ILLINOIS OFFICIAL REPORTS

Supreme Court

***Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212**

Caption in Supreme Court:	MARK GRUSZECZKA, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION (Alliance Contractors, Appellee).
Docket No.	114212
Filed	August 1, 2013
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	Where a workers' compensation claimant's request for circuit court review of an Industrial Commission decision was mailed within the 20 days called for by statute, but was not received by the clerk of circuit court until the twenty-fourth day, the statute's ambiguity was resolved by applying the "mailbox" rule to hold that the filing was timely and that subject matter jurisdiction in the circuit court was not lacking; if this construction is not what the legislature intended, it needs to clearly so set forth.
Decision Under Review	Appeal from the Appellate Court for the Second District; heard in that court on appeal from the Circuit Court of McHenry County, the Hon. Thomas Meyer, Judge, presiding.
Judgment	Reversed and remanded.

Counsel on Appeal	Jane M. Ryan and Thomas M. Strow, of the Law Offices of Peter F. Ferracuti, P.C., of Ottawa, for appellant. Daniel R. Egan, of Rusin, Maciorowski & Friedman, Ltd., of Chicago, for appellee Alliance Contractors.
Justices	JUSTICE THOMAS delivered the judgment of the court, with opinion. Chief Justice Kilbride and Justices Garman, Karmeier, and Theis concurred in the judgment and opinion. Justice Freeman dissented, with opinion, joined by Justice Burke.

OPINION

¶ 1 Claimant, Mark Gruszeczka, sought benefits under the Workers' Compensation Act for accidental injuries allegedly arising out of and in the course of his employment. After a hearing, an arbitrator denied the claim. The Illinois Workers' Compensation Commission (Commission) upheld the arbitrator's decision, and the circuit court of McHenry County confirmed the Commission's decision. On appeal, a divided panel of the appellate court vacated the judgment of the circuit court as having been entered without subject matter jurisdiction, and dismissed Gruszeczka's appeal. 2012 IL App (2d) 101049WC. We allowed Gruszeczka's petition for leave to appeal (Ill. S. Ct. R. 315 (eff. Feb. 26, 2010)), and now reverse the judgment of the appellate court.

¶ 2 BACKGROUND

¶ 3 Gruszeczka filed an application for adjustment of claim alleging accidental injuries sustained on July 21, 2004, while he was working for defendant Alliance Contractors (Alliance). In March 2008 an arbitrator for the Commission found that Gruszeczka did not sustain accidental injuries arising out of and in the course of his employment with Alliance. The arbitrator also found that, "[e]ven assuming an accident did in fact occur," Gruszeczka failed to prove by a preponderance of the evidence that his condition of ill-being was causally related to that accident. On April 15, 2009, the Commission affirmed and adopted the arbitrator's decision denying benefits. Gruszeczka's attorney received a copy of the Commission's decision on April 20, 2009.

¶ 4 Gruszeczka sought judicial review of the Commission's decision in the circuit court of De Kalb County, where the alleged accident occurred. Pursuant to section 19(f)(1) of the Workers' Compensation Act (Act) (820 ILCS 305/19(f)(1) (West 2008)), Gruszeczka submitted to the clerk of the circuit court (1) a request for the issuance of summons, and (2) his attorney's affidavit of payment of the probable cost of the record. The clerk's office file-

stamped these documents on May 14, 2009, which was 24 days after Gruszeczka's attorney received the Commission's decision.

¶ 5 Alliance filed a motion to dismiss, arguing the circuit court lacked jurisdiction to entertain Gruszeczka's action for judicial review because it was filed more than 20 days after Gruszeczka's attorney received the Commission's decision. Alliance argued, in addition, that venue was improper in the circuit court of De Kalb County because Alliance, a party defendant, was located in McHenry County. In his response, Gruszeczka argued that he fulfilled the jurisdictional requirements for filing an action for judicial review by mailing all of the necessary documents to the clerk of the circuit court within 20 days of his attorney's receipt of the Commission's decision. Attached to Gruszeczka's response were affidavits of his attorney and of Coreen Berg, a clerk in the attorney's office. In her affidavit, Berg stated that on May 4, 2009, she mailed the following to the clerk of the circuit court: Gruszeczka's request for the issuance of summons, summons to defendants, a certificate of mailing, the attorney's affidavit of payment of the probable cost of the record, and checks for the filing fee and for the certified mailing of the summons. As to the issue of venue, Gruszeczka argued venue was appropriate in De Kalb County because he was injured while working in Sycamore, which is in De Kalb County.

¶ 6 The circuit court of De Kalb County denied Alliance's motion to dismiss Gruszeczka's action for want of jurisdiction, but granted the motion to transfer venue to the circuit court of McHenry County. After the matter was transferred to McHenry County, Alliance filed a motion to reconsider the denial of its motion to dismiss for lack of jurisdiction. The circuit court denied the motion to reconsider. On the merits of Gruszeczka's action for judicial review, the circuit court of McHenry County confirmed the Commission's decision denying Gruszeczka benefits under the Act.

¶ 7 A divided appellate court held that Gruszeczka failed to commence his action for judicial review within the 20-day period mandated in section 19(f)(1) of the Act. 2012 IL App (2d) 101049WC. The appellate court majority acknowledged that a party is entitled to rely on the mailbox rule when he seeks review of an arbitrator's decision before the Commission (*Norris v. Industrial Comm'n*, 313 Ill. App. 3d 993 (2000)), and when he seeks review of the circuit court's decision in the appellate court (*Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326 (1989)), but held that he may *not* do so at the middle stage of review when he seeks review of the Commission's decision in the circuit court. The majority stated that it "decline[d] to follow *Norris*," and that *Harrisburg-Raleigh Airport Authority* was distinguishable because in that case this court was interpreting one of its rules and exercising its rulemaking authority. 2012 IL App (2d) 101049WC, ¶¶ 11, 12. The majority held that a court could *not* interpret a statute as providing for a mailbox rule and said that it was aware of no authority that would allow it to do so. *Id.* ¶ 12. Instead, the majority found guidance in cases that declined to apply the mailbox rule to the filing of a civil complaint (*Kelly v. Mazzie*, 207 Ill. App. 3d 251 (1990)), and a section 2-1401petition (*Wilkins v. Dellenback*, 149 Ill. App. 3d 549 (1986)). The majority noted that section 19(f)(1) requires that a proceeding for judicial review be "commenced" within 20 days of the receipt of the decision, and held that the same rule that applies to the commencement of civil complaints and section 2-1401 proceedings should also apply here. 2012 IL App (2d) 101049WC, ¶ 13.

The majority cited Webster's for the proposition that "commence" means "to begin or to start," and stated that it was "at a loss to understand how one can begin or start any action in the circuit court before the necessary documentation is presented to the clerk of the court." *Id.* ¶ 15. The appellate court vacated the judgment of the circuit court as having been entered without subject matter jurisdiction and dismissed Gruszeczka's appeal.

¶ 8 Justices Stewart and Holdridge dissented. The dissent noted that the mailbox rule has already been held to apply to the other two steps in the workers' compensation appeal process, and argued that it is illogical to apply a different rule at the middle stage. *Id.* ¶ 20 (Stewart, J., dissenting, joined by Holdridge, J.). The dissent argued that *Kelly* and *Wilkins* were distinguishable because they involved original actions in the circuit court. Moreover, the dissent pointed out that *Kelly* and *Wilkins* specifically distinguished cases adopting the mailbox rule for the very reason that those cases involved jurisdictional steps in the appeal process rather than the filing of original actions. *Id.* ¶ 24.

¶ 9 ANALYSIS

¶ 10 Gruszeczka argues that the circuit court acquired subject matter jurisdiction when Berg mailed all of the necessary documents to the clerk of the circuit court of De Kalb County on May 4, 2009, which was within 20 days of the receipt of the Commission's decision. Gruszeczka argues that the mailbox rule should apply when a party seeks judicial review of a Commission decision under section 19(f)(1). Under the mailbox rule, Gruszeczka asserts, the time of the mailing of the necessary documents to the clerk of the circuit court is the time of filing for jurisdictional purposes. See Black's Law Dictionary 964 (7th ed. 1999) (defining "mailbox rule" as "[t]he principle that when a pleading or other document is filed or served by mail, filing or service is deemed to have occurred on the date of mailing").

¶ 11 Alliance responds that there is nothing in section 19(f) of the Act "which allows for the initiation of the Circuit Court [review] process by mail." Alliance notes that Gruszeczka's request to the circuit court for issuance of summons was file-stamped on May 14, 2009, more than 20 days after receipt of the Commission's decision. In Alliance's view, the circuit court therefore lacked jurisdiction to consider Gruszeczka's action for judicial review.

¶ 12 The interpretation of a statute is a question of law that we review *de novo*. *Branson v. Department of Revenue*, 168 Ill. 2d 247, 253-54 (1995). The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Phoenix Bond & Indemnity Co. v. Pappas*, 194 Ill. 2d 99, 106 (2000). The language used in the statute is normally the best indicator of what the legislature intended. *Id.* Each undefined word in the statute must be given its ordinary and popularly understood meaning. *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 270 (1998). Words and phrases must not be viewed in isolation but must be considered in light of other relevant provisions of the statute. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 320 (2003). In ascertaining the legislature's intent, if the meaning of an enactment is unclear from the statutory language itself, the court may look beyond the language employed and consider the purpose behind the law and the evils the law was designed to remedy (*Kunkel v. Walton*, 179 Ill. 2d 519, 533-34 (1997)), as well as other sources such as legislative history (*People v. Jameson*, 162 Ill.

2d 282, 288 (1994)). However, where the statutory language is clear, it will be given effect without resort to other aids for construction. *Kunkel*, 179 Ill. 2d at 534.

¶ 13 Circuit courts are courts of general jurisdiction and enjoy a presumption of subject matter jurisdiction, but such a presumption is not available in workers' compensation proceedings, where the court exercises special statutory jurisdiction, and strict compliance with the statute is required to vest the court with subject matter jurisdiction. *Kavonius v. Industrial Comm'n*, 314 Ill. App. 3d 166, 169 (2000). This court has consistently held that the timely filing of a request for issuance of summons and the timely exhibition of proof of payment for the probable cost of the record (both of which are necessary for commencement of a judicial review action under section 19(f)(1)) are jurisdictional requirements that must be strictly adhered to in order to vest the circuit court with jurisdiction. *Jones v. Industrial Comm'n*, 188 Ill. 2d 314, 320 (1999).[1]

¶ 14 Section 19(f)(1) of the Act, which deals with actions for judicial review of Commission decisions, provides, in pertinent part:

> "(1) Except in cases of claims against the State of Illinois, in which case the decision of the Commission shall not be subject to judicial review, the Circuit Court of the county where any of the parties defendant may be found, or if none of the parties defendant can be found in this State then the Circuit Court of the county where the accident occurred, shall by summons to the Commission have power to review all questions of law and fact presented by such record.
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> A proceeding for review shall be *commenced within 20 days of the receipt of notice of the decision of the Commission*. The summons shall be issued by the clerk of such court upon written request ***, and the written request shall contain the last known address of other parties in interest and their attorneys of record who are to be served by summons. ***
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> 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

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[1]The question before the court is not answered by recognizing that the circuit court exercises special statutory jurisdiction in workers' compensation cases and that strict compliance with the jurisdictional requirements of section 19(f)(1) is required. The question for the court is *how* a party strictly complies with the time limit—by getting the requisite documents in the mail within 20 days or having them file-stamped by the circuit clerk within 20 days. This court requires strict compliance with Rule 303(a)'s time limit for filing a notice of appeal. *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 150 (1994). When this court held in *Harrisburg-Raleigh Airport Authority* that the mailbox rule applied to Rule 303(a), this court was *not* excusing strict compliance with the rule. Rather, the court was clarifying that a party strictly complies with the rule by having the notice of appeal in the mail within 30 days of final judgment.

an affidavit of the attorney setting forth that payment has been made of the sums so determined to the Secretary or Assistant Secretary of the Commission ***." (Emphasis added.) 820 ILCS 305/19(f)(1) (West 2008).

¶ 15 The question for this court is whether a proceeding for review is commenced when the request for summons is placed in the mail or when it is file-stamped by the circuit clerk. Unlike the appellate court, we do not believe that this question can be answered merely by consulting a dictionary. As the appellate court noted, "commence" means "to enter upon : BEGIN, START." Webster's Third New International Dictionary 456 (2002). This definition does not *resolve* the question; it *raises* the same one: Is a proceeding for judicial review of a Commission decision under section 19(f)(1) begun or started when the request for summons and the proof of payment of the probable cost of the record are placed in the mailbox, or when they are file-stamped by the circuit clerk? Moreover, unlike the appellate court, we are not at a loss to understand how a legal process can be begun or started when a party places the necessary documents in the mail. Indeed, that is the very essence of the mailbox rule.

¶ 16 A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses. *Jameson*, 162 Ill. 2d at 288. Section 19(f)(1) may reasonably be construed both in the manner that Gruszeczka proposes and in the manner that Alliance proposes. The appellate court believed that if a statute uses the word "commence" in relation to a filing deadline, that necessarily means that the date the document is received by the circuit clerk controls. 2012 IL App (2d) 101049WC, ¶ 13. This is simply not true. Section 122-1(b) of the Post-Conviction Hearing Act (725 ILCS 5/122-1(b) (West 2010)), for instance, provides that a postconviction proceeding is "commenced" by filing a verified petition with the clerk of the circuit court, and this has always been interpreted to mean that a postconviction proceeding is "commenced" when a petitioner places the petition in the mail. *People v. Saunders*, 261 Ill. App. 3d 700 (1994); *People v. Johnson*, 232 Ill. App. 3d 882 (1992). Moreover, as we will discuss in detail later, the mailbox rule has already been held to apply to most documents filed with the circuit court. We conclude that "commence" in section 19(f)(1) is ambiguous.

¶ 17 As we noted above, where the language of a statute is ambiguous, we may consider other sources such as legislative history to ascertain the legislature's intent. *Jameson*, 162 Ill. 2d at 288; *Kunkel*, 179 Ill. 2d at 534. However, our research has not revealed the existence of any legislative material that would assist in resolving the issue before us. Alliance asserts that there is nothing in the legislative history that would indicate that a mailbox rule would apply. There is likewise nothing in the legislative history that would indicate that the mailbox rule would not apply.

¶ 18 Over 20 years ago, in *Harrisburg-Raleigh Airport Authority*, this court recognized that the modern policy and trend was to equate time of mailing with time of filing. In that case, the court construed Rule 303(a)'s requirement that a notice of appeal must be "filed with the clerk of the circuit court" within 30 days of final judgment. *Harrisburg-Raleigh Airport Authority*, 126 Ill. 2d at 339. This court noted that the policy of filing documents by mail was widespread, and that the trend in statutes and rules was to equate time of mailing and time of filing, "particularly with respect to appellate practice." *Id.* at 340-41 (citing Ill. S. Ct. R.

11 (eff. May 15, 1980); Ill. S. Ct. R. 373 (eff. Aug. 1, 1985); Ill. Rev. Stat. 1985, ch. 1, ¶ 1026(1)). Therefore, the court held that a notice of appeal, which is closely related to the appellate process because it confers jurisdiction on the appellate court, should be considered "filed in the circuit court" when placed in the mail. The court found that sound policy reasons supported this reading because it placed smaller firms on an equal footing with their larger competitors. *Id.* at 342. At the time, the court declined to say whether the same policy would apply to other papers filed in the circuit court. *Id.*

¶ 19 A fairly consistent body of precedent has developed in the appellate court regarding when the mailbox rule will be applied, and we find that these cases set forth a reasonable approach. As the appellate court majority noted below, the courts in *Kelly v. Mazzie*, 207 Ill. App. 3d 251 (1990), and *Wilkins v. Dellenback*, 149 Ill. App. 3d 549 (1986), held that the mailbox rule would not be applied to the filing of a civil complaint (*Kelly*) or a section 2-1401 petition (*Dellenback*). The appellate court majority very strongly implied that the result in both of these cases was based on the plain meaning of the word "commence" (see 2012 IL App (2d) 101049WC, ¶ 13), but that played no part in the analysis of either decision. Indeed, section 2-1401 did not at the time, nor does it now, even contain the word "commence" or any variation thereof. See Ill. Rev. Stat. 1985, ch. 110, ¶ 2-1401 (now 735 ILCS 5/2-1401 (West 2010)).

¶ 20 The real reason that the mailbox rule was rejected in both cases was summarized in *Kelly*:

> "Although a section 2-1401 petition, and not a complaint, was at issue in *Wilkins v. Dellenback*, 149 Ill. App. 3d 549 (1986), that case implicitly answers the question presented here. In *Wilkins*, the section 2-1401 petition was mailed within the two-year period but received by the clerk after the period had expired. In determining whether the petition was timely, the court stated:
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> > 'Although the weight of recent authority evinces a policy favoring the acceptance of the mailing date rather than the receiving date of certain documents, such as a post-trial motion or a notice of appeal, as the filing date of those documents with the clerk of the circuit court [citations], this policy has never been applied to the filing of pleadings such as a complaint or a section 2-1401 petition.' 149 Ill. App. 3d at 553.
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> The court determined that, unlike the filing of a document in a pending action, the filing of a section 2-1401 petition is the initiation of a new action, and '[l]ike a complaint, it must be sufficiently pleaded to notify the opposition of the cause of action and must be filed within a certain period of time to avoid staleness.' (149 Ill. App. 3d at 554.) The court concluded that the actual filing date of a section 2-1401 petition is the date when it is received and stamped by the circuit clerk's office." *Kelly*, 207 Ill. App. 3d at 253.

¶ 21 *Kelly* went on to explain that a statute of limitations is also involved with the filing of a complaint, and that defendants have a right to rely on the certainty that a statute of limitations provides. Moreover, the court explained that the limitations period in the case under consideration was two years, and thus requiring parties to comply with the actual receipt rule

was not "an unwarranted burden." *Id.* at 254. *Kelly* distinguished *Harrisburg-Raleigh Airport Authority* on the basis that it involved a notice of appeal, which is " 'closely related to the appellate process.' " *Id.* (quoting *Harrisburg-Raleigh Airport Authority*, 126 Ill. 2d at 341).

¶ 22 Thus, the results in *Kelly* and *Wilkins* had nothing to do with the plain meaning of the word "commence." Rather, the courts drew a distinction between documents that: (1) were pleadings that commenced a new action and were subject to a statute of limitations; and (2) were continuations of a previous proceeding or were closely related to the appellate process. *Kelly* and *Wilkins* were both decisions of the Appellate Court, Second District, and that court later explained in *Pakrovsky v. Village of Lakemoor*, 274 Ill. App. 3d 515, 517 (1995),[2] that *Kelly* and *Wilkins* do *not* state the general rule; they state a narrow exception to the general rule: "Except for the filing of complaints and the filing of petitions pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 1994)), the appellate court has consistently held that documents mailed to the circuit court within the requisite time period but received thereafter are timely filed." *Pakrovsky* involved whether the mailbox rule applied to the notice of a rejection of an arbitration award. The plaintiffs argued that the court should apply the *Kelly* and *Wilkins* rule because a notice of rejection of an arbitration award commences the action in the circuit court. The appellate court disagreed, explaining that the rejection of the award merely allowed the parties to go to trial. It was not the commencement of an entirely new cause of action, and there was no statute of limitations involved. Thus, because "the weight of authority clearly favors equating the mailing date with the filing date for court documents which do not commence a new cause of action," the "special circumstances" of *Kelly* and *Wilkins* did not apply. *Pakrovsky*, 274 Ill. App. 3d at 518.[3]

¶ 23 Alliance argues that *Kelly* and *Wilkins* apply here because circuit court review of a Commission decision is a "new action" with a "20-day statute of limitations." We disagree with this characterization and find that the *Kelly/Wilkins* test leads inescapably to the conclusion that the date of mailing should control when a party seeks judicial review of a Commission decision. Clearly, when a party seeks review of a Commission decision in the circuit court, the party is *not* instituting an entirely new cause of action. As this court explained in *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 157 (1992), the circuit courts have no original jurisdiction over workers' compensation proceedings where benefits are determined. Rather, the "role of the circuit court in compensation proceedings is *appellate only*, and is limited by section 19(f) of the Workers' Compensation Act." (Emphasis added.) *Id.*; see also *Scott Wetzel Services v. Regard*, 271 Ill. App. 3d 478, 481 (1995) (same). A review of the plain language of section 19(f) leaves no doubt that a proceeding for judicial review under that section is an appeal of the Commission's decision. Section 19(f) refers to

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[2]Two of the justices who decided *Kelly* were also on the panel in *Pakrovsky*.

[3]Postconviction petitions are an exception to this approach, as the mailbox rule applies to them even though they commence new actions and are subject to a statute of limitations. Additional considerations apply to that situation, however, as prisoners have no choice but to file by mail and must deal with the vagaries of the prison mail system. See *Saunders*, 261 Ill. App. 3d at 704; *Johnson*, 232 Ill. App. 3d at 884.

the proceeding as a "proceeding for review," and it specifically states that the circuit court may "review all questions of law and fact presented by [the] record" and may "confirm or set aside the decision of the Commission." 820 ILCS 305/19(f) (West 2010). Thus, a request for summons under section 19(f) is how one commences an appeal of the Commission's decision to the circuit court. It is a continuation of the same action, and the request for summons is as "closely related to the appellate process" as the notice of appeal considered in *Harrisburg-Raleigh Airport Authority*.[4] Indeed, the request for summons is the functional equivalent of a notice of appeal.

¶ 24 The other concerns that *Kelly* listed are not present here, either. There is no issue with the other party lacking notice of the claim, because the matter has already been contested before the arbitrator and the Commission. There is similarly no issue with a lengthy statute of limitations. In *Kelly*, the court believed that a two-year statute of limitations should not be extended any longer because of "staleness" concerns, and the court stated that the opposing party had a right to the certainty that a statute of limitations provides. Clearly, there is no "staleness" concern when a party seeks circuit court review of a Commission decision, because a party has a mere *20 days* to do so. This is a full 10 days shorter than a party has to appeal an arbitrator's decision to the Commission (820 ILCS 305/19(b) (West 2010)), or to appeal the circuit court's decision to the appellate court (Ill. S. Ct. R. 303(a) (eff. May 1, 2007)). As Justice Stewart noted in his dissent below, applying the mailbox rule here would not in any way affect cases that have declined to apply the mailbox rule to the filing of original actions in the circuit court. 2012 IL App (2d) 101049WC, ¶ 24 (Stewart, J., dissenting, joined by Holdridge, J.). The appellate court majority stated that it found "no valid reason to deviate from the holdings or reasoning in either *Kelly* or *Wilkins*" (*id.* ¶ 13 (majority op.)), but that is precisely what it did.

¶ 25 The appellate court majority was also concerned that the filing deadline here was supplied by a statute and not a supreme court rule. In *Harrisburg-Raleigh Airport Authority*, this court was construing one of its own rules, and the appellate court stated that it was aware of no authority that would allow a court to construe a statute as containing a mailbox rule. *Id.* ¶ 12. That authority is readily available. The courts simply have not drawn a distinction between statutes and rules when applying the mailbox rule to filing deadlines.[5] See, *e.g.*, *People v. Tlatenchi*, 391 Ill. App. 3d 705 (2009) (motion to withdraw a guilty plea pursuant to Supreme Court Rule 604(d)); *Baca v. Trejo*, 388 Ill. App. 3d 193 (2009) (motion to vacate default judgment pursuant to section 2-1301(e) of the Code of Civil Procedure (735 ILCS

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[4]At oral argument, Justice Burke asked counsel for Alliance whether the proceeding in the circuit court was an appeal of the Commission's decision. Although counsel continued to maintain that it was a new action, he agreed with Justice Burke that "in common parlance" it was an appeal.

[5]Both *Kelly*, 207 Ill. App. 3d at 254, and *Wilkins*, 149 Ill. App. 3d at 554, noted that they were construing statutes rather than supreme court rules. However, the Second District had previously construed a statute as containing a mailbox rule (*A.S. Schulman Electric Co. v. Village of Fox Lake*, 115 Ill. App. 3d 746 (1983)), and that court clearly no longer recognizes any such distinction between statutes and rules (*Baca v. Trejo*, 388 Ill. App. 3d 193 (2009)).

5/2-1301(e) (West 2006)); *Tolve v. Ogden Chrysler Plymouth, Inc.*, 324 Ill. App. 3d 485 (2001) (postjudgment petition for attorney fees); *Pakrovsky*, 274 Ill. App. 3d 515 (notice of rejection of an arbitration award pursuant to Supreme Court Rule 93(a)); *Johnson*, 232 Ill. App. 3d 882 (postconviction petition pursuant to section 122-1 of the Post-Conviction Hearing Act (Ill. Rev. Stat. 1991, ch. 38, ¶ 122-1 (now 725 ILCS 5/122-1 (West 2010)); *People v. Easley*, 199 Ill. App. 3d 179 (1990) (motion to reduce sentence pursuant to section 5-8-1(c) of the Unified Code of Corrections (Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-8-1(c) (now 730 ILCS 5/5-4.5-50(d) (West 2010)))); *Board of Trustees of Southern Illinois University v. Department of Human Rights*, 190 Ill. App. 3d 644 (1989) (entry of appearance and answer); *A.S. Schulman Electric Co. v. Village of Fox Lake*, 115 Ill. App. 3d 746 (1983) (posttrial motion pursuant to section 2-1203 of the Code of Civil Procedure (Ill. Rev. Stat. 1981, ch. 110, ¶ 2-1203 (now 735 ILCS 5/2-1203 (West 2010)))); *Department of Conservation v. Baltimore & Ohio R.R. Co.*, 103 Ill. App. 3d 417 (1982) (notice of appeal of Illinois Commerce Commission decision to the circuit court pursuant to section 68 of the Public Utilities Act (Ill. Rev. Stat. 1979, ch. 111⅔, ¶ 72)). Thus, contrary to what the appellate court majority claimed, ample authority supports application of the mailbox rule when a filing deadline is supplied by statute.

¶ 26 The appellate court majority pointed to section 1.25 of the Statute on Statutes (5 ILCS 70/1.25 (West 2012)), which provides a mailbox rule for all documents filed with the state, as evidence that the legislature "certainly knows how to provide for such a rule when it desires to do so." 2012 IL App (2d) 101049WC, ¶ 14. The counter to that argument is that the same statute also shows that the legislature knows how to *preclude* application of the mailbox rule when it wants to. In 2011, the legislature amended the section of the Statute on Statutes relied upon by the appellate court to provide that:

> "Notwithstanding any other provision of law, neither a petition for nomination as a candidate for political office nor a petition to submit a public question to be voted upon by the electors of the State or of any political subdivision or district may be considered filed until it is received by the political subdivision, election authority, or the State Board of Elections, as applicable." 5 ILCS 70/1.25 (West 2012).

¶ 27 In none of the above-cited cases in which the courts construed statutes as containing a mailbox rule did the legislature respond by amending the statute to preclude it. The legislature is obviously aware that the courts have been construing statutes as containing the mailbox rule for decades, and has stepped in to preclude it only in the case of certain documents filed under the Election Code. It is quite possible that the legislature is comfortable with the widespread adoption of the mailbox rule by the courts and sees no need to specifically provide for it in every statute.

¶ 28 We note that the mailbox rule already applies at the first and third stages of the workers' compensation review process. Pursuant to *Harrisburg-Raleigh Airport Authority*, a party may rely on the mailbox rule when appealing the circuit court's decision to the appellate court. Moreover, the appellate court held in *Norris v. Industrial Comm'n*, 313 Ill. App. 3d 993 (2000), that a party may rely on the mailbox rule when seeking review of the arbitrator's decision before the Commission. Thus, in addition to being consistent with the existing legal framework for application of the mailbox rule, a decision in claimant's favor would bring

harmony and consistency to the workers' compensation review process, with the same rules applying at every stage of review. By contrast, Alliance advocates for a process in which the rules change at every step: first the party can rely on the mailbox rule, then he cannot, then he can do so again. We believe that if this is what the legislature intended, then the legislature needs to clearly set this forth in the statute. Absent such a clear directive from the legislature, we believe that allowing a party to rely on the mailbox rule when he appeals a decision of the Commission to the circuit court is the result most consistent with Illinois law.

¶ 29 CONCLUSION

¶ 30 For the reasons stated, the judgment of the appellate court is reversed, and the cause is remanded to the appellate court for consideration of the other issues raised by the parties.

¶ 31 Reversed and remanded.

¶ 32 JUSTICE FREEMAN, dissenting:

¶ 33 The majority holds that the mailbox rule applies when a party seeks judicial review of a Workers' Compensation Commission (Commission) decision in the circuit court pursuant to section 19(f)(1) of the Workers' Compensation Act (Act). According to the majority, a section 19(f)(1) proceeding for review is commenced when the necessary documentation is placed in the mail, rather than when it is received and file-stamped by the circuit clerk. I disagree with this conclusion and the reasoning underlying it. I would apply a different analysis and would conclude, contrary to the majority, that the mailbox rule does not apply here. I respectfully dissent.

¶ 34 Section 19(f)(1) of the Act, which deals with actions for judicial review of Commission decisions, provides, in pertinent part:

> "(1) Except in cases of claims against the State of Illinois, in which case the decision of the Commission shall not be subject to judicial review, the Circuit Court of the county where any of the parties defendant may be found, or if none of the parties defendant can be found in this State then the Circuit Court of the county where the accident occurred, shall by summons to the Commission have power to review all questions of law and fact presented by such record.
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> A proceeding for review shall be *commenced within 20 days of the receipt of notice of the decision of the Commission*. The summons shall be issued by the clerk of such court upon written request ***. ***
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> 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 to the Secretary or Assistant Secretary of the Commission ***." (Emphasis added.) 820 ILCS 305/19(f)(1) (West 2008).

¶ 35 In its analysis, the majority preliminarily notes the importance in workers' compensation cases of the "special statutory jurisdiction" conferred by the Act. "Circuit courts are courts of general jurisdiction and enjoy a presumption of subject matter jurisdiction, but such a presumption is not available in workers' compensation proceedings, where the court exercises special statutory jurisdiction, and strict compliance with the statute is required to vest the court with subject matter jurisdiction." *Supra* ¶ 13. Specifically, "the timely filing of a request for issuance of summons and the timely exhibition of proof of payment for the probable cost of the record (both of which are necessary for commencement of a judicial review action under section 19(f)(1)) are jurisdictional requirements that must be strictly adhered to in order to vest the circuit court with jurisdiction." *Supra* ¶ 13 (citing *Jones v. Industrial Comm'n*, 188 Ill. 2d 314, 320 (1999)).

¶ 36 The majority next provides a gloss on these assertions regarding "special statutory jurisdiction." In a footnote following the citation to *Jones*, the majority begins by stating:

> "The question before the court is not answered by recognizing that the circuit court exercises special statutory jurisdiction in workers' compensation cases and that strict compliance with the jurisdictional requirements of section 19(f)(1) is required. The question for the court is *how* a party strictly complies with the time limit—by getting the requisite documents in the mail within 20 days or having them file-stamped by the circuit clerk within 20 days." *Supra* ¶ 13 n.1.

¶ 37 The second sentence presents a correct description of the question before this court: whether strict compliance is achieved by putting the necessary documents in the mail within 20 days, or by getting them file-stamped by the clerk within 20 days. However, this question raises a second one: What specifically constitutes strict compliance under section 19(f)(1) of the Act, as opposed to, say, strict compliance under this court's Rule 303(a)? The provisions themselves are clearly different. For example, Rule 303(a) deals with appeals *from* final judgments of the circuit court, while section 19(f)(1) applies to requests for judicial review *by* the circuit court.

¶ 38 In the second portion of the footnote, the majority attempts to merge the two. The majority cites *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143 (1994), for the proposition that this court requires strict compliance with Rule 303(a)'s time limit for filing a notice of appeal. And in *Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326 (1989), this court held that the mailbox rule applied to Rule 303(a). The majority assures us that in applying the mailbox rule to Rule 303(a), this court was *not* excusing strict compliance. "Rather, the court was clarifying that a party strictly complies with the rule by having the notice of appeal in the mail within 30 days of final judgment." *Supra* ¶ 13 n.1. The clear implication is that if the mailbox rule qualifies as strict compliance under Rule 303(a), it should qualify as strict compliance under section 19(f)(1). I disagree. The majority's argument here is unpersuasive.

¶ 39 Beyond this footnote and other initial matters (*e.g.*, setting forth relevant portions of the statute, stating canons of statutory construction), the core of the majority's analysis relies on

four cases, one from this court (*Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326 (1989)), and three from the Appellate Court, Second District (*Wilkins v. Dellenback*, 149 Ill. App. 3d 549 (1986); *Kelly v. Mazzie*, 207 Ill. App. 3d 251 (1990); *Pakrovsky v. Village of Lakemoor*, 274 Ill. App. 3d 515 (1995)). From these cases, the majority draws two conclusions: (1) the modern policy and trend is to equate time of mailing with time of filing, particularly with respect to appellate practice; and (2) our appellate court has fairly consistently applied the mailbox rule to documents that are continuations of a previous proceeding or are closely related to the appellate process, but not to pleadings that commence a new action, such as complaints or section 2-1401 petitions. The majority then cites two other cases,[6] as well as "the plain language of section 19(f)," and concludes "a proceeding for judicial review under that section is an appeal of the Commission's decision" (*supra* ¶ 23) and, as such, is subject to the mailbox rule. In concluding that the date of mailing controls, the majority acknowledges its reliance on a "fairly consistent body of precedent *** in the appellate court regarding when the mailbox rule will be applied." *Supra* ¶ 19.

¶ 40 A problem with this reasoning is that none of the four decisions relied on by the majority in the principal portion of the analysis involve the Act in any way. *Harrisburg-Raleigh Airport Authority*, for example, is a tax-exemption case, not a workers' compensation case. The main issue was whether, under section 19.20 of the Revenue Act of 1939 (Ill. Rev. Stat. 1985, ch. 120, ¶ 500.20), real estate leased to private individuals by an airport authority was exempt from taxation as property belonging to an airport authority and "used for Airport Authority purposes." More important, the mailbox-rule decision in *Harrisburg-Raleigh Airport Authority* (the court held the mailbox rule would apply) dealt with notices of appeal from the circuit court to the appellate court, not, as here, with requests for judicial review of a Commission decision by the circuit court. There was thus no reference to the special statutory jurisdiction exercised by circuit courts under the Act or to the compliance with prescribed conditions necessary for such jurisdiction to vest.

¶ 41 Similarly, the courts in *Wilkins* and *Kelly* held that the mailbox rule did not apply to the filing of a section 2-1401 petition (*Wilkins*) or a personal-injury complaint (*Kelly*), and the court in *Pakrovsky* held that the mailbox rule did apply to the rejection of an arbitration award in a property damage case. None of these decisions are workers' compensation cases. No mention is made of the Act.

¶ 42 If I were writing this opinion, I would take a different approach, focusing instead on workers' compensation cases from this court which specifically involve section 19(f)(1) of the Act. Because the particular question presented here is an issue of first impression for this court, there are no such cases directly on point. However, this court has considered other section 19(f)(1) issues, including the requirement that the party seeking judicial review exhibit proof of payment of the probable cost of the record. Decisions addressing this proof-of-payment measure are helpful in determining the mailbox-rule question presented here.

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[6] *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 157 (1992), and *Scott Wetzel Services v. Regard*, 271 Ill. App. 3d 478, 481 (1995).

¶ 43 In *Moweaqua Coal Mining & Manufacturing Co. v. Industrial Comm'n*, 322 Ill. 403 (1926), the employer (Moweaqua) sought judicial review of an award to the claimant under the Workmen's (now Workers') Compensation Act. The employer filed a *praecipe* for a writ of *certiorari* (the statutory predecessor of the request to issue summons) in the circuit court on November 29, 1924, apparently within the 20-day statutory period, and the writ (summons) was issued on that day. However, the probable cost of the record ($25) was not paid until March 6, 1925. The circuit court granted the claimant's motion to quash the writ, and this court affirmed. In reaching that decision, this court explained that, absent complete compliance with the statutory conditions, the circuit court lacked jurisdiction.

> "The method of bringing before the circuit court for consideration the record of the Industrial Commission is purely statutory, and the court can obtain jurisdiction of the proceeding only in the manner provided by statute. [Citations.] The jurisdiction exercised by the circuit courts under the Workmen's Compensation act is a special statutory jurisdiction, and the parties seeking a hearing in the circuit court under this statute must comply with all the conditions prescribed. The statute says plainly that no *praecipe* for a writ of *certiorari* may be filed and no writ shall issue until the parties seeking the writ shall exhibit to the circuit clerk a receipt showing payment of the amount of the probable cost of the record ***. *** The language of the statute is plain and there is no room for construction. The clerk had no authority to issue the writ and it was properly quashed on motion." *Moweaqua*, 322 Ill. at 405.

¶ 44 This court reached a similar conclusion on analogous facts in *Peter H. Clark Lodge No. 483, I.B.P.O.E. of W. Elks v. Industrial Comm'n*, 48 Ill. 2d 64 (1971), where an arbitrator's award to the claimant was upheld by the Commission and confirmed by the circuit court. The claimant argued that the circuit court, though it approved the award, nevertheless was without jurisdiction to review it. The claimant contended, *inter alia*, that the employer (the Lodge) "failed, within the period allowable under section 19(f) ***, to exhibit a receipt for the cost of the record at the time the *praecipe* for the writ of *certiorari* was filed in the circuit court." *Id.* at 66. This court agreed, holding the circuit court lacked jurisdiction. The record demonstrated that the receipt was not exhibited to the clerk at the time the *praecipe* for *certiorari* was filed. "The receipt was filed on February 26, 1969, two days beyond the expiration of the statutory 20-day period, and the receipt itself shows that it was prepared by the Industrial Commission on February 25, 1969, which also was after the period for filing the *praecipe* had expired." *Id.* at 69. The court cited *Moweaqua* and other cases in stating that the jurisdiction of the court to review the award is "wholly statutory, and in the absence of complete compliance with the act jurisdiction of the subject matter is not obtained." *Id.* at 70-71.

¶ 45 This court reached a somewhat different conclusion in *Berry v. Industrial Comm'n*, 55 Ill. 2d 274 (1973), where the claimant sought judicial review of a Commission decision affirming the denial of compensation. The claimant's attorney sent a *praecipe* for writ of *certiorari* to the circuit clerk, who received it on May 26, 1972, the fifteenth day of the 20-day period. Also on that day, the attorney (1) forwarded to the Commission a check for $200 in payment of the probable cost of the record, and (2) forwarded a copy of the transmittal letter to the circuit clerk. On May 30, the last day of the 20-day period, the clerk's office

received the copy of the transmittal letter, and a deputy clerk called the Commission and confirmed the $200 had been paid. The deputy clerk then filed the petition for writ of *certiorari*. The employer moved to quash the writ on the ground that the claimant did not physically exhibit to the clerk a receipt for the probable cost of the record before the *praecipe* was filed. The circuit court allowed the motion and quashed the writ. This court reversed, concluding that "[u]nder the peculiar facts present in this case" the requirements of the statute were satisfied and the circuit court erred in quashing the writ. *Id.* at 277. Citing *Moweaqua*, the court noted that the purpose of requiring the exhibiting of the receipt was to coerce the *payment* of the costs of the record. "If the costs have been paid and the clerk has been satisfied that payment has in fact been made, the purpose of the statute has been fulfilled." *Id.* at 278. In *Berry*, before issuing the *certiorari* petition, the clerk received a copy of the letter from the attorney to the Commission transmitting the costs, and the clerk telephoned the Commission to verify that the costs had been received. This court observed "that the tendency is to simplify procedure, to honor substance over form, and to prevent technicalities from depriving a party of the right to be heard." *Id.* (citing *Republic Steel Corp. v. Industrial Comm'n*, 30 Ill. 2d 311, 313 (1964)). The court in *Berry* noted that *Moweaqua* and *Peter H. Clark Lodge* were distinguishable on the basis that in those cases it appeared the cost of the record was not paid within the 20-day statutory period.

¶ 46 Ten years later this court declined to extend "the rationale of *Berry*" in *Arrington v. Industrial Comm'n*, 96 Ill. 2d 505 (1983), where the Commission modified an award of compensation to the claimant, and the circuit court set aside that decision and reinstated the award. The employer (Arrington) argued the circuit court lacked jurisdiction to review the Commission's decision because the claimant failed to exhibit a receipt showing payment of the cost of the record as required by section 19(f)(1). Instead, the claimant's attorney timely filed an affidavit with the circuit clerk stating he had sent a check to the Commission to pay the probable cost of the record but had not received a receipt. On the basis of the affidavit, the clerk issued a writ of *certiorari*. Seven days later—one day after the 20-day period—the clerk received the receipt. This court vacated the circuit court's judgment, concluding the writ was wrongly issued and the circuit court had no jurisdiction to review the Commission's decision. The court acknowledged that the evidence ultimately showed the payment was made and the Commission's receipt was issued before the writ of *certiorari* was issued. The court nevertheless concluded that the affidavit, which was the only basis for the clerk's issuance of the writ within the 20-day period, was in itself "inadequate to demonstrate that the Commission had actually received payment *** before the writ of the circuit court issued." *Id.* at 510. The court acknowledged *Berry*'s aim of furthering substance over form and preventing technicalities from depriving a party of the right to be heard, but concluded "these objectives must be balanced against the statutory goal of ensuring that payment has actually been received prior to the issuance of the writ." *Id.* Notably, in concluding its decision, this court acknowledged the hardship that can result from strict compliance with section 19(f)(1) and "strongly suggest[ed] *** that the General Assembly seriously consider amending section 19(f)(1) to permit proof of payment to the Commission to be made by *affidavit of the attorney* or in some other suitable manner." (Emphasis added.) *Id.* at 512.

¶ 47 At the time *Arrington* was decided, section 19(f)(1) provided that "a receipt showing

payment" of the probable cost of the record shall be exhibited to the circuit clerk, but mentioned no other way of establishing proof of payment. Ill. Rev. Stat. 1981, ch. 48, ¶ 138.19(f)(1). In 1985, two years after *Arrington* was decided, the General Assembly amended the statute to provide, as it still does, that the party seeking judicial review "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* [to the Commission]." (Emphasis added.) Ill. Rev. Stat. 1985, ch. 48, ¶ 138.19(f)(1). See Pub. Act 84-981 (eff. Sept. 25, 1985).

¶ 48 This court took up the proof-of-payment issue again in *Jones v. Industrial Comm'n*, 188 Ill. 2d 314 (1999), where an arbitrator awarded the claimant "substantial benefits" and the Commission reversed the arbitrator's decision. The claimant's attorney received the Commission's decision on October 25, 1996, and sought judicial review under section 19(f)(1). On November 8, the fourteenth day after receipt of the decision, the attorney filed a request for summons with the circuit court, and the summons was issued the same day. On November 14, the twentieth day of the statutory period, the claimant's attorney filed an affidavit with the circuit clerk stating that $35 had been paid to the Commission for the probable cost of the record. The employer moved to dismiss, arguing the circuit court lacked jurisdiction because the summons was improperly issued prior to the exhibition of proof of payment, in violation of section 19(f)(1). The circuit court granted the motion to dismiss, the appellate court affirmed, and this court reversed. The court acknowledged that compliance with the statute is necessary for jurisdiction to vest, emphasizing the importance of the requirement of timeliness. The court stated: "[T]he timely filing of a request for summons, and the timely exhibition of proof of payment for the probable cost of the record, are jurisdictional requirements which must be strictly adhered to in order to vest the circuit court with jurisdiction ***." *Jones*, 188 Ill. 2d at 320. The court added that this "comports with one of the primary purposes of the workers' compensation law, which is to determine whether an employee is entitled to receive compensation for his or her injuries as quickly as possible." *Id.* at 320-21. Though acknowledging the claimant did not strictly comply with the sequence in which the required tasks were to be performed, the court noted that he did strictly comply with the timeliness requirement. "He filed his request for summons, and exhibited proof of payment for the probable cost of the record, within the 20-day period required by section 19(f)(1)." *Id.* at 324. The court concluded that, "under the particular facts of this case," the claimant satisfied the material provisions of the statute, and jurisdiction properly vested in the circuit court. *Id.* at 327.

¶ 49 The decisions in *Moweaqua*, *Peter H. Clark Lodge*, *Berry*, *Arrington*, and *Jones*, along with the statutory amendment following *Arrington*, are instructive. They illustrate efforts by this court and the legislature to strike a balance between strict statutory compliance, on the one hand, and *Berry*'s aim of simplifying procedure and furthering substance over form, on the other. They reflect, in the process, the relative importance of the section 19(f)(1) requirements, particularly with regard to the overall timeliness requirement versus the sequence in which the required tasks were to be performed.

¶ 50 In these cases, even when the sequencing requirement was being relaxed, the 20-day timeliness requirement was honored. For example, in *Jones*, which loosened the sequencing

requirement, the court nevertheless firmly asserted that "the *timely* filing of a request for summons, and the *timely* exhibition of proof of payment for the probable cost of the record, are jurisdictional requirements which must be strictly adhered to in order to vest the circuit court with jurisdiction." (Emphases added.) *Jones*, 188 Ill. 2d at 320. In *Jones*, though the claimant's compliance with the sequencing requirement was less than strict, there nevertheless was "no dispute that [he] initiated his appeal in the circuit court in a timely fashion." *Id.* at 324.

¶ 51 These proof-of-payment decisions, which stood firm regarding the timeliness requirement, provide support for the conclusion that under section 19(f)(1), a proceeding for judicial review of a Commission decision is commenced when the request for summons and the proof of payment of the probable cost of the record are file-stamped by the circuit clerk, rather than when they are mailed. Under the mailbox rule, the required documents could be mailed as late as the twentieth day, which necessarily would mean they would not reach the circuit clerk's office within the statutory period. Indeed, in the case at bar, the documents were mailed *within* the 20-day period but apparently took some 10 days to reach the circuit clerk, which was 4 days beyond the prescribed maximum. In such circumstances, the mailbox rule becomes, in effect, an extension of the 20-day period, undermining strict adherence to this jurisdictional requirement. See *Jones*, 188 Ill. 2d at 320.

¶ 52 Moreover, this conclusion—that an action for judicial review under section 19(f)(1) commences when the documents are received and file-stamped by the circuit clerk—comports with one of the primary purposes of the Act, which is "to determine whether an employee is entitled to receive compensation for his or her injuries as quickly as possible" (*Jones*, 188 Ill. 2d at 320-21). Under a mailbox rule, as noted, the time when the request for summons and proof of payment reach the circuit clerk is essentially subject to the vagaries of mail delivery, which runs counter to this statutory goal.

¶ 53 In sum, I would conclude that a proceeding for judicial review of a Commission decision under section 19(f)(1) of the Act is commenced when the request for issuance of summons and the proof of payment of the probable cost of the record are file-stamped by the circuit clerk. I would hold that the mailbox rule does not apply, and the circuit court therefore lacked subject matter jurisdiction to entertain Gruszeczka's action. I respectfully dissent.

¶ 54 JUSTICE BURKE joins in this dissent.

2013 IL App (4th) 121113

NO. 4-12-1113

FILED
September 16, 2013
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

TIBURZI CHIROPRACTIC, an Illinois Corporation, Plaintiff-Appellee, v. DAVID KLINE, Defendant-Appellant, and ROVEY SEED COMPANY, INC., an Illinois Corporation, Third-Party Defendant.	))))))))	Appeal from Circuit Court of Macoupin County No. 11SC109 Honorable Joshua A. Meyer, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court, with opinion.
Justices Pope and Harris concurred in the judgment and opinion.

OPINION

¶ 1 In May 2011, plaintiff, Tiburzi Chiropractic, filed a small-claims complaint against defendant, David Kline, to collect the balance of fees charged following the performance of chiropractic services. In November 2012, the trial court found in favor of plaintiff and ordered defendant to pay $2,155.

¶ 2 On appeal, defendant argues the trial court erred in entering a money judgment in favor of plaintiff. We affirm as modified.

¶ 3 I. BACKGROUND

¶ 4 In October 2008, defendant suffered an injury while working for third-party defendant, Rovey Seed Company, Inc. Thereafter he filed a workers' compensation claim. Defendant sought and received treatment from plaintiff's office in Carlinville. In August 2010,

defendant and third-party defendant entered into a settlement contract lump-sum petition and order, whereby third-party defendant agreed to satisfy, pursuant to the fee schedule, all medical bills for medically causally related treatment received on or before June 10, 2010.

¶ 5 In March 2011, plaintiff filed a small-claims complaint against defendant, alleging defendant was indebted to plaintiff in the sum of $2,336.60 for an overdue account related to chiropractic and related services. Plaintiff claimed defendant refused to pay and no part had been paid despite being requested to do so.

¶ 6 In May 2012, defendant filed a petition and application under section 19(g) of the Workers' Compensation Act (Act) (820 ILCS 305/19(g) (West 2010)) for judgment on a workers' compensation award. Defendant attached a certified copy of the final award to the petition. Defendant also stated his belief that plaintiff alleged defendant and/or third-party defendant had failed to satisfy, pursuant to the fee schedule, certain medical bills incurred by defendant. He stated he had demanded third-party defendant pay all such bills pursuant to the fee schedule and third-party defendant had claimed it made full payment.

¶ 7 In July 2012, the trial court entered an order on defendant's section 19(g) petition. The court found third-party defendant had made full payment pursuant to the terms of the settlement contract lump-sum petition and order, including payment pursuant to the fee schedule and section 8 of the Act of "all medical bills for medically causally related treatment, including, but not limited to, any bills for medical treatment provided by [plaintiff]." The court held defendant and third-party defendant had met all of their obligations under the Act. The court denied defendant's demand for additional payment, costs, fees, and interest because "all medical bills, including, but not limited to, the bills from [plaintiff] have been satisfied pursuant to the

[Act]."

¶ 8 In November 2012, the trial court conducted a bench trial on plaintiff's complaint. The proceedings were not transcribed, but the court entered a bystander's report pursuant to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). The report stated, in part, as follows:

> "a. Kline testified that he sustained an injury at work on October 7, 2008[,] and filed a workers' compensation claim pursuant to 820 ILCS 305 (the Illinois Workers' Compensation Act or the 'Act'). His trial counsel noted that Section 8.2 of the Act contained a fee schedule in effect for physicians' services rendered after February 1, 2006. Kline further testified that he sought treatment by Tiburzi, a chiropractor, at his Carlinville office for the injury that he had sustained. Kline's counsel pointed out that on August 2, 2010[,] Kline and his employer had entered into a settlement contract, approved by the Illinois Workers' Compensation Commission, requiring, among other things, that the employer pay for Kline's medical treatment, subject to the medical fee schedule of the Act. Kline's counsel pointed out further that Kline had filed a third party complaint against his employer alleging that it had not paid Tiburzi in full according to the fee schedule, that following the filing of the third party complaint the employer conducted a utilization review and paid the Tiburzi bill according to the fee schedule, and that the court entered an order on July 12, 2012[,]

dismissing the third party complaint. Kline's lawyer argued that the provisions of the Act apply to any contractual relationship formed by Tiburzi and Kline, that payment according to the fee schedule satisfies Kline's obligation to Tiburzi under the Act, and that Tiburzi's acceptance estops or otherwise bars further recovery.

b. Tiburzi testified that, when Kline came to his first visit, he doubted that any prospective treatment by him for Kline would qualify for payment under the Act, because he was the third physician. Tiburzi testified that Kline requested a specific type of treatment and that Kline advised Tiburzi that his attorney agreed he would be paid for the treatment. Tiburzi advised Kline that he would accept him as a patient; however, he would be required to pay the cost for the treatment in full even if not covered by the workers' compensation insurance carrier. Tiburzi testified that the parties reached an oral agreement to that effect and that Kline signed an agreement consistent with the parties' oral statement guaranteeing payment in full as a private pay patient. Tiburzi testified that on several occasions he submitted his bill, in the amount of $3,000.00, to Kline's employer's workers' compensation insurance company. The carrier, according to Tiburzi, paid $663.40 and he applied that amount to the bill. He sued Kline in this proceeding for the balance of $2,336.60. After the filing of the

third party complaint, Kline's workers' compensation insurance company paid an additional $326.60, which Tiburzi credited to the bill, resulting in a balance due, of $2,010.00. Tiburzi's lawyer argued that the private pay agreement of the parties superseded the fee restrictions of the Workers' Compensation Act in that the Act did not apply in the context of the parties['] contractual relationship and was allowed by the Workers' Compensation Act.

c. The trial court after hearing the testimony of both parties made a finding accepting Tiburzi's version of the parties['] statements and agreements and found that Kline and Tiburzi had entered into a binding and enforceable agreement that was controlling, if allowed under the law."

The court ordered defendant to pay $2,010 for chiropractic services, plus court costs of $145, for a total of $2,155. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues the trial court erred in entering a money judgment in favor of plaintiff for treatment rendered under and paid pursuant to the Act based on the private-pay agreement. "Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2006)), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of [his] employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury." *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165

(2011). Medical expenses are governed by section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)), which states, in part, as follows:

> "The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury."

Pursuant to the Act, the employer must adjust the medical bills to conform to the fee schedule found in section 8.2. 820 ILCS 305/8.2 (West 2010). "Except as provided under subsections (e-5), (e-10), (e-15), and (e-20), a provider shall not bill or otherwise attempt to recover from the employee the difference between the provider's charge and the amount paid by the employer or the insurer on a compensable injury." 820 ILCS 305/8.2(e) (West 2010).

¶ 11 In the case *sub judice*, plaintiff relies on the exception in subsection (e-20) (820 ILCS 305/8.2(e-20) (West 2010)), which states as follows:

> "Upon a final award or judgment by an Arbitrator or the Commission, or a settlement agreed to by the employer and the employee, a provider may resume any and all efforts to collect payment from the employee for the services rendered to the employee and the employee shall be responsible for payment of any outstanding bills

> for a procedure, treatment, or service rendered by a provider as well as the interest awarded under subsection (d) of this Section. In the case of a procedure, treatment, or service deemed compensable, the provider shall not require a payment rate, excluding the interest provisions under subsection (d), greater than the lesser of the actual charge or the payment level set by the Commission in the fee schedule established in this Section. Payment for services deemed not covered or not compensable under this Act is the responsibility of the employee unless a provider and employee have agreed otherwise in writing. Services not covered or not compensable under this Act are not subject to the fee schedule in this Section."

Plaintiff argues subsection (e-20) supports the trial court's judgment based on its finding that the parties had entered into a private agreement, whereby defendant guaranteed payment to plaintiff for services he specifically requested. Defendant, however, argues the court held the employer paid in full according to the fee schedule. Thus, defendant contends that since plaintiff's services were covered and compensable under the Act, and thereby subject to the fee-schedule rate, plaintiff is not entitled to recover the balance of its bill. We agree with defendant that plaintiff's compensable services under the Act are not recoverable.

¶ 12 Contrary to plaintiff's argument, it did not treat defendant as a private-pay patient. Instead, plaintiff submitted its bill to defendant's workers' compensation insurance carrier. The exhibits offered at trial reflect that except for 20 cold packs ($10 each), the chiropractic services

were deemed compensable by the insurer and were paid at the fee-schedule rate. Thus, plaintiff, as the provider, "shall not require a payment rate *** greater than the lesser of the actual charge or the payment level set by the Commission in the fee schedule established." 820 ILCS 305/8.2(e-20) (West 2010). Accordingly, the trial court erred in awarding plaintiff a monetary judgment in the amount of $2,010.

¶ 13 Although we find subsection (e-20) does not allow plaintiff to recover for compensable services in excess of the fee schedule, we find it does allow plaintiff to recover for services not compensable. Specifically, "[p]ayment for services deemed not covered or not compensable under this Act is the responsibility of the employee unless a provider and employee have agreed otherwise in writing." 820 ILCS 305/8.2(e-20) (West 2010). Here, the workers' compensation insurer paid nothing for the 20 cold packs, each billed in the amount of $10. Thus, plaintiff is entitled to judgment in the amount of $200, plus costs.

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated and pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we affirm the monetary judgment in favor of plaintiff and against defendant but reduce the amount awarded to $200, plus court costs of $145, for a total of $345.

¶ 16 Affirmed as modified.

Order

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Julia Garcia

v.

Magid Glove & Safety & Illinois Workers' Compensation Commission

No. 12 L 50560

ORDER

This cause coming to be heard for hearing on the motion of Goldstein, Bender & Romanoff for attorney's fees, the court having heard the argument of counsel, and being fully advised of the premises; It is hereby ordered:

That the motion of Goldstein, Bender & Romanoff for a full 20% attorney's fee is herby granted, for the following reasons:

1) That there is no connection found in Section 16a of the Workers' Compensation Act between the statutory fee recited therein and Section 8-d-1 of the Act;
2) That there is no connection found between the statutory fee in Section 16a and Section 8-d-1, in the Act as a whole;
3) That there is a reasonable inference from the construction of the Act that a set of conditions must be satisfied for the statutory fee to apply, which is not present regarding Section 8-d-1;
4) That this determination is consistent with the rules of statutory construction;
5) That as a matter of law the statutory fee recited in Section 16a does not apply to Section 8-d-1 of the Act.

Therefore the full 20% fee in the amount of $28,658.78 is hereby awarded to Goldstein, Bender & Romanoff; and that Goldstein, Bender & Romanoff is directed to release from their escrow account and retain the amount of $10,535.95, which represents the difference between the full 20% fee and the statutory fee previously awarded by the Illinois Workers' Compensation Commission.

Judge Robert Lopez Cepero

SEP 23 2013

Circuit Court - 1627

ENTERED:

Judge **Judge's No.**

Atty. No.: 31521
Name: Richard H. Victor
Atty. for: Plaintiff
Address: One N. LaSalle Street, Ste. 2600
City/State/Zip: Chicago IL 60602
Telephone: (312) 346-8558

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

1 of 100 DOCUMENTS

LOURDES M. OLIVER, PETITIONER, v. POSEN-ROBBINS SD # 143.5, RESPONDENT.

NO. 12WC 17743

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

13 IWCC 297; 2013 Ill. Wrk. Comp. LEXIS 270

March 19, 2013

JUDGES: Kevin W. Lamborn; Daniel R. Donohoo; Thomas J. Tyrrell

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review under § 19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 4, 2012 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under § 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The probable cost of the record to be filed as return to Summons is the sum of $ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

ATTACHMENT:

ARBITRATION DECISION

19(b)

LOURDES M. OLIVER
Employee/Petitioner

v.

POSEN-ROBBINS SD # 143.5
[*2] Employer/Respondent

Case # **12** WC **17743**

Consolidated Cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **THOMPSON-SMITH**, Arbitrator of the Commission, in the city of **Chicago**, on **August 6, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

C. [X] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
F. [X] Is Petitioner's current condition of ill-being causally related to the injury?
J. [X] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
L. [X] What temporary benefits are in dispute?

[X] TTD

M. [X] Should penalties or fees be imposed upon Respondent?
N. [X] Is Respondent due any credit?

FINDINGS

On the date of accident, **02/23/12**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, [*3] an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $ **35,034.09**; the average weekly wage was $ **875.85**.

On the date of accident, Petitioner was 53 years of age, ***single*** with 4 dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $ **0.00** for TTD, $ **0.00** for TPD, $ **0.00** for maintenance, and $ **0.00** for other benefits, for a total credit of $ **0.00**.

Respondent is entitled to a credit of that amount certain, paid under Section 8(j) of the Act.

ORDER

The petitioner has not proven, by a preponderance of the evidence, that an accident occurred which arose out of and in the course of her employment. Therefore no benefits are awarded under the Act.

In no instance shall this [*4] award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

October 4, 2012

FINDINGS OF FACT

The disputed issues in this matter are: 1) accident; 2) causal connection; 3) medical bills; 4) temporary total disability; 5) penalties; and 6) attorney's fees.

Lourdes Oliver ("Petitioner") testified that on February 23, 2012, she was employed by the Posen-Robbins School District # 143.5 ("Respondent") as a second grade teacher at Gordon Elementary School. Petitioner testified that she had been [*5] working for the Respondent for about sixteen (16) years.
Petitioner testified that on the morning of February 23, 2012, she finished making copies in the office and was walking from the north entrance of the school, down the hallway to pick up her class from the gym. Petitioner further testified that she was carrying a book in her hands and wearing red pants with flat, rubber-soled boots. Petitioner stated that Ms. Doris Sams was also present in the hallway, leaning against the wall near classroom 19. Petitioner testified that the floor in the hallway was grey with black stripes and while walking down the hallway, she noticed something shiny on the floor; about 30 feet ahead of her, which she described as a liquid. Petitioner testified that she did not notice any color to the liquid and did not see it again after she initially saw it from 30 feet away. Petitioner testified that she attempted to walk around the alleged spill when slipped and fell in the area where she saw the substance, between classrooms 18 and 19, falling on her right shoulder and knee, having pain in her neck. She testified that when she slipped, she was laying on the liquid. She testified that she reported a spill [*6] on the floor to the principal and others while laying on the floor after her fall.

Petitioner also testified that later that night she noticed that her knee was skinned and that she had a small spot on her pants that smelled like coffee. She brought the pants to the arbitration hearing and a dime-sized white spot was apparent on the right knee. Although Petitioner testified that her pants smelled like coffee, she denied drinking coffee or noticing brown discoloration in the area of the hallway where she saw the liquid. The Arbitrator takes judicial notice that the pants displayed by petitioner do not have any stains on them except a dime sized mark on the right pant by the knee area.

While all of Petitioner's medical records reference the history of the accident as Petitioner slipping on a spill of some kind, that information was volunteered subjectively by the petitioner as the only source of that history. So it does not confirm that an accident took place.

Ms. Doris Sams testified for the Respondent that on February 23, 2012, she was employed by the Posen-Robbins School District # 143.5 as a resource teacher at Gordon Elementary School. Ms. Sams stated that on the date of the [*7] accident, she had been employed by the Respondent for approximately twelve (12) years and had worked with the Petitioner for approximately two (2) years. She further testified that the petitioner was a much respected worker at Gordon Elementary School.

Ms. Sams testified that on the morning of February 23, 2012, she was acting as a hall monitor and witnessed Petitioner's accident. Ms. Sams stated that she remembered the accident clearly. Ms Sams also testified that she was not reading anything at the time of Petitioner's fall and that she was able to observe the hallway from where she stood. Ms. Sams stated that the hallway was very clear and well lit and that she had been looking at the area where Petitioner fell for about three to five (3-5) minutes before the accident as she was approximately five (5) to ten (10) steps away from the spot and did not observe anything or any discoloration on the light gray floor. Ms. Sams testified that the hallway was clear. Ms. Sams stated that she was standing by the wall near classroom 19 when she directly saw Petitioner slip and fall, approximately ten (10) feet from where she was standing. She testified that Petitioner just fell and that Petitioner [*8] did not make mention of any substance on the floor during the fifteen to twenty (15-20) minutes that it took for the ambulance to come. Ms. Sams further testified that she hurried to Petitioner's assistance and that there was no liquid spilled on the floor.

CONCLUSIONS OF LAW

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Under the provisions of the Illinois Workers' Compensation Act (the "Act"), the Petitioner has the burden of proving by a preponderance of credible evidence that the accidental injury both arose out of and occurred in the course of employment. *Horath v. Industrial Commission, 96 Ill.2d 349, 449 N.E. 2d 1345 (1983).* An injury "arises out of the Petitioner's employment if its origin is in the risk connected with or incidental to employment so that there is a causal connection between the employment and the accidental injury. *See, Warren v. Industrial Commission, 61 Ill.2d 373, 335 N.E. 2d 488 (1975). See also,. Technical Tape Corp. v. Industrial Commission, 58 Ill.2d 226 (1974).* [*9] The mere fact that the worker is injured at a place of employment will not suffice to prove causation. The Act was not intended to insure employees against all injuries. *Quarant v. Industrial Commission, 38 Ill.2d 490, 231 N.E. 2d 397 (1967).* The burden is on the party seeking an award to prove, by a preponderance of credible evidence, the elements of the claim; particularly the pre-requisite that the injury complained of arose out of and in the course of employment. *Hannibal, Inc. v. Industrial Commission, 38 Ill. 2d 473, 231 N.E. 2d 409, 410 (1967).*

It is generally accepted by Illinois courts that a fall originating from an unknown, neutral source is "unexplained." *Builder's Square v. Industrial Commission, 339 Ill. App. 3d 1006, 1010, 791 N.E.2d 1308 (2003).* An unexplained fall will not be compensable where the claimant fails to present factual evidence at the arbitration hearing, upon which the Commission could draw a reasonable inference that the employment conditions contributed to the fall. Illinois courts have consistently rejected the [*10] positional risk doctrine, and, as such, a claimant alleging an unexplained fall has the burden of proving a reasonable inference that the fall arose out of the employment. *Id.* Illinois courts have made it clear that an inference alone is not enough to establish the compensability of an unexplained fall. Rather, the claimant must prove that the inference was reasonable.

In *Builders Square,* an employee's husband brought a workers' compensation claim after his wife fell at work and died. The decedent was working for the Respondent in the lawn and garden department, when she fell while opening boxes of merchandise. In his witness testimony, the decedent's coworker and friend stated that he saw her straighten up, then stagger two or three steps backward, collapsing on the floor. The Illinois Appellate Court determined that the decedent's fall at work was not compensable because her husband failed to offer reasonable inferences to explain the fall. *Id. at 1011.*

Although the Arbitrator had found it possible that the decedent could have gotten her foot stuck beneath a pallet or could have been startled by something, the court found that [*11] those inferences were not based on evidentiary facts. *Id.* Further, the court relied heavily upon the testimony of the coworker and friend of the decedent, who stated that he did not notice any objects or defects on the floor or near the decedent that would have caused her to slip. *Id. at 1012.* As such, the court held that the decedent's claim was attributable to an idiopathic condition and unrelated to her employment. *Id.*

Similar to the decedent's spouse in *Builder's Square,* the Petitioner only offered conjecture as to what caused her to fall, failing to offer evidence or information allowing the Arbitrator to form a reasonable inference to explain the accident. Petitioner's claim that she slipped and fell due to a coffee spill is based solely upon the smell of coffee on her pants later that night and her assertion that she noticed liquid on the floor from thirty (30) feet away. During her testimony, Petitioner admitted that she saw no brown discoloration on a floor where she slipped, despite the light colored flooring. Further, Petitioner testified that she did not notice any liquid around her when she was on the floor. She [*12] testified that she saw liquid on the floor from 30 feet away; and tried to avoid it as she walked closer to it.

Ms. Doris Sams also testified that she had been watching the area of the hallway where the accident happened for approximately three to five (3-5) minutes and remembered that the area was clear, with no defects on the ground or liquid spilled. The Arbitrator finds the testimony of Ms. Sams to be credible.

The testimony of Ms. Sams parallels the testimony of the coworker in *Builder's Square.* The coworker was a friend of the decedent and had no reason to have bias against her. Similarly, Ms. Sams testified that the Petitioner was well-respected at the school, indicating that Ms. Sams had no bias or reason to testify in an untruthful manner as to the conditions surrounding the Petitioner's fall. During her entirely testimony, Ms. Sams had no doubt that the area where Petitioner fell was clear and that there were no defects on the floor contributing to the accident. Based upon the testimony of Doris Sams, it is unlikely that the accident occurred in the way the claimant testified that it happened. Petitioner's testimony contradicts the testimony of Ms. Sams as Ms. Sams [*13] saw nothing spilled on the floor and Petitioner

also admitted that she did not notice any discoloration on the floor. Petitioner did not allege that she slipped on coffee until the arbitration hearing, and she presented no evidence to link the coffee smell to the fall.

The Arbitrator finds that the Petitioner has not proven, by a preponderance of the evidence, that she sustained an accidental injury arising out of and in the course of her employment.

As petitioner has failed to prove, by a preponderance of the evidence, that an accident occurred that arose out of and in the course of her employment; it is unnecessary to address the remaining issues.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIAdministrative ProceedingsAlternative Dispute ResolutionWorkers' Compensation & SSDICompensabilityCourse of EmploymentCausationWorkers' Compensation & SSDICompensabilityInjuriesAccidental Injuries

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Nicholas Duncan
Employee/Petitioner

Case # **12** WC **34355**

v.

Consolidated cases: **12 WC 34356**

Federal Whalen Moving & Storage
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Waukegan**, on **July 29, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **June 16, 2012 and August 28, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On these dates, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of these accidents ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accidents.

In the year preceding the injuries, Petitioner earned **$27,133.08**; the average weekly wage was **$521.79**.

On the date of the accidents, Petitioner was **39** years of age, ***single*** with **2** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$3,763.30** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$3,763.30**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$347.86**/week for **10-6/7** weeks, commencing **8/29/12** through **11/12/12,** as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **$3,763.30** for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner permanent partial disability benefits of **$313.07**/week for **53.75** weeks, because the injuries sustained caused the **25%** loss of the **left leg**, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Arbitrator Anthony C. Erbacci

August 23, 2013
Date

SEP 4 - 2013

FACTS:

The Petitioner testified that on June 16, 2012 he was employed by the Respondent as a mover/driver. He testified that his job duties included loading up trucks with materials for moving homes, packing boxes, and loading them from the homes into the truck and from the truck into the home.

The Petitioner testified that on June 16, 2012, he and a co-worker were closing a metal gate in the Respondent's parking lot when the co-worker slipped causing the Petitioner's left foot to get caught in the gate. The Petitioner testified that he was moving backwards when his foot got caught and that caused his left knee to twist. The Petitioner testified that his left knee "popped" and he noticed soreness and pain immediately thereafter.

On June 19, 2012, the Petitioner received medical treatment for his left knee at the company clinic, Vista Health Clinic. X-rays were taken and reported to reveal mild to moderate osteoarthritis. The Petitioner was diagnosed with an acute left knee contusion/sprain. He was given Ibuprofen and an ACE bandage and advised to return to work with restrictions of no lifting over 20 pounds, alternate sitting and standing.

On June 22, 2012, the Petitioner returned to Vista Health and was noted to be doing well with minimal pain. He was told to continue with his stretching exercises and he was discharged from medical care at that time.

The Petitioner testified that he then returned to his regular job duties for the Respondent and continued working until August 28, 2012. The Petitioner testified that on August 28, 2012, he was carrying a dresser down some stairs and his left knee "popped" and again and then became painful. The Petitioner was again sent to Vista Health Clinic where he was diagnosed with an acute exacerbation of knee pain and possible internal derangement of his left knee. An MRI was ordered and Petitioner was advised to return to restricted work.

On September 6, 2012, the Petitioner underwent the prescribed MRI at Vista MRI Institute. The MRI was reported to reveal joint effusion around the left knee, a grade III tear within the posterior horn of the medial meniscus, mild to moderate osteoarthritic changes, and small edema within the tibial plateau suggestive of a bone contusion. The Petitioner returned to Vista Health on September 7, 2013 and he was diagnosed with an acute exacerbation of knee pain and a grade III meniscal tear with effusion. It was recommended that he continue using crutches and he was referred to an orthopedic physician.

On September 13, 2012, Petitioner came under the care of Dr. Summerville of Illinois Bone & Joint Institute. Dr. Summerville examined the Petitioner and he concurred with the diagnosis of acute left medial meniscal tear and recommended surgery for the Petitioner's left knee.

At the request of the Respondent, the Petitioner was examined by Dr. John Cherf on

October 3, 2012. Dr. Cherf opined that the mechanism of injury to the Petitioner's left knee on June 16, 2012 and August 28, 2012 were consistent with causing meniscal pathology, such as a medial meniscal tear. Dr. Cherf concurred with Dr. Summerville's recommendation for the left knee arthroscopy and recommended a partial medial meniscectomy.

On October 26, 2012, the Petitioner underwent a left knee arthroscopy and chondroplasty of the left medial femoral condyle. The surgical report noted the presence of degenerative changes of the patellofemoral joint with exposed bone in the trochlear groove. An osteochondral lesion of the medial femoral condyle was also noted.

On November 6, 2012, the Petitioner returned for a follow-up visit and was noted to be doing quite well although some swelling was still noted.

On December 4, 2012, the Petitioner advised Dr. Summerville that he was continuing to have pain over the medial aspect of the suprapatellar area of his left knee and it was noted that there was not significant improvement despite physical therapy. The Petitioner also advised Dr. Summerville that he was having occasional swelling and difficulty with weight bearing and activity. Dr. Summerville administered a corticosteroid injection to Petitioner's left knee.

On January 8, 2013, the Petitioner returned to Dr. Summerville with complaints of continuing medial knee pain as well as patellofemoral pain. The Petitioner was noted to describe pain along the medial aspect of the knee with squatting, bending, kneeling and stair climbing. Dr. Summerville diagnosed the Petitioner with left knee patellofemoral pain status post arthroscopy and a left knee osteochondral lesion. Dr. Summerville recommended the Petitioner undergo a repeat arthroscopy and osteochondral autografting. He also recommended that the Petitioner continue with physical therapy.

At the request of the Respondent, the Petitioner was again examined by Dr. John Cherf on February 20, 2013. In his report of that date, Dr. Cherf opined that the Petitioner was not a good candidate for cartilage surgery including osteochondral autografting. In recommending against the surgery, Dr. Cherf noted the Petitioner's age and his very large body habitus with a BMI of 46 that was considered "extreme obesity." Dr. Cherf reported that osteochondral allografts in patients such as the Petitioner are known to have unpredictable and often poor results. Dr. Cherf also opined that the Petitioner had idiopathic osteoarthritis of the knees, left greater than right, and that the osteoarthritis "should be considered independent of the work related left knee injury on June 16, 2012." Dr. Cherf recommended that the Petitioner lose weight, keep his legs in shape, ice his knees when needed, take over-the-counter medications and consider corticosteroid injection every three months. Dr. Cherf noted that the recommended treatments "should be considered independent of the work related left knee injury on June 16, 2012" and he concluded that the Petitioner was at maximum medical improvement "when considering his work-related left knee contusion on June 16, 2012."

Dr. Cherf also provided an impairment rating report dated February 21, 2013 as an

addendum to his report of February 20, 2013. In that report, Dr. Cherf provided a lower extremity impairment rating of 1% and a whole person impairment rating of 1%.

On March 19, 2013, the Petitioner returned to Dr. Summerville with complaints of patellofemoral pain, difficulty squatting, bending, kneeling and carrying heavy objects. Dr. Sommerville noted that the Petitioner had failed to respond to conservative measures following the surgery, and he diagnosed the Petitioner with left knee patellofemoral arthrosis and patellofemoral pain. Dr. Summerville provided the Petitioner with work restrictions through April 19, 2013 and he recommended follow-up on an as needed basis depending on the Petitioner's response to continued conservative measures.

The Petitioner testified that he currently continues to experience sharp pain in his left knee which causes him to have difficulty with stairs and squatting. The Petitioner also testified that he had no injuries to his left knee prior to June 16, 2012 and no injuries to his left knee subsequent to August 28, 2012.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (F.), Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds and concludes as follows:

The Petitioner sustained an undisputed injury to his left knee on June 16, 2012. He received conservative treatment for that injury, which included two visits to Vista Health Clinic, and he was then discharged to return to his regular job duties, which he did. The Petitioner sustained another undisputed injury to his left knee on August 28, 2012. Following that second injury, the Petitioner came under the care of Dr. Summerville who performed surgery to the Petitioner's left knee. The Respondent's examining physician, Dr. Cherf, opined that the mechanism of the Petitioner's injuries were consistent with causing meniscal pathology, such as a medial meniscal tear and that the surgery recommended by Dr. Summerville was appropriate and causally related to the Petitioner's work injury.

Following the Petitioner's left knee surgery on October 26, 2012, the Petitioner continued to complain of pain and swelling in his left knee. As a result of the Petitioner's complaints and as a result of his examination of the Petitioner on December 4, 2012, January 8, 2013 and March 19, 2013, Dr. Summerville recommended additional surgery for the Petitioner's left knee.

The Respondent obtained a second opinion from Dr. John Cherf regarding the need for this second surgery. Dr. Cherf gave various reasons as to why he recommended against the surgery for the Petitioner and he opined that the need for this second surgery was not related to the June 16, 2012 accident. The Arbitrator takes note of the reasons given by Dr. Cherf and notes his diagnosis of "idiopathic osteoarthritis of the knees." The Arbitrator also notes,

however, the Petitioner's credible testimony that he never had any problems with his left knee prior to the accidents of June 16, 2012 and August 28, 2012. The Arbitrator also notes that Dr. Cherf opined only that the need for this second surgery was not related to the June 16, 2012 accident. Dr. Cherf did not, however, render any opinions on causation regarding the accident of August 28, 2012.

The Arbitrator finds the Petitioner's testimony to be credible and persuasive. The Arbitrator further finds that the findings and opinions of Dr. Summerville are credible reliable and persuasive. The Arbitrator finds, therefore, that the Petitioner's current condition involving his left knee is causally related to the accidents of June 16, 2012 and August 28, 2012. This finding also incorporates the surgery recommended by Dr. Summerville on January 8, 2013.

In Support of the Arbitrator's Decision relating to (L.), What is the nature and extent of the injury, the Arbitrator finds and concludes as follows:

As a result of his injuries, the Petitioner underwent a left knee arthroscopy and chondroplasty of the left medial femoral condyle. In addition to the Petitioner's testimony, the medical records reflect that the Petitioner continued to complain of left knee pain subsequent to the surgery. As a result, the Petitioner's treating physician recommended a second surgery to consist of a repeat arthroscopy and osteochondral autografting.

At the March 19, 2013 visit with Dr. Summerville, the Petitioner was noted to have a mild antalgic gait pattern. Left knee trace effusion was noted as well as tenderness with patellofemoral grind. Dr. Summerville recommended that the Petitioner continue to work on continued quadriceps strengthening and unloading.

The Petitioner testified that he presently has a constant sharp pain on the inside of his left knee. He testified that his knee cap aches and that he has difficulty walking up and down stairs. He also testified that he has difficulty getting in and out of his car and truck. The medical evidence supports the Petitioner's testimony that he was working without any physical restrictions and that he was not under a doctor's care for any problems involving his left knee at the time of the June 16, 2012 accident.

Petitioner's two alleged accident dates occur after September 1, 2011. Therefore, consideration of AMA guidelines is relevant in determining permanent partial impairment. Permanent partial disability shall be established using the following criteria:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to:

loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment: shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:

(i) the reported level of impairment pursuant to subsection (a).
(ii) the occupation of the injured employee.
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

820 ILCS 305/8.1(b)

In the instant case, the Petitioner suffered an injury which required surgery consisting of a left knee arthroscopy and chondroplasty of the left medial femoral condyle. The Petitioner continued to experience left knee pain following that surgery and the Petitioner's treating physician recommended a second surgery to consist of a repeat arthroscopy and osteochondral autografting.

With regard to the reported level of impairment pursuant to subsection (a), the level of impairment reported by Dr. Cherf pursuant to the American Medical Association's Guides to Evaluation of Permanent Impairment is 1% lower extremity impairment and a whole person impairment rating of 1%. The Arbitrator notes that impairment does not equate to permanent partial disability under the Workers' Compensation Act. Dr. Cherf used a physical examination grade modifier of zero, indicating no problem, and does not appear to have considered the surgical report in formulating his impairment rating.

With regard to the occupation of the injured employee, the Petitioner's occupation is that of a mover, which the Arbitrator notes is medium to heavy work. The Arbitrator concludes that the Petitioner's ability to perform the duties of his employment will be more adversely affected by his permanent partial disability than would the ability of an individual who performs lighter work. Thus, the Arbitrator concludes that the Petitioner has sustained a greater amount of permanent partial disability than an individual who performs lighter work.

With regard to the age of the employee at the time of injury, the Petitioner's age at the time of injury was 39 years old. The Arbitrator considers the Petitioner to be a younger individual and concludes that the Petitioner's permanent partial disability will be more extensive than that of an older individual because he will have to live with the permanent partial disability longer.

With regards to the employee's future earning capacity, the Arbitrator notes that the Petitioner's future earning capacity appears to be diminished because he has been released to return to work with restrictions of no lifting/carrying/pushing/pulling of over 10 pounds. The Petitioner would have difficulty working as a mover with those restrictions and the Petitioner testified that he no longer works as a mover. The Petitioner testified that he presently works for Penske Truck Rental spotting trucks and that his job requires him to do only minimal lifting.

With regard to the evidence of disability corroborated by the treating medical records, the Petitioner credibly testified that he currently experiences pain in his left knee. These complaints are corroborated in the records of Dr. Summerville, including but not limited to the diagnosis of left knee medial femoral condyle osteochondral lesion and the necessity of the subsequent surgery recommended by Dr. Summerville. The Petitioner's complaints as supported by the medical records, evidences a disability as indicated by Commission decisions regarded as precedent pursuant to Section 19(e).

The determination of permanent partial disability is not simply a calculation but an evaluation of all 5 factors as stated in the Act. In making this evaluation of permanent partial disability, consideration is not given to any single enumerated factor as the sole determinant. Therefore, having considered the factors enumerated in Section 8.1(b) of the Act, 820 ILCS 305/8.1(b), the Arbitrator finds that as a result of his accidental injuries the Petitioner has sustained 25% loss of use of his left leg.