

2025 IL App (2d) 230596WC-U
No. 2-23-0596WC
Order filed February 7, 2025

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

Workers' Compensation Commission Division

MARY CATHERINE RYBA,)	Appeal from the Circuit Court of
)	Lake County.
Appellant,)	
)	
v.)	No. 23-MR-141
)	
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION, <i>et al.</i>)	Honorable
)	Luis A. Berrones
(Libertyville Manor Extended Care, Appellee).)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* We reverse the circuit court's order setting aside the Commission's decision and reinstate the order of the Commission affirming and adopting the decision of the arbitrator, where claimant's denial of receipt of the notice of dismissal created an issue of fact, and the Commission's granting of reinstatement was not an abuse of discretion.
- ¶ 2 Claimant, Mary Catherine Ryba, appeals from an order of the circuit court of Lake County, which set aside and vacated the decision of the Illinois Workers' Compensation Commission (Commission) reinstating claimant's case and awarding claimant benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2020)). For the following

reasons, we reverse the circuit court's order setting aside the Commission's decision and reinstate the order of the Commission affirming and adopting the decision of the arbitrator.

¶ 3

I. BACKGROUND

¶ 4 On May 24, 2016, and July 13, 2016, claimant filed applications for adjustment of claim pursuant to the Act, seeking benefits for various back injuries she sustained while working for employer, Libertyville Manor Extended Care, as an admissions coordinator and unit nurse. Following motions for hearing filed by employer in 2018 and 2019, the arbitrator set the case for a hearing on February 18, 2020, to determine whether to proceed to trial or dismissal. Claimant failed to appear, and the arbitrator dismissed the case for want of prosecution.

¶ 5 On April 29, 2021, claimant filed a motion to reinstate. Claimant argued that she never received the notice of dismissal and therefore, pursuant to section 9020.90 of the Illinois Administrative Code (Code) (eff. Nov. 9, 2016), the “failure of the Commission to send such a notice—possibly due to the rise of the Covid crisis at or shortly after the dismissal occurred—the 60-day time period to file a Motion to Reinstate has never commenced to run.” In its response, employer contended that it filed five hearing requests prior to dismissal, that 436 days passed between the dismissal and the filing of claimant's motion to reinstate, employer received the notice of dismissal, and, at the time of the dismissal, Covid had not yet interrupted Commission proceedings.

¶ 6 On September 20, 2021, the arbitrator held a hearing on claimant's motion to reinstate. Claimant's counsel reiterated that he never received the notice of dismissal and further stated that “near [the time of the dismissal], the wife of Erwin Cohn, [claimant's] attorney at the time, and mother of [claimant's] current counsel, Charles A. Cohn, died.” Employer argued that “there is a duty to monitor your cases and 436 days is not being diligent in monitoring and prosecuting your cases.” The arbitrator noted on the record that the “red line” was not in effect as of March 15,

2020, and was still not in effect at the time of the hearing. In addition, the arbitrator noted that attorneys hold a legal duty to check the status of their cases, although the arbitrator questioned if that duty was “altered” when the red line was not enforced. Moreover, the arbitrator acknowledged the death in counsel’s family and how Covid affected the nation. The arbitrator took the matter under advisement.

¶ 7 On December 27, 2021, the arbitrator issued a written decision reinstating the consolidated cases of claimant, and the matter subsequently proceeded to an arbitration hearing on the merits. In his written decision, entered March 21, 2022, the arbitrator ruled, in pertinent part, as follows:

“The Arbitrator based his Decision to allow the reinstatement of these cases on petitioner’s attorney[’s] claim that their office never received a written copy of the Dismissal of these Cases and the fact that the Illinois Workers’ Compensation Commission shut down during the period between when the case was dismissed and the date the Petition to Reinstate would have been due. Further, the Commission suspended the [Red Line] when it reopened on a limited basis. In the Arbitrator’s opinion, the closure of the Commission and the subsequent suspension of the red line relieved the petitioner’s attorney of their duty to monitor his above the Red Line cases from the date of the Red Line suspension in March 2020 until the Red Line enforcement was renewed in November 2021. The Arbitrator also notes [***] that the petitioner’s attorney that appeared for arguments on the Motion to Reinstate represented to the Arbitrator that the wife of the petitioner’s attorney that was handling the case at the time of its dismissal subsequently passed away from Covid after this matter had been dismissed. After [h]earing arguments that were presented in person with a court reporter present, the Arbitrator took the matter under advisement. The Arbitrator did subsequently advise the parties in a Webex conference that he was planning to allow the reinstatement provided petitioner’s attorney was present and prepared to

proceed to Hearing on December 27, 2021. Both parties appeared at that time prepared to proceed, and this matter was tried to conclusion on all issues on December 27, 2021. The Motion to Reinstate was officially granted on this date. The Arbitrator believes his Decision to Reinstate is an appealable issue to be reviewed by [t]he Commission in conjunction with the other issues ruled upon in these cases.”

¶ 8 In his written order, the arbitrator awarded claimant benefits under the Act. Employer sought review before the Commission. Its petition for review and statement of exceptions included the issues of (1) accident, (2) causation, (3) medical expenses, and (3) the nature and extent of the injury. On March 9, 2023, the Commission affirmed and adopted the decision of the arbitrator “after considering the issues of accident, jurisdiction, medical expenses, causal connection, reasonableness of charges, necessity of treatment, permanent disability, [and] reinstatement of claim[.]” Employer filed a timely appeal with the circuit court of Lake County on March 27, 2023, only raising for judicial review the issue of whether the Commission properly reinstated claimant’s case. Following briefing and arguments on November 21, 2023, the circuit court reversed the decision of the Commission after finding that the arbitrator lacked jurisdiction to vacate the dismissal and reinstate claimant’s cases. The circuit court specifically held:

“1. At the time of reinstatement, the Arbitrator lacked jurisdiction to vacate the dismissal with prejudice because the statutory 60-day period to file for reinstatement had passed. The Record reflects notice of dismissal was sent by the Commission to both parties on February 19, 2020. Case law says that receipt of notice is established upon the date of mailing with confirmation of the sender. *See Talmage v. Union Cent. Life Ins. Co.*, 315 Ill. App. 623, 43 N.E.2d 575 (1st Dist. 1942); *Tabor & Co. v. Goren*, 43 Ill. App. 3d 124, 356 N.E.2d 1150 (2nd Dist. 1976).

2. Even if the Illinois Workers' Compensation Commission had jurisdiction at the time of reinstatement, the factual determination of the Arbitrator does not support reinstatement. The Commission only considered Petitioner's arguments supporting the late filing of the motion for reinstatement and failed to consider the evidence against reinstatement. No evidence was considered as to why Petitioner did not appear for Respondent's motion to dismiss on February 18, 2020. There is no evidence in the record to support reinstatement, only allegations."

¶ 9 Claimant timely appealed on December 21, 2023.

¶ 10 II. ANALYSIS

¶ 11 On appeal, claimant argues that the arbitrator and Commission accepted the averments of claimant's counsel that he never received a notice of dismissal, and that the Covid pandemic and death in her attorney's family disrupted her case. Claimant contends these factual findings are in the discretion of the Commission and are due deference. Claimant further argues that the circuit court misstated the law regarding the 60-day limit on filing a motion to reinstate, and that when claimant denied receiving the notice of dismissal, she rebutted the presumption of receipt and raised an issue of fact. In response, employer argues that the circuit court properly held that the arbitrator lacked jurisdiction to reinstate claimant's case because of the 60-day limit. Employer further contends that claimant was not diligent in monitoring the case when it was dismissed on February 18, 2020, and the Commission did not suspend operations until March 21, 2020, and "[a]s such, the 'Covid excuse' is a red herring and without merit."

¶ 12 The question before this court is procedural. Section 9020.90(a) of the Code governs petitions to reinstate and provides as follows:

“When a cause has been dismissed from the Arbitration call for want of prosecution, the parties shall have 60 days from receipt of the dismissal order to file a Petition to Reinstate the cause onto the Arbitration call. Notices of dismissal shall be sent to the parties.”

¶ 13 Here, the circuit court found the arbitrator lacked jurisdiction to reinstate the cases because “[r]eceipt of the notice is established upon the date of mailing with confirmation of the sender.” In so finding, the court cited *Talmage*, 315 Ill. App. 623 and *Tabor & Co.*, 43 Ill. App. 3d 124. However, in *Talmage*, the appellate court held that “when the receipt thereof is denied, the only effect is to raise an issue of fact.” 315 Ill. App. at 639. Claimant, here, denies receiving any notice of dismissal. Accordingly, this denial rebuts the presumption of receipt and creates a question of fact for the trier of fact to decide. “As the trier of fact, the Commission is primarily responsible for resolving conflicts in the evidence, assessing the credibility of witness[es], assigning weight to evidence, and drawing reasonable inferences from the record.” *ABF Freight Sys. v. Illinois Workers’ Comp. Comm’n*, 2015 IL App (1st) 141306WC, ¶ 19. Therefore, because an issue of fact was raised by claimant’s denial of receipt, the Commission—as the trier of fact—was permitted to weigh the evidence, conclude that the 60-day limit had not run, and affirm the arbitrator’s decision. Thus, we cannot conclude that the arbitrator or Commission lacked jurisdiction to reinstate claimant’s cases.

¶ 14 We next consider whether the Commission erred by reinstating claimant’s cases. “The granting or denying of the petition to reinstate rests in the sound discretion of the Commission” (*Zimmerman v. Indus. Comm’n*, 50 Ill. 2d 346, 349 (1972)), and we will not disturb the Commission’s decision on review absent an abuse of discretion (*Bromberg v. Indus. Comm’n*, 97 Ill. 2d 395, 400 (1983)). An abuse of discretion occurs when the Commission’s decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the Commission. *Oliver v. Illinois Workers’ Compensation Comm’n*, 2015 IL App (1st)

143836WC, ¶ 50. A reviewing court can affirm the Commission's decision if there is any legal basis in the record to support its decision, regardless of the Commission's findings or reasoning. *General Motors Corp. v. Industrial Comm'n*, 179 Ill. App. 3d 683, 695 (1989).

¶ 15 While it is true that parties must “exercise due diligence in pursuing his or her claim before the Commission,” as employer argues (*Banks v. Indus. Comm'n*, 345 Ill. App. 3d 1138, 1143 (2004)), the Commission, here, found the particularly unique factual situation of this case sufficient to allow reinstatement. As the arbitrator explained in his decision, claimant denied receiving the notice of dismissal, Covid disrupted the practice and procedures of the Commission, a death occurred in claimant's attorney's family, and “the closure of the Commission and the subsequent suspension of the red line relieved the petitioner's attorney of their duty to monitor his above the Red Line cases.” The exceptional disruption that was the Covid pandemic led the Commission to make specific factual determinations and allow reinstatement of this case. We cannot say this decision was arbitrary, fanciful, or unreasonable, and it is not our role to reweigh evidence or substitute our judgment for that of the Commission. *ABF Freight Sys.*, 2015 IL App (1st) 141306WC, ¶ 19. Furthermore, we afford deference to the Commission's interpretation of its own administrative rules and procedures. *Chicago Transit Auth. v. Indus. Comm'n*, 141 Ill. App. 3d 930, 933 (1986). While acknowledging the unique factual circumstances and our deferential standard, we however note that the extensive delay in this case pushes the limits of our finding of discretion. It is still the norm and expectation of this court that parties will exercise due diligence in pursuing their claims. *Banks*, 345 Ill. App. 3d 1138, 1143 (2004).

¶ 16 In the conclusion of its brief filed in the circuit court, employer requested that the court “[d]eny any permanency, [temporary total disability], or medical expenses[.]” However, it neither argued nor cited case law regarding these issues. The failure to raise an issue in the circuit court results in forfeiture of the issue on appeal. See *Fernandes v. Industrial Comm'n*, 246 Ill. App. 3d

261, 268 (1993) (erroneous calculation issue waived on appeal where claimant failed to raise it before circuit court); *May v. Industrial Comm'n*, 195 Ill. App. 3d 468, 472 (1990) (*res judicata* challenge waived on appeal where claimant failed to raise it before circuit court). Employer's failure to properly raise or argue any claim of error concerning the award of benefits before the circuit court results in the forfeiture of these claims on appeal. Therefore, our decision to reverse the circuit court's finding that the arbitrator lacked jurisdiction to vacate the dismissal leaves no issues for remand and so we reinstate the Commission's decision in full.

¶ 17

III. CONCLUSION

¶ 18 For the reasons stated, we reverse the circuit court's order setting aside the Commission's decision and reinstate the order of the Commission affirming and adopting the decision of the arbitrator.

¶ 19 Reversed; Commission's initial decision reinstated.