court of why there may be an issue regarding finality. Let the reviewing court decide if the order being appealed is final and jurisdiction is appropriate, then proceed accordingly.

Handling the appeal of a workers' compensation case before the circuit court requires close attention to details, in particularly, finality. If the circuit court reverses the Commission's decision, even in part, the finality of the order must be closely considered. If non-final, options are available to get the case before the appellate court on an interlocutory basis. Moreover, if an order appears non-final, but any doubts exists, diligence requires the aggrieved party to go forward



with the appeal, but also to ask the court to check jurisdiction immediately. No one benefits from waiting until briefs are filed or the case is argued before questioning the finality of a circuit court order.

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