

No. 1-23-0464WC

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

EUGENIA BALA,)	Appeal from the
)	Circuit Court of
Appellant,)	Cook County
)	
v.)	No. 2021 L 050411
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> ,)	Honorable
)	Daniel P. Duffy,
(Covenant Care at Home, Appellee).)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Mullen, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* Finding that the decision of the Illinois Workers' Compensation Commission (Commission) was not an abuse of discretion, we affirmed the judgment of the circuit court that confirmed a decision of the Commission affirming the arbitrator's order dismissing this case for want of prosecution and declining to reinstate the matter.

¶ 2 The claimant, Eugenia Bala, filed the instant appeal from an order of the Circuit Court of

Cook County which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) affirming the order of an arbitrator declining to reinstate the instant action after it was dismissed for want of prosecution. For the reasons which follow, we affirm.

¶ 3 The claimant, Eugenia Bala, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2014)), seeking benefits for injuries she sustained on June 25, 2015, while working for Covenant Care at Home (Covenant).

¶ 4 The following factual and procedural recitation is taken from the August 23, 2021, decision of the Commission.

¶ 5 On August 25, 2017, Covenant filed a Motion to Dismiss the claimant's case. On September 11, 2017, the arbitrator dismissed the claimant's case for want of prosecution when the claimant failed to appear either on September 6 or September 11, 2017. On September 28, 2017, the claimant filed a motion to reinstate her case, which the arbitrator granted.

¶ 6 On January 4, 2019, the matter appeared on the arbitrator's call and was set for hearing on January 17, 2019. The arbitrator dismissed the case for want of prosecution on January 17, 2019, when the claimant's counsel failed to appear. On February 20, 2019, the claimant filed a motion to reinstate her case which the arbitrator granted on March 14, 2019.

¶ 7 On May 3, 2019, the claimant's case appeared on the arbitrator's call and was set for trial on May 15, 2019. When the claimant's counsel failed to appear on May 15, 2019, the arbitrator again dismissed the case for want of prosecution. On June 14, 2019, the claimant filed a motion to reinstate the case, alleging that she never received a Notice of Motion to dismiss filed by Covenant. The claimant also alleged that the "case has been settled months ago" and that she had been "waiting many months in anticipation of Respondent's [Covenant] Medicare set-aside pursuant to

the Arbitrator's recommendation.”

¶ 8 On July 16, 2019, the claimant's motion to reinstate came on for hearing before the arbitrator. The claimant's counsel asserted that she was unaware that the case was set for trial on May 15, 2019. She stated that she did not know how the case came up for status on May 3, 2019, and requested a continuance to check her office computer and speak to her clerk. According to the claimant's attorney, Covenant's attorney had offered a settlement agreement that contained objectionable language which would not be approved by the Commission, and the arbitrator had recommended the removal of the disputed language. Covenant's counsel objected to reinstatement, asserting that the case had not been settled due to the dispute over language in the settlement contract and noting that the case had been dismissed on two prior occasions. Covenant also argued that its ability to defend would be prejudiced if the case were reinstated. Covenant's counsel argued that the dispute over the language of a settlement agreement did not excuse the failure of the claimant or her attorney to appear on a set trial date.

¶ 9 The arbitrator stated that the claimant's case would not have received a trial date at the May 3, 2019, status call unless someone from the office of the claimant's counsel had requested a trial date. The arbitrator denied the claimant's request for a continuance and denied her motion to reinstate the case.

¶ 10 On August 14, 2019, the claimant filed a petition for review of the arbitrator's decision before the Commission. On August 23, 2021, the Commission issued a unanimous decision, affirming the arbitrator's decision which denied the claimant's motion to reinstate her case. In arriving at its decision, the Commission addressed several issues raised by the claimant. In response to the claimant's argument that she never received notice of a motion by Covenant to

dismiss the case, the Commission stated that, according to its rules, Covenant was not required to file a motion to dismiss or provide the claimant notice thereof once the case had been on file for more than three years, noting that once a case has been on file for more than three years its rules of practice provide that cases are set for trial or dismissed absent a written request for a continuance. See 50 Ill. Adm. Code 9020.60(b)(2)(D)(1) (2016). As to the claimant's contention that she had no notice of the May 3, 2019, status date at which the case was set for trial on May 15, 2019, the Commission noted that, when a case has been on file for more than three years, it is no longer continued on the status call for three-month intervals, citing section 9020.60(a). The Commission also rejected the claimant's contention that the case had been settled, finding that the record established that there was an ongoing dispute between the parties as to language in the proposed settlement agreement and that Covenant's counsel never agreed to remove the disputed language.

¶ 11 The claimant sought a judicial review of the Commission's decision in the circuit court of Cook County. On February 10, 2023, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 12 Before addressing the claims of error raised by the claimant in this appeal, we again find it necessary to admonish a litigant for failure to comply with the requirements for briefs filed with this court. Illinois Supreme Court Rule 341(h)(9) (eff. Oct. 1, 2020) requires that an appellant's brief contain an appendix as required by Rule 342. When, as in this case, an appeal involves proceedings to review a decision of the Commission, Rule 342 requires that the appendix to the appellant's brief contain, among other things, the decision of the Commission. Ill. S. Ct. R. 342 (eff. Oct. 1, 2019). The appendix filed by the claimant in this case failed to contain the

Commission's decision. The Commission's decision was supplied by Covenant as a supplemental appendix attached to its brief as the appellee. Additionally, Illinois Supreme Court Rule 341(h)(6) requires that an appellant's brief include a Statement of Facts containing the facts necessary to an understanding of the case with appropriate references to the pages in the record. The Statement of Facts contained in the claimant's brief fails to contain any references to the pages in the record. Further, the claimant's Statement of Facts fails to even mention the dismissals of this case for want of prosecution entered by the arbitrator on September 11, 2017, and January 17, 2019, or her motions to reinstate those dismissals. We remind the claimant's counsel that supreme court rules "are not suggestions;" rather, they are rules which have the force of law, and the presumption is that they will be followed as written. *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995).

¶ 13 In urging reversal of the Commission's decision affirming the arbitrator's denial of her motion to reinstate her case, the claimant argues both that the dismissal of her case was a violation of procedural due process and that failure to reinstate the case was an abuse of discretion. We address first the due process argument.

¶ 14 The claimant argues that the Commission's actions in "assigning random status dates, setting the case for trial without a request from *** [her], failing to provide notice, refusing to reinstate the case, and denying *** [her] the opportunity to obtain affidavits violated [her] due process rights." According to the claimant, the arbitrator randomly assigned her case a trial date and violated her right to due process by failing to provide her with notice of the date. We disagree.

¶ 15 The United States and Illinois Constitutions prohibit the deprivation of life, liberty, and property without due process. U.S. Const, amend. XIV; Ill. Const. 1970, art 1, § 2. The concepts of due process apply to administrative agencies that perform adjudicatory functions. *Girot v. Keith*,

212 Ill. 2d 372, 380 (2004). Due process in an administrative proceeding is satisfied by a “ ‘procedure that is suitable and proper to the nature of the determination to be made and conforms to fundamental principles of justice.’ ” *Comito v. Police Board*, 317 Ill. App. 3d 677, 687 (2000) (quoting *Telcser v. Holzman*, 31 Ill. 2d 332, 339 (1964)). At minimum, due process requires notice and a meaningful opportunity to be heard. *Snow v. Chicago Transit Authority*, 2022 IL App (1st) 201217, ¶ 54. In administrative proceedings, the notice required does not need to be as precise or detailed as in normal court proceedings, but it must be reasonably calculated to apprise a party of the action contemplated. *Id.*

¶ 16 The Commission’s rules provide that written notice will be sent to the parties only for the initial status call at arbitration. 50 Ill. Adm. Code 9020.60(a) (2016). Thereafter, the cases are continued at three-month intervals until the case has been on file for three years, set for trial, or otherwise disposed of. *Id.* Following the initial status hearing, parties are required to obtain any continued status dates from the Commission’s records. 50 Ill. Adm. Code 9020.60(a) (2016). When a case has been on file 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 9020.60(b)(2)(C)(i) (2016).

¶ 17 The claimant does not argue that she did not receive notice of the initial status call. Thereafter, she was required to obtain any continued status dates from the Commission’s records. Nor has she argued that the continued status dates were not contained in the Commission’s records. We believe that the Commission’s rules, which only require notice of the initial status call date and provide that after the initial status date it is the obligation of the parties to obtain any continued status dates from the Commission’s records, satisfy the requirements of due process as they inform the party that the case is pending for status before an arbitrator and provide adequate due process

safeguards by which a party is able to determine pending status dates.

¶ 18 The claimant filed her application for adjustment of claim in this case on July 22, 2015. As of July 23, 2018, the claimant's case had been on file with the Commission for three years. 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 9020.60(b)(2)(D)(i) (2016)), and it is the obligation of the parties to obtain any continued status dates from the Commission's records (50 Ill. Adm. Code 9020.60(a) (2016)). In the instant case, the claimant argues that the arbitrator's order of May 3, 2019, setting the case for trial on May 15, 2019, and the dismissal of her case when her attorney failed to appear on May 15, 2019, violated her right to procedural due process. She asserts in her brief that her "counsel is positive that nobody from her office attended [the] May 3, 2019 status call and requested [the] May 15, 2019 trial date." It is impossible to determine the accuracy of that assertion based upon the record before us. However, contrary to the claimant's arguments, the Commission was not required to notify her that her case was set on the status call for May 3, 2019. In its decision, the Commission noted that the arbitrator stated that the case would not have been given a trial date on the May 3, 2019, status call unless a trial date had been requested by someone from the office of the claimant's attorney. The arbitrator's statement in that regard is consistent with the Commission's rule which provides that the failure of a claimant or her attorney to appear at a status call "shall result in the case being dismissed for want of prosecution." 50 Ill. Adm. Code 9020.60(b)(2)(D)(ii) (2016). Had neither the claimant nor someone from her attorney's office appeared at the May 3, 2019, status call, the arbitrator would have been obligated to dismiss the claimant's case on that date, but he did not do so. Rather, the arbitrator set the case for trial on May 15, 2019. Either, as the claimant appears to

assert, no one from her attorney's office appeared at the May 3, 2019, status date, or someone from the claimant's attorney's office did appear on May 3, 2019, when the case was set for trial on May 15, 2019. In either case, the dismissal of the claimant's case on May 15, 2019, was not the result of any denial of procedural due process; rather, it was the result of the claimant's failure to monitor her case for upcoming hearing dates and to attend those hearings.

¶ 19 After a case has been dismissed for want of prosecution by an arbitrator, notice of the dismissal must be sent to the parties. 50 Ill. Adm. Code 9020.90(a) (2016). Within sixty days after receiving the dismissal order, a party may file a petition to reinstate the case. 50 Ill. Adm. Code 9020.90(a) (2016). At the hearing on a petition for reinstatement, the parties are permitted to present evidence in support of, or in opposition to, the petition. 50 Ill. Adm. Code 9020.90(c) (2016). The rules of the Commission both require that a claimant be given notice of the dismissal order and provide a procedure for reinstatement, including the right to a hearing. The post-dismissal rules of the Commission more than satisfy the procedural due process requirements of notice and an opportunity to be heard.

¶ 20 We turn next to the questions of whether it was an abuse of discretion for: (1) the arbitrator to deny claimant's counsel's request for a continuance of the hearing on the motion for reinstatement; (2) the arbitrator to deny the claimant's motion for reinstatement; and (3) the Commission to affirm the arbitrator's denial of the motion to reinstate the case.

¶ 21 The record reflects that the claimant filed a motion for reinstatement and was accorded a hearing before the arbitrator on that motion. At that hearing, the claimant's attorney stated that she was unaware that the case had been set for trial on May 15, 2019, and did not know how the case came up for status on May 3, 2019. She stated that she did not know how the case jumped from

the January call to the May call. She requested a continuance to check her office computer and speak to her clerk. The claimant's counsel also requested a continuance to retrieve e-mail correspondence with opposing counsel. The arbitrator denied counsel's request for a continuance.

¶ 22 The denial of a request for a continuance is a matter committed to the discretion of the arbitrator, whose decision will not be disturbed on review absent an abuse of that discretion. *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 650 (2003). Under the abuse of discretion standard, the court will not disturb the arbitrator's decision unless it was arbitrary, capricious, or where no reasonable person would agree. See *Young v. Illinois Human Rights Comm'n*, 2012 IL App (1st) 112204, ¶ 33.

¶ 23 We find no abuse of discretion in the arbitrator's decision to deny counsel's request for a continuance. The hearing before the arbitrator was on the claimant's motion to reinstate her case. One would have expected that claimant's counsel would have checked her computer, conferred with her clerk, and retrieved any relevant e-mails before she appeared at the hearing on her client's own petition.

¶ 24 Turning to the question of whether the arbitrator abused his discretion in denying the claimant's motion for reinstatement, we address first the assertion by the claimant's attorney that she did not know how the case came up for status on May 3, 2019. As noted earlier, it was the obligation of the parties to check the Commission's records for status dates, and, because the case had been pending for more than three years, the claimant or her attorney was required to appear at all status calls. The claimant has not alleged that the status date of May 3, 2019, was not reflected in the Commission's records. At the reinstatement hearing, the claimant's attorney alleged only that she was unaware of the date.

¶ 25 According to the claimant, Covenant's attorney had offered a settlement agreement that contained objectionable language which would not be approved by the Commission, and the arbitrator had recommended the removal of the disputed language. Covenant's counsel objected to reinstatement, asserting that the case had not been settled due to the dispute over language in the settlement contract and noting that the case had been dismissed on two prior occasions. Covenant also argued that its ability to defend would be prejudiced if the case were reinstated. Covenant's counsel argued that the dispute over the language of a settlement agreement did not excuse the failure of the claimant's attorney to appear on a set trial date.

¶ 26 The arbitrator stated that the claimant's case would not have received a trial date at the May 3, 2019, status call unless someone from the office of the claimant's counsel had requested a trial date. The arbitrator denied the claimant's motion to reinstate the case.

¶ 27 In ruling on a motion to reinstate, the Commission's rules provide that the arbitrator shall apply standards of fairness and equity, consider the grounds relied upon by the petitioner, consider the objections of the respondent, and consider the Commission's decisions. 50 Ill. Adm. Code 9020.90(c) (2016). The granting or denying of a motion to reinstate a case is a matter of discretion and will not be disturbed on review absent an abuse of that discretion. *Bromberg v. Industrial Comm'n*, 78 Ill. 2d 395, 400 (1983). We are unable to conclude that the arbitrator abused his discretion in denying the claimant's motion to reinstate her case following its dismissal for want of prosecution.

¶ 28 It was the obligation of the claimant to obtain any continued status dates from the Commission's records and to appear in person or by counsel at every status date after her case had been pending for three years. The Commission was not obligated to send the claimant notices of

status dates other than the first. It was counsel's responsibility to monitor her client's case by checking the Commission's records for upcoming status dates. If neither the claimant nor her counsel had appeared at the May 3, 2019, status date, the arbitrator would have been obligated to dismiss the case on that date for want of prosecution. 50 Ill. Adm. Code 9020.60(b)(2)(D)(ii) (2016). At the May 3, 2019, status date, the case was not dismissed; rather, it was continued for trial on May 15, 2019. At the hearing on the motion for reinstatement, the arbitrator stated "there is no way the case would have gotten a date on May 3, 2019, status call unless you [claimant's attorney] or your clerk requested it. It would have been DWP'd. It was above the red line." When neither the claimant nor her attorney appeared for trial on May 15, 2019, the case was dismissed for want of prosecution.

¶ 29 In her motion to reinstate, the claimant alleged that the "case has been settled months ago," and that she had been "waiting many months in anticipation of Respondent's [Covenant] Medicare set-aside pursuant to the Arbitrator's recommendation." At the July 16, 2019, hearing, the claimant's attorney stated that Covenant's attorney had offered a settlement agreement that contained objectionable language which would not be approved by the Commission, and the arbitrator had recommended the removal of the disputed language. The record clearly reflects that the claimant's case had not been settled as the parties could not agree on the provisions of a settlement agreement.

¶ 30 In addition, as Covenant's counsel noted at the reinstatement hearing, the claimant's case had been dismissed and reinstated on two prior occasions.

¶ 31 Based on the foregoing facts, we are unable to find that the arbitrator acted either arbitrarily or capriciously in denying the claimant's motion to reinstate her case, or that no

reasonable person would agree. The claimant's case had been dismissed for want of prosecution on two prior occasions, the case had not been settled, and neither the claimant nor her attorney appeared at the May 15, 2019, set trial date. We conclude, therefore, that the arbitrator did not abuse his discretion in denying the claimant's motion to reinstate. Having found that the arbitrator did not abuse his discretion in denying the claimant's motion to reinstate, it follows that we find no abuse of discretion in the Commission's decision affirming the arbitrator.

¶ 32 For the reasons stated, we affirm the judgment of the circuit court, which confirmed the Commission's decision.

¶ 33 Affirmed.