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6 IWCC 762; 2006 Ill. Wrk. Comp. LEXIS 764, *

SUSANA DIAZ, PETITIONER, v. MARRIOTT HOTEL, RESPONDENT.

NO: 01WC 66534

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

6 IWCC 762; 2006 Ill. Wrk. Comp. LEXIS 764

September 8, 2006

CORE TERMS: arbitrator, reinstate, summary affirmance, reinstatement, failure to file, advise, want of prosecution, petitioning, oral argument, claimant, election, sheet, law firm, promptly, average weekly wage, failed to file, period of time, timely filed, day late, expeditiously, affirming, diligence, summarily, untimely, exceeded, pursuing, one-day, Commission's Rules, meritorious case, good cause

JUDGES: Barbara A. Sherman; Iionka Ulrich; Yofaine Dauphin

OPINION: [*1] DECISION AND OPINION ON REVIEW

Timely Petition for Review was filed by the Petitioner herein. Petitioner did not file a Statement of Exceptions and Supporting Brief. The Commission, after considering the issue of Petitioner's failure to file a Statement of Exceptions and Supporting Brief, and having been advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Petitioner's failure to file a statement of exceptions and supporting brief is a violation of Rule 7040.70. Section 7040.70(a) provides in pertinent part that "each party filing a petition for review of the Arbitrator's decision, . . . shall file its statement of exception(s) and/or addition(s) and supporting brief" setting forth, among other things, "separate headings identifying each issue asserted as an exception or addition" and "statements of particular evidence in the record pertaining to each issue, together with citation to legal authorities, . . . which support the position of that issue." 50 Ill. Adm. Code § 7040.70(d) (emphasis added). Section 7040.70(b) provides:

three (3) copies of the appellant's [*2] statement of exception(s) and/or addition(s) and the supporting brief shall be filed with the Commission and served on all parties not later than thirty (30) days from the date of closing of proofs on Review if no transcript of the hearing on Review is to be prepared, or thirty (30) days from the date of notice of mailing or transmittal of the transcript of evidence on Review whenever such a transcript is to be prepared. The appellee may submit a response, in which case he must file three (3) copies of the response with the Commission and serve copies thereof on all parties within fifteen (15) days from the last day allowed for the filing of appellant's statements of exception(s) and/or addition(s) and supporting brief.

50 Ill. Adm. Code § 7040.70(b). The foregoing language establishes that the requirement for an appellant to file a statement of exceptions and supporting brief is mandatory. Section 7040.70(d) establishes the sanctions for a petitioning party's failure to file such statement and brief, which extends beyond a waiver of oral arguments:

Failure of any appellant or petitioning party to file timely any statement of exception(s) [*3] and/or addition(s) and supporting brief as required by this Section, shall constitute waiver of the right to oral argument by that party and an election not to advise the Commission of any reason to change the Arbitrator's decision or to grant the petition.

50 Ill. Adm. Code § 7040.70(d) (emphasis added). The plain language in Rule 7040.70(d) therefore provides for two sanctions that are available to the Commission: waiver of the right to oral argument by that party and an election not to advise the Commission of any reason to change the Arbitrator's decision or to grant the petition. As Rule 7040.70(d) contains the conjunctive word "and," it does not operate to deny only oral arguments.

In addition to noncompliance with Rule 7040.70, Petitioner's failure to file a statement of exceptions and supporting brief violates Section 19(e) of the Act, the statutory authority for the rule. Section 19(e) provides that on review of Decisions of Arbitrators, Commission "[d]ecisions shall be filed within 60 days after the Statement of Exceptions and Supporting Brief and Response thereto are required to be filed or oral argument whichever is [*4] later." 820 ILCS 305/19(e). The clear legislative intent underlying the 1989 amendments to Section 19(e) was to achieve decision of cases in the expeditious manner contemplated by the Act. To carry out the purpose, the Legislature eliminated the right to present evidence on review and required that decisions issue within 60 days of the date of the parties' final opportunity to present the case, whether orally or in writing. The fact that the 60 day prescription is linked directly to the date on which the statement of exceptions and supporting brief must be filed reflects the Legislature's underlying recognition that the statement of exceptions and brief is necessary to enable the Commission to review meaningfully and expeditiously an Arbitrator's decision. A petitioning party's failure to file a statement of exceptions and supporting brief hinders the Commission's ability to resolve cases expeditiously and contravenes the intent of amendments made to Section 19(e).

The Commission finds that Petitioner's failure to comply with the Act and the Commission's Rules by failing to file a Statement of

Exceptions and Supporting Brief warrants a summary [*5] affirmation of the Arbitrator's Decision. While Section 19(e) establishes a duty on the part of the Commission to review cases promptly, this charge is impeded when the parties themselves fail to fulfill their legal obligation to file statements of exceptions and supporting briefs.

Failure to organize the record and failure to present a brief is onerous for the Commission and protracts the process for litigants. Without a statement of exceptions and supporting brief from the appellant, the Commission is left in the untenable position of ascertaining the reasons why the Arbitrator's Decision should be changed, with absolutely no guidance for resolving or even clearly identifying any of the issues. The Commission cannot reasonably assume the roles of attorneys who have an ethical and fiduciary obligation to represent their clients zealously and properly.

Our decision today is not inconsistent with the Illinois Appellate Court cases involving the validity of the Commission's interpretation of its own Rules. In *Chicago Transit Authority v. Industrial Comm'n*, the court found that the Commission's implementation of one of its rules added a sanction not provided for under the rule, and, [*6] thus, held that the Commission's interpretation of such rule was arbitrary and erroneous. 141 Ill.App.3d 930, 933, 491 N.E.2d 58, 60 (1st Dist. 1986). In CTA, the Commission's former rule provided that a petitioning party must provide a summary sheet, and that a party's failure to do so shall constitute a waiver of oral argument. As the CTA failed to file the summary sheet timely, the Commission summarily affirmed the arbitrator's decision. Subsequent to the hearing in the CTA case, the Commission's rule changed and provided for an additional sanction upon an untimely filing: an election not to advise the Commission of any reason to change the Arbitrator's decision or to grant the petition. 141 Ill.App.3d at 934, 491 N.E.2d at 61. The CTA Court found that the Commission, in summarily affirming the arbitrator's decision without examining the merits based on an untimely filing of a summary sheet, acted arbitrarily because the Commission exceeded its powers by imposing an additional penalty not provided for in a rule. Unlike the circumstances before the CTA Court wherein the Commission [*7] exceeded its authority by creating a sanction not provided for in the Rules, the Commission's decision today is in accordance with the penalties clearly and unambiguously provided for in the Commission's Rules.

The Illinois Appellate Court decided another case involving the Commission's use of summary affirmation in *Shannon v. Industrial Comm'n*, 160 Ill.App.3d 520, 513 N.E.2d 525 (4th Dist. 1987). In Shannon, the petitioner challenged the Commission's summary affirmation of the arbitrator's decision because the petitioner's brief was filed one day late. The Shannon Court explicitly approved of the Commission's rule providing for summary affirmation but found that the Commission's use of summary affirmation, with the particular set of facts in the case before it, was unreasonable as petitioner's one-day delay in filing a statement of exceptions and supporting brief did not burden or prejudice any party, including the respondent and the Commission. 160 Ill.App.3d at 523, 513 N.E.2d at 527. The court noted that respondent was able to file its brief well in advance of its scheduled due date. [*8] Id. The Shannon Court believed that the Commission's rationale for the rule was not served by rendering such a harsh result. In so concluding, the Shannon Court implicitly directed that the Commission implement its rules reasonably and in a manner consistent with the Commission's statutory duty, under Section 19(e), to review promptly the decision of the arbitrator and all apparent questions of law or fact. Id. Unlike the facts in Shannon, this is not a case in which the reviewing party conscientiously sought a full hearing and inadvertently filed a brief one day late to no one's prejudice. Rather, the Commission is confronted with a scenario in which the Commission itself is hindered from promptly reviewing the issues as the Petitioner in this case wholly has failed to file a statement of exceptions and brief.

In *Jetson Midwest Maintenance v. Industrial Comm'n*, the court approved of the Commission's application of its own procedural rules, specifically Rule 7040.70 which applies to the instant case. 296 Ill.App.3d 314, 694 N.E.2d 1037 (1st Dist. 1998). In Jetson, the respondent, as the petitioning party, raised the [*9] issue of average weekly wage in its brief; the brief, however, was not filed timely. The Commission found that the average weekly wage issue was waived as respondent failed to check off the issue of wages in its Petition for Review form and failed to raise the issue in a timely filed brief. Jetson, 296 Ill.App.3d at 315-316, 694 N.E.2d at 1038. The circuit court and the First District affirmed. In so affirming, the appellate court stated that "[a]bsent an abuse of discretion, a reviewing court should not overturn an administrative decision of the Commission regarding its own procedural rules." 296 Ill.App.3d at 317, 694 N.E.2d at 1038. Failure ever to file a statement of exceptions and supporting brief is a far more compelling justification for summary affirmation than failure to check a box on a petition for review form as was presented in Jetson.

The Shannon Court approved the Commission's use of an automatic application of summary affirmation when the rule provided for it is applied reasonably. The Commission finds that, unlike Shannon, this is not a case that involves a party's one-day [*10] late filing of a brief. The Commission finds that, as a result of Petitioner's failure to file a brief, Petitioner has elected to not advise the Commission of the reasons why the Arbitrator's decision should be changed or why the petition for review should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on October 31, 2005, 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 therefore and deposited with the Office of the Secretary of the Commission.

DATED: September 8, 2006

ATTACHMENT I:

ORDER

SUSANA DIAZ
Employee/Petitioner

v.

MARRIOTT HOTEL
Employer/Respondent

Case # 01 WC 66534

On August 31, 2004, the Petitioner filed the first of three Motions for Reinstatement [*11] of Case. After conducting an October 11, 2005 hearing of the Motion, and after carefully considering the evidence, Arbitrator Cronin hereby denies the Petitioner's Motion. A record of the hearing was made.

FINDINGS OF FACT:

The IWCC ("Commission") file shows that the Petitioner filed an Application for Adjustment of Claim on December 4, 2001. In such Application, the Petitioner claimed that on September 14, 2001, she sustained an injury to her back and to her person as a whole while pulling a full cart for the Respondent. In an Attorney Representation Agreement, which was also file-stamped December 4, 2001, the Petitioner agreed to be represented by Mr. James Feliksik of the law firm Goldstein, Fishman, Bender & Romanoff, 1 N. LaSalle Street, # 2600, Chicago, IL 60602.

The above case first appeared on the February 6, 2002 Commission status call, and reappeared every 90 days. Beginning with the December 2004 status calls, the Commission went from a 90-day continuance cycle to a 60-day continuance cycle.

Arbitrator Cronin pre-tried this case with Mr. David Z. Feuer, Petitioner's Counsel, and Mr. James A. Moran, Respondent's Counsel. Arbitrator Cronin repeatedly arranged for a [*12] special setting of this case, but the case never proceeded to trial. The four special setting dates are as follows: November 13, 2003 @ 1:30 P.M., January 13, 2004 @ 1:30 P.M., May 18, 2004 @ 9:00 A.M. and August 11, 2004 @ 9:00 A.M. On January 13, 2004, only Mr. Moran appeared to announce that the parties had worked out the medical bills. For at least 2 of these special setting dates, the Arbitrator instructed Petitioner's Counsel to compel a physician or chiropractor from the Neck & Back Clinic to testify as to the reasonableness of their medical bills. For whatever reason, no physician or chiropractor from Neck & Back ever appeared.

On August 11, 2004, when the Petitioner failed to proceed on this "final, final" special setting date, Arbitrator Cronin dismissed the above case for want of prosecution. Petitioner's Counsel, Mr. David Z. Feuer, and Respondent's Counsel, James A. Moran, were present. A record was made.

Petitioner's Counsel, by his own admission, received the Notice of Case Dismissal on August 19, 2004.

Petitioner's Counsel filed the Motion for Reinstatement of Case on August 31, 2004. In the August 31, 2004 Motion, Mr. Feuer indicated that he would present the Motion [*13] on September 29, 2004 at 2:00 PM before Arbitrator Cronin in Chicago. The reason that Petitioner's Counsel gave for requesting reinstatement was that "petitioner has a meritorious case and is ready, willing and able to proceed with case".

Neither Mr. Feuer nor any colleague of his presented the Motion to **Reinstate** in September or October 2004. The Motion for Reinstatement of Case, which was filed on August 31, 2004, was never allowed by an Arbitrator or Commissioner of the IWCC.

Commission records also indicate that Petitioner's Counsel filed another Motion for Reinstatement of Case on November 16, 2004. The Motion for Reinstatement of Case, which was filed on November 16, 2004, was never presented to Arbitrator Cronin by Mr. Feuer or by a colleague of his, and was never allowed by an Arbitrator or Commissioner of the IWCC.

Commission records also indicate that Petitioner's Counsel filed another Motion for Reinstatement of Case on July 22, 2005. Such Motion was to be presented on August 26, 2005 at 2:00 PM before Arbitrator Cronin in Chicago. On August 26, 2005, Arbitrator Cronin continued to September 6, 2005. The reason for reinstatement in this most recent Motion is as follows: [*14]

"Petitioner has a meritorious case and is ready, willing and able to proceed with case. The Petitioner went to Ecuador in April of 2004 and has recently returned to Chicago. Petitioner's attorney had no knowledge to Petitioner's whereabouts and all efforts to contact her were unsuccessful. The Petitioner contacted her attorneys upon her return to Chicago and this Petition to **Reinstate** is now being refiled for that reason."

On July 29, 2005, Respondent's Counsel filed a motion to deny petitioner's petition to **reinstate**.

On October 11, 2005, Arbitrator Cronin held a hearing on the most recent Motion for Reinstatement of Case.

Mr. Feuer argued as follows:

The Petitioner left Chicago in April 2004 and went to Ecuador. Ms. Diaz did not advise the law firm of Goldstein, Fishman, Bender & Romanoff that she was leaving. The law firm sent her letters and made phone calls. They had a couple of leads. More than one year passed and the case was dismissed for want of prosecution. Ms. Diaz came back to Chicago and inquired as to the status of her case. Petitioner's Motion for Reinstatement of Case was timely filed but not presented because he did not know Petitioner's whereabouts. Ms. Diaz is available. [*15] She is in Chicago and is ready to proceed with her case -- either by trial or settlement. If the Respondent needs help in locating witnesses, he will accommodate them. He had good reason for the delay. He can bring Ms. Diaz to the Commission to testify as to the reason she went to Ecuador. Ms. Diaz was in Ecuador on pressing family matters.

Mr. Moran argued as follows:

Prior to the dismissal for want of prosecution, the above case was up for trial six times. Before Ms. Diaz allegedly left for Ecuador, there were four trial dates. The case was set for a final trial date of August 11, 2004. Petitioner's petition to **reinstate** is not for good cause. Mr. Moran cited the Bromberg case. He does not believe that the case law says that one can abandon one's case for 1-1/2 years. One can not expect that to be a good basis. Petitioner missed six hearing dates. Respondent has been prejudiced by this delay.

THE LAW:

Section 7020.90 of the *Rules Governing Practice Before the Industrial Commission (n/k/a the IWCC)*, states:

(a) Where a cause has been dismissed from the arbitration call for want of prosecution, the parties shall have 60 days from receipt of the dismissal order to file a [*16] petition for reinstatement of the cause onto the arbitration call. Notices of dismissal shall be sent

to the parties.

(b) Petitions to **Reinstate** must be in writing. The petition shall set forth the reason the cause was dismissed and the grounds relied upon for reinstatement. The petition must also set forth the date on which Petitioner will appear before the Arbitrator to present his petition. A copy of the petition must be served on the other side at the time of filing with the Commission in accordance with the requirements of Section 7020.70.

(c) Petitions to **Reinstate** shall be docketed, and assigned to and heard by the same Arbitrator to whom the cause was originally assigned. Both parties must appear at the time and place set for hearing. Parties will be permitted to present evidence in support of, or in opposition to, the petition. The Arbitrator shall apply standards of fairness and equity in ruling on the Petition to **Reinstate** and shall consider the grounds relied on by Petitioner, the objections of Respondent and the precedents set forth in Commission decisions.

In [Banks v. Industrial Comm'n, 345 Ill. App. 3d 1138, 804 N.E.2d 629, 2004 Ill. App. LEXIS 67, 281 Ill. Dec. 664 \(2004\)](#), [*17] the arbitrator dismissed claimant's case for want of prosecution on 4/21/99. On 6/28/99, claimant's counsel petitioned to **reinstate** the claim but did not set a hearing on the petition. Claimant obtained new counsel who, on 2/28/01, filed a second petition to **reinstate**. An arbitrator denied reinstatement. On review, the Commission upheld the arbitrator's denial. The Appellate Court affirmed the Commission's decision.

On a petition to **reinstate** before the Commission, the burden is on the claimant to allege and prove facts justifying the relief sought. [Bromberg v. Industrial Comm'n, 97 Ill.2d 395, 401, 454 N.E.2d 661, 73 Ill. Dec. 564 \(1983\)](#)

A party must exercise due diligence in pursuing his or her claim before the Commission. [Contreras v. Industrial Comm'n, 306 Ill.App. 3d 1071, 1076, 715 N.E.2d 701, 240 Ill. Dec. 14 \(1999\)](#)

In [Garibay v. Plano Molding, 01 IIC 133](#), the Commission adopted and affirmed the decision of Arbitrator Akemann. In such case, there was a 17 month period of time between the timely filing of the motion to **reinstate** and the appearance of petitioner/hearing [*18] of the motion. Petitioner's reason for reinstatement was "the best interest of all parties involved in the administration of justice". Arbitrator Akemann found that there was no good cause and denied petitioner's motion. The Commission also found that the "Petitioner's testimony and argument for reinstatement as stated in her Statement of Exceptions contradicts the factual assertions in her first Petition to **Reinstate** filed before the Arbitrator on January 26, 1998."

CONCLUSIONS OF LAW:

There was a 1 year and 7 week period of time between the initial filing of the Motion for Reinstatement of Case and the actual hearing of the Motion. By the time the undersigned arbitrator heard the Motion, over four years had passed since the filing of the Application for Adjustment of Claim. After a four-year delay, witnesses may be unavailable or their ability to recall the incident may be diminished.

In his original Motion, which was file-stamped August 31, 2004, Mr. Feuer indicates that he is "ready, willing and able to proceed with case". However, based on his argument on the record and his reasons offered in the Motion filed on July 22, 2005, Mr. Feuer could not have been "ready, willing [*19] and able to proceed with case" on 8/31/04 since his client had left the country in April 2004 for a 15-month trip and he was *incommunicado*.

The Arbitrator concludes that Ms. Diaz, by leaving the country for approximately 15 months and by not communicating with Mr. Feuer during this entire time period, failed to exercise due diligence in pursuing her claim before the Commission. Ms. Diaz did not even appear for the October 11, 2005 hearing of the Motion.

Based on the facts and the law, the Arbitrator denies Petitioner's Motion for Reinstatement of Case.

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

Brian T. Cronin

Arbitrator

Date

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2009 Ill. Wrk. Comp. LEXIS 785, *

09 IWCC 0254

TODD VAN POUCKE, PETITIONER, v. DOMINICK'S FINER FOODS, RESPONDENT,

NO: 03WC 46936

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF LAKE

2009 Ill. Wrk. Comp. LEXIS 785

July 13, 2009

CORE TERMS: temporary total disability, reinstatement, outstanding, notice, settlement offer, vacated, fax, services rendered, rack, leg, entitled to credit, medical treatment, lack of diligence, emergency room, paid directly, blood sugar, right leg, continuances, depositions, scheduled, reminding, responded, trouble, carrier, pallet, accrue, cycles, mail

JUDGES: James F. DeMunno; Mario Basurto; David L. Gore

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, benefit rate, causal connection, medical, nature and extent, penalties/attorneys' fees, "dismissal reinstatement," and "vacation pay" and being advised of the facts and law, reverses the Arbitrator's decision and vacates the award for the reasons stated below.

This was an "above the line" 2003 case that was set for status hearing on January 12, 2007. On January 8, 2007, Respondent's attorney sent Petitioner's attorney a fax reminding him of the hearing, explicitly stating that Respondent would not agree to any further continuances, and also including a settlement offer. Petitioner's attorney admitted at hearing to receiving this fax. However, Petitioner's attorney never responded to the settlement offer nor did he attend the January 12, 2007 status hearing.

The Arbitrator dismissed this case on January 12, 2007 and Respondent's attorney stated that he received the Notice of Dismissal, dated January 29, 2007, on February 2, 2007. We note that over ten months passed before Petitioner's [*2] attorney allegedly realized that this case had been dismissed. This constitutes five, two-month hearing cycles. Petitioner's attorney claimed that he never received the Notice and that he had been having trouble receiving his mail in 2007 and 2008.

Petitioner filed a Motion to **Reinstare** on December 28, 2007, almost a year after the case had been dismissed and well beyond the applicable 60-day time limit. A hearing on the merits was held on April 21, 2008. Despite the lack of diligence by Petitioner's attorney, and admonishing him in the decision, the Arbitrator granted Petitioner's Motion to **Reinstare** and issued a decision dated June 12, 2008.

Petitions for Review were filed by both parties and the Commission issued a decision on March 16, 2009 reversing the Arbitrator's decision and denying Petitioner's Motion to **Reinstare**. On May 6, 2009, Petitioner filed a Section 19(f) Motion to Recall Decision on Review and Request for Oral Argument. In this motion, Petitioner's attorney represented that he never received the Commission decision nor even the notice of the February 19, 2009 Oral Argument date and claimed that the notice and decision had been sent to a former office address. Although [*3] the Commission decision did not contain any clerical errors, we granted the § 19(f) motion, based upon principles of due process and fundamental fairness, and scheduled a new Oral Argument date of July 2, 2009.

In the § 19(f) motion, Petitioner's attorney claimed that he moved his office from "79 W. Monroe Street" to "222 N. LaSalle Street" "[i]n or about May 2008." As such, we note that there is no evidence to suggest that the Commission's records were incorrect during the relevant time period in 2007 and leading up to the original arbitration hearing on April 21, 2008. At that hearing, Petitioner's attorney did not allege that his address was wrong in the Commission's records or provide any other reasonable or justifiable explanation as to why he failed to file a Petition to **Reinstare** in a timely manner.

Based upon the above and a review of the record as a whole, we find that it was error for the Arbitrator to grant Petitioner's Motion to **Reinstare**. Under this set of facts, Petitioner's attorney's justification for the extreme delay in filing the Motion to **Reinstare** was not reasonable nor was his lack of diligence in prosecuting this claim. He failed to appear on scheduled hearing [*4] dates, the last of which Respondent's attorney had actually reminded him by fax. Respondent had made a settlement offer, to which Petitioner's attorney failed to respond. Prior to the case being dismissed, Petitioner's attorney had apparently still not even provided Respondent with medical documentation to support the outstanding medical bills. There were no depositions in evidence and there is no indication that any depositions were scheduled or even planned. Petitioner's attorney claims that he had trouble receiving his mail but admitted receiving the fax that Respondent's attorney sent reminding him of the status date and preparing him that Respondent would not agree to any additional continuances. Five status cycles came and went without Petitioner's attorney diligently pursuing this case.

We, therefore, find that the Arbitrator's reinstatement of Petitioner's case was in error and is hereby vacated. As a result, the Arbitrator's decision is hereby reversed and the award vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is hereby reversed and the award vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's granting of Petitioner's [*5] Motion to **Reinstate** is vacated and that Petitioner's Motion to **Reinstate** is hereby denied.

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.

DATED: JUL 13 2009

ATTACHMENT:

FINDINGS

- . On **July 13, 2008**, the respondent **Dominick's Finer Foods, Inc. was** operating under and subject to the provisions of the Act.
- . On this date, an employee-employer relationship **did** exist between the petitioner and respondent.
- . On this date, the petitioner **did** sustain injuries that arose out of and in the course of employment.
- . Timely notice of this accident **was** given to the respondent.
- . In the year preceding the injury, the petitioner earned \$ **47,297.12**; the average weekly wage was \$ **909.56**.
- . At the time of injury, the petitioner was **40** years of age, **married** with **4** children under 18.
- . Necessary medical services **have not** been provided by the respondent.
- . To date, \$ **0.00** has been paid by the respondent for TTD [*6] and/or maintenance benefits.

ORDER

- . The respondent shall pay the petitioner temporary total disability benefits of \$ **606.37/week** for **9 5/7** weeks, from **July 14, 2003** through **September 19, 2003**, which is the period of temporary total disability for which compensation is payable.
- . The respondent shall pay the petitioner the sum of \$ **545.74/week** for a further period of **10** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **permanent disability to the Petitioner's right leg to the extent of 5% thereof**.
- . The respondent shall pay the petitioner compensation that has accrued from **July 13, 2003** through **April 21, 2008**, and shall pay the remainder of the award, if any, in weekly payments.
- . The respondent shall pay the further sum of \$ **454.00** for necessary medical services, as provided in Section 8(a) of the Act.
- . The respondent shall pay \$ **0.00** in penalties, as provided in Section 19(k) of the Act.
- . The respondent shall pay \$ **0.00** in penalties, as provided in Section 19(l) of the Act.
- . The respondent shall pay \$ **0.00** in attorneys' fees, as provided in Section 16 of the Act.

The Petitioner's [*7] petition for reinstatement is, hereby, granted.

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 of 2.05% 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.

Anthony C. Erbacci, Arbitrator

June 4, 2008

Date

JUN 12 2008

As Petitioner's counsel represented, as an officer of the Court, that he never received the Commission's Notice of Dismissal, and the Arbitrator can see no prejudice to the Respondent that would result from the reinstatement of the Petitioner's claim, the Arbitrator grants the Petitioner's petition for reinstatement, and the matter is, therefore, reinstated.

In reinstating the Petitioner's claim, however, the Arbitrator in no way condones the apparent lack of diligence exercised by Petitioner's counsel in monitoring the status and progress [*8] of a case which had achieved "above the line status" and was ready for trial or settlement. It is clear that the matter was on the Waukegan status call of January 12, 2007 as an "above the line" case, that the case was dismissed on that date and that it was not until ten months later that Petitioner's counsel became aware of the dismissal. The Arbitrator notes that with cases appearing on the status call every two months, Petitioner's counsel should have been aware of some change of status when the case did not appear on the status calls of March, May, September and November and, in

any event, should have responded to the settlement offer communicated to him by Respondent's counsel in January of 2007.

In support of the Arbitrator's Decision relating to (C), Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent, (F), Is the petitioner's present condition of ill-being causally related to the injury, and (L), What is the nature and extent of the petitioner's injuries, the Arbitrator finds and concludes as follows:

Petitioner testified that on July 13, 2003, he was employed as an Assistant Store Manager by Respondent, having been [*9] so employed for seven years. Petitioner testified that his job duties were to see that the Respondent's store ran smoothly and to do the necessary acts to see that goal accomplished.

Petitioner testified that on July 13, 2003 he went into the store room to retrieve a product requested by a customer which was located on a pallet rack. He testified that he stepped up approximately one foot onto the rack and, while balancing himself, he reached up to grab the product and started to lose his balance. Petitioner testified that in attempting to retain his balance, he lifted his right leg which struck the end corner of the pallet rack, which was a sharp edged metal bar. The Petitioner testified he immediately felt pain in his leg and when he looked down at his leg he saw a large rip in his pants and a deep cut in his leg. The Petitioner was then taken to the emergency room at Highland Park Hospital where the wound was cleaned and stitched.

Petitioner testified that he has been diagnosed with "Fragile Diabetes" since the age of seven and that when he suffers trauma, his blood sugar drops. Petitioner testified that in anticipation of such a reaction, he ate a candy bar while he was being [*10] taken to the hospital. He testified that when he arrived at the emergency room, he became disoriented and the staff monitored his blood sugar and treated him accordingly. Petitioner testified that he followed

In support of the Arbitrator's Decision relating to (J), Were the medical services that were provided to petitioner reasonable and necessary, the Arbitrator finds and concludes as follows:

The Petitioner testified that some of the bills for medical treatment he received as a result of the injury of July 13, 2003 were paid by his group insurance carrier, some were paid directly by him and some remain outstanding. Specifically, the Petitioner testified that he paid for the services rendered by Dr. Miller. The parties stipulated that the Respondent paid \$ 12, 422.22 of the Petitioner's medical bills through its group medical plan for which it is entitled to credit under Section 8(j) of the Act.

With the exception of the charges of Dr. Miller and Dr Costas, the Arbitrator cannot determine from a review of the Petitioner's exhibits how much of what bills were paid by whom or what balances remain outstanding. In fact, the Arbitrator cannot determine the total amount of charges incurred [*11] for medical services rendered to the Petitioner. The Petitioner gave no specific testimony in this regard and provided no summary of the bills incurred or amounts paid, compromised, or outstanding. While the Arbitrator notes that Dr. Costes' records reflect that \$ 320.00 in charges were denied by the Respondent's Workers' Compensation carrier, the Petitioner did not specify whether he paid that amount or it remains outstanding. Petitioner's testimony and Dr. Miller's records do, however, demonstrate that the Petitioner paid \$ 454.00 for services rendered to him by Dr. Miller on February 22, 2005 and July 14, 2005.

Based upon the findings and conclusions of the Arbitrator relating to the issues of accident and causation, the Arbitrator finds that the Respondent is liable for payment of the reasonable charges for medical treatment rendered to the Petitioner as a result of the accident of July 13, 2003 and for reimbursement to the Petitioner in the amount of \$ 454.00 for the amount he paid directly to Dr. Miller. The Arbitrator further finds that the Respondent is entitled to credit for all amounts it has paid on behalf of the Petitioner to date.

In support of the Arbitrator's Decision [*12] relating to (K), What amount of compensation is due for temporary total disability, the Arbitrator finds and concludes as follows:

The parties agreed that the Petitioner was temporarily totally disabled from July 14, 2003 through September 19, 2003, a period of 9 5/7 weeks. The Respondent denied liability for Temporary Total Disability benefits based upon the dispute as to whether the Petitioner's injury arose out of and in the course of his employment. Having found for the Petitioner on the issue of accident, the Arbitrator finds that the Respondent is liable to the Petitioner for the payment of Temporary Total Disability benefits in the amount of \$ 606.37 per week, from July 14, 2003 through September 19, 2003, a period of 9 5/7 weeks.

Legal Topics:

For related research and practice materials, see the following legal topics:

[Labor & Employment Law](#) > [Disability & Unemployment Insurance](#) > [Disability Benefits](#) > [General Overview](#)
[Workers' Compensation & SSDI](#) > [Administrative Proceedings](#) > [Claims](#) > [Time Limitations](#) > [Notice Periods](#)
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9 IWCC 377; 2009 Ill. Wrk. Comp. LEXIS 389, *

SHERRY HARRIS-HART, PETITIONER, v. AMERICAN LEGION POST # 32, RESPONDENT.

No. 97WC 49986

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF SANGAMON

9 IWCC 377; 2009 Ill. Wrk. Comp. LEXIS 389

APR 17 2009

CORE TERMS: arbitrator, main frame, reinstatement, noticed, reasonable to infer, claimant, want of prosecution, left hand, continuance, signature, withdrew, missing

JUDGES: Molly C. Mason; Yolaine Dauphin; Nancy Lindsay

OPINION: [*1]

DECISION AND OPINION ON REVIEW

This matter comes before the Commission on Petitioner's timely review of Arbitrator Mathis's Decision of May 20, 2008 denying Petitioner's Petition to **Reinstate**. After considering the entire record, the Commission reverses the Arbitrator, grants reinstatement and remands this claim to the Arbitrator for further proceedings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Because a number of relevant documents are missing from the Commission file, and because both parties have changed attorneys during the long course of this claim, the Commission relies, in part, on its internal records, which are essentially print-outs of information stored in its main frame computer.
2. Attorney Steve W. Berg filed an Application for Adjustment of Claim on Petitioner's behalf on September 18, 1997. The Application alleges that Petitioner sustained injuries to her left hand and arm while picking up garbage on February 24, 1996.
3. On April 2, 2004, Arbitrator Mathis dismissed Petitioner's claim for want of prosecution.
4. According to the Commission's main frame computer, Petitioner filed a Petition to **Reinstate** on May 25, 2004. The Petition to [*2] **Reinstate** is not in the Commission's file but Respondent admits that the Petition was filed within the 60-day period contemplated by Section 7020.90(a) of the Illinois Administrative Code. [Respondent's Statement of Exceptions, p. 2]
5. The Commission's file does contain an Objection to Petition to **Reinstate** filed by Respondent on May 27, 2004. As of that date, Respondent was represented by the law firm of Livingstone, Mueller, O'Brien & Davlin, P.C. The Objection alleges that Respondent noticed the claim for trial before Arbitrator Mathis in June of 2003 but that the trial was continued thereafter because Petitioner was in the process of changing attorneys. According to the Objection, a new attorney appeared on behalf of Petitioner in December of 2003 and secured a continuance. The Objection further reflects that only Respondent's counsel appeared at a subsequent April 2004 docket call and that the Arbitrator dismissed the claim at that time. The Objection describes Petitioner's injury as a laceration to the left hand. The Proof of Service attached to the Objection reflects service on attorney Patricia Hayes on May 25, 2004. For purposes of this Decision, the Commission assumes [*3] that Hayes represented Petitioner as of May 25, 2004. ARDC records reflect that Hayes was censured in 2005 and suspended from the practice of law for thirty months as of September 21, 2006, with a probation order staying the suspension until 2007, when probation was revoked.
6. Respondent noticed its Objection to Petition to **Reinstate** for hearing before Arbitrator Mathis on October 4, 2004. The order section of the Notice of Motion reflects that the Arbitrator continued the matter to November 1, 2004. It does not appear that any record was made on October 4 or November 1, 2004. Although the Commission's file does not contain an order dated January 7, 2005, the main frame computer reflects that relief was granted on that date.
7. The main frame also reflects that Respondent filed a Stipulation to Substitute Attorneys on April 29, 2005. The Stipulation is not in the Commission's file. Two Substitution forms in the Commission's file reflect that attorneys Steve W. Berg and Patricia Hayes withdrew from representing Petitioner. Berg's signature is dated August 30, 2006 and the Stipulation to Substitute bearing his signature was filed on August 31, 2006. The Commission is unable to determine [*4] when Hayes withdrew.

Attorney Danz served an Appearance of Representative on behalf of Petitioner on Respondent's present counsel, Rusin Maciorowski & Friedman, Ltd., on August 22, 2006. In his Statement of Exceptions, Danz alleges that it was not until he attempted to enter his


Appearance that he learned of the prior dismissal for want of prosecution. Upon learning of the dismissal, Danz filed an Amended Petition to **Reinstate**. Unfortunately, this pleading is also missing from the Commission's file. It was apparently marked as Arbitrator's Exhibit 1 at hearings held before Arbitrator Mathis on September 7, 2007 and May 8, 2008, but it is not attached to the transcript of those hearings. According to the Decision of the Arbitrator, the pleading was noticed for hearing on October 5, 2006 and initially heard on that date but "re-argued" on September 7, 2007. As stated at the outset, Arbitrator Mathis denied reinstatement on May 20, 2008.

8. Since the parties agree that the initial Petition to **Reinstate** was timely filed, the Commission need only determine whether the Petition "set forth the date on which the claimant will appear before the arbitrator to present the Petition," pursuant [*5] to Section 7020.90(6), and whether the Arbitrator, in denying reinstatement, properly applied standards of fairness and equity pursuant to Section 7020.90(c). As noted earlier, the Commission's file does not contain the initial Petition to **Reinstate** or any Notice of Motion pertaining thereto. Based on the timing of Respondent's Objection and the main frame computer records, however, the Commission finds it reasonable to infer that the initial Petition to **Reinstate** was accompanied by a notice of hearing. Respondent clearly became aware of the Petition the day it was filed, since it served its Objection on Petitioner's prior counsel, Patricia Hayes, the same day. Respondent noticed the Objection for hearing before Arbitrator Mathis on October 4, 2004, and the Arbitrator granted a continuance on that date. The Commission also finds it reasonable to infer that the January 7, 2005 main frame computer entry "GRNT" means that the initial Petition to **Reinstate** was granted on January 7, 2005. These facts distinguish this case from [Banks, v. Industrial Commission, 345 Ill. App.3d 1138 \(5th Dist. 2004\)](#), in which no reinstatement-related hearing was held until approximately [*6] twenty months after the claimant filed his petition.


The Commission relies on the foregoing analysis in reversing the Arbitrator's Decision. The unusual circumstances existing herein (i.e., the various substitutions and the disciplinary proceedings initiated against one of Petitioner's former attorneys) also prompt the Commission to conclude that the attorneys currently representing the parties may not be aware of, or have access to, all of the relevant information. The equities work in Petitioner's favor and the Commission finds reinstatement to be appropriate.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator is reversed and that this claim is reinstated and remanded to the Arbitrator for further proceedings.

Dated: APR 17 2009

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9 IWCC 438; 2009 Ill. Wrk. Comp. LEXIS 484, *

TIM AUSTIN, PETITIONER, v. A.B.F. FREIGHT SYSTEMS, INC., RESPONDENT,

NO. 04WC 20219

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF KANE

9 IWCC 438; 2009 Ill. Wrk. Comp. LEXIS 484

May 5, 2009

JUDGES: James F. DeMunno; Mario Basurto; David L. Gore**OPINION:** [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of "reinstatement" and being advised of the facts and law, affirms and adopts the Arbitrator's decision, which is attached hereto and made a part hereof, denying Petitioner's Petition to **Reinstate**.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 28, 2008 is hereby affirmed and adopted.

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

DATED: MAY 5 2009

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION DECISION

The *petitioner* filed a petition or motion for **reinstatement** on **June 2, 2008**, and properly served all parties. The matter came before me on **July 21, 2008** in the city of **Geneva, IL**. After hearing the parties' arguments and due deliberations, I hereby **deny** the petition. A record of the hearing **was not** made. [*2]

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Respondent appeared by counsel; neither Petitioner nor his attorney appeared. The Petition to Reinstate is denied.

Unless a *Petition for Review* is filed within 30 days from the date of receipt of this order, and a review perfected in accordance with the Act and the Rules, this order will be entered as the decision of the Workers' Compensation Commission.

Signature of arbitrator

July 21, 2008

Date

JUL 28 2008

Legal Topics:

For related research and practice materials, see the following legal topics:


[Workers' Compensation & SSDI](#) > [Administrative Proceedings](#) > [Judicial Review](#) > [General Overview](#)

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09 IWCC 0493

2009 Ill. Wrk. Comp. LEXIS 506, *

MIGUEL GARZA, JR., PETITIONER, v. DURACO PRODUCTS, INC., RESPONDENT.

NO. 02WC 46317

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2009 Ill. Wrk. Comp. LEXIS 506

May 21, 2009

JUDGES: Kevin Lamborn; Barbara A. Sherman; Paul W. Rink**OPINION:** [*1]

Decision and Opinion on Review

ProSe Petitioner appeals the March 23, 2007 Order of Arbitrator DeVriendt denying reinstatement of Petitioner's case. The issues before the Commission are whether Petitioner's case was properly dismissed and whether the matter should be reinstated. The Commission, after having considered these issues, finds that it is impossible to determine whether the Arbitrator erred in denying reinstatement of Petitioner's claim, and hereby orders that the denial of reinstatement be vacated and remanded to the Arbitrator for further proceedings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- Petitioner filed an Application for Adjustment of Claim, 02 WC 46317, on September 6, 2002, alleging a date of accident of January 1, 2001, with repetitive trauma injuries to his right and left wrists.
- Although the Commission computer records indicate the Arbitrator granted Petitioner's Motion to Withdraw as attorney of record in this matter on July 11, 2006, there are no copies of the Order granting this motion.
- The Commission computer records further indicate the Arbitrator dismissed Petitioner's Application for Adjustment of Claim on that same date, July 11, 2006. [*2] However, the Commission file does not contain a copy of the Dismissal Order, or of Notice of Case Dismissal issued by the Commission.
- On February 13, 2007, ProSe Petitioner presented a Motion to **Reinstato** this matter. The Motion was continued to March 5, 2007 for hearing. On March 5, 2007, the Arbitrator denied ProSe Petitioner's Motion to **Reinstato** this matter. However, there was no record made with respect to the denial of the motion, and there were findings by the Arbitrator explaining the basis for the denial of reinstatement.
- On March 23, 2007, ProSe Petitioner filed a Petition for Review of the Arbitrator's denial of the Motion to **Reinstato** this matter.

The Commission finds it is impossible to meaningfully review Arbitrator DeVriendt's denial of reinstatement of ProSe Petitioner's claim, given the lack of a hearing on the Motion to **Reinstato**, and the lack of any findings by the Arbitrator on the issue. Commission Rule 7020.90, governing Petitions to **Reinstato**, provides that where a case is dismissed for want of prosecution, the parties shall have 60 days from receipt of the order to file a Petition to **Reinstato**, after which the Arbitrator must conduct a hearing to determine, [*3] applying standards of fairness and equity, whether to **reinstato** the case. 50 Ill. Admin. Code, Ch.II Sec. 7020.90. The Commission finds there is nothing in the Commission file to indicate the Arbitrator conducted a hearing with respect to this motion as provided for under Rule 7020.90.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order dated March 23, 2007, denying reinstatement of Petitioner's claim, is hereby vacated, that this matter is remanded to the Arbitrator for hearing and determination with a records and or findings that would permit a meaningful review on Petitioner's Motion to **Reinstato**.

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

DATED: May 21 2009

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2009 IWCC 787; 2009 Ill. Wrk. Comp. LEXIS 735, *

JOSEPH VALENTI, PETITIONER, v. ROCHELLE FOODS, RESPONDENT.

NOS: 02WC 59254, 02WC 59256

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2009 IWCC 787; 2009 Ill. Wrk. Comp. LEXIS 735

July 27, 2009

CORE TERMS: reinstatement, motion to reinstate, clerking, failed to file, trial date, stamped**JUDGES:** Barbara A. Sherman; Paul W. Rink; Kevin W. Lamborn**OPINION:** [*1]

DECISION AND OPINION ON REVIEW

Petitioner appeals Arbitrator Falcioni's order dated September 18, 2008, denying Petitioner's motion for reinstatement, which was filed on March 11, 2008. In Petitioner's Petition for Review, he wrote, "whether DWP should be vacated." The issue on review is whether the Arbitrator erred in denying Petitioner's motion for reinstatement that was filed on March 11, 2008. The Commission hereby affirms the Arbitrator's order denying Petitioner's motion for reinstatement.

The case file contains several documents that we find relevant in affirming the Arbitrator's order. On April 20, 2006, Arbitrator Andros issued two separate orders dismissing both cases because of Petitioner's failure to appear at a status call or trial date. On June 15, 2006, Arbitrator Andros granted Petitioner's motion for reinstatement of both cases. The notice of motion and order was filed stamped on May 8, 2006, and the actual motion for reinstatement of the case was filed on June 12, 2006.

On February 25, 2008, Arbitrator Falcioni issued an order dismissing both cases because of Petitioner's failure to appear at a status call or trial date. On March 11, 2008, Petitioner filed a [*2] motion to **reinstate**, citing the same reasons that were set forth in the motion to **reinstate** filed on June 12, 2006. Arbitrator Falcioni issued an order dated September 18, 2008, denying Petitioner's motion to **reinstate**, which is the subject of this review.

The Commission hereby affirms the Arbitrator Falcioni's order dated September 18, 2008, denying Petitioner motion for reinstatement. The Commission notes that there are no briefs filed on review and no record of the hearing of the petition for reinstatement was made and/or submitted to the Commission for review. Petitioner had an opportunity to file a brief and explain or offer good reason to the Commission as to why he failed to appear on February 25, 2008, or why his case should be reinstated, but Petitioner failed to file a brief.

As Petitioner failed to file a brief or transcript of proceedings on review, the Commission is left with the ambiguous explanation offered in Petitioner's motion to **reinstate**. In Petitioner's most recent motion to **reinstate**, filed on March 11, 2008, Petitioner indicated, in support of his motion, as follows: "Petitioner had his clerking service cover this case when it was up for hearing on February 25, [*3] 2008. However, having the clerking service cover the matter was not apparently within the Arbitrator's rules regarding cases of this age." We reject Petitioner's alleged misapprehension of the "Arbitrator's rules" regarding clerking services. First, Petitioner has failed to identify which rules he is referencing. Moreover, in Petitioner's prior motion to **reinstate**, file stamped on June 12, 2006, Petitioner interestingly cited the same reason in support of his motion to **reinstate**:

"Petitioner had his clerking service cover this case when it was up for hearing on April 20, 2006. However, having the clerking service cover the matter was not apparently within the Arbitrator's rules regarding cases of this age." It appears that Petitioner reiterated his vague explanation and merely changed the date of the hearing in his March 11, 2008, motion to **reinstate**. Petitioner's grounds for reinstatement in March 2008 are identical to his grounds for reinstatement in June 2006, when reinstatement was granted. We find that Petitioner's basis for reinstatement is not credible the second time around. Other than a bare allegation lacking in credibility, Petitioner has failed to offer any argument or [*4] any evidence to suggest that the denial of reinstatement was erroneous.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's order, filed on September 18, 2008, is hereby affirmed.


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 of Illinois in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: JUL 27 2009

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2009 Ill. Wrk. Comp. LEXIS 1213, *

WILLIAM RICHTER, PETITIONER, v. ADM, RESPONDENT.

NO: 00WC 49835; 09 IWC C 1128

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF MACON

2009 Ill. Wrk. Comp. LEXIS 1213

November 3, 2009

CORE TERMS: good cause, arbitrator, incarcerated, disputed issues, continuance, disputed, notice

JUDGES: David L. Gore; James F. DeMunno; Mario Basurto

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of Denial of Reinstatement 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 November 13, 2008 is hereby affirmed and adopted.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION DECISION

Decatur

The *petitioner* filed a petition or motion for **Reinstatement** within 60 days of receipt of notice of the dismissal of this case, and properly served all parties. The matter came before me on **October 27, 2008** in the city of **Decatur**. After hearing the parties' arguments and due deliberations, I hereby **deny** the petition.

A record of the hearing [*2] **was** made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

This case was dismissed for want of prosecution on June 23, 2008, because Petitioner neither appeared for the docket call nor sent a timely written request for hearing showing good cause for a continuance as required by Section 7020.60 Rules Governing Practice Before the Illinois Workers' Compensation Commission. A Motion to Reinstate was timely filed and motioned in for hearing September 29, 2008. The Motion to Reinstate likewise showed no good cause to leave this case on the docket; therefore, the Motion was set for hearing on October 27, 2008 to allow Petitioner's attorney one final opportunity to state a good cause for continuing to leave this 8 year old case on the docket.

Petitioner's attorney did file a Supplement to **Petition to Reinstate**. The Motion was heard on October 27, 2008 with attorneys for both parties present. The Supplement to **Petition to Reinstate** fails to state a good cause for returning this case to the active docket.

The Supplement states that Petitioner is currently incarcerated. Petitioner was not, however, incarcerated when the case was dismissed on June 23, 2008, and there is no showing that he was [*3] incarcerated and unable to prosecute this claim at any other time during the 8 years this case has been pending.

A second reason stated in the Supplement is that Petitioner's attorney needs more information regarding treatment for Mr. Richter. Petitioner's attorney was unable to describe any attempts by himself or his office to identify or procure this information.

Lastly, the Supplement states that disputed issues exist with regard to this claim and therefore the case must proceed to trial. Respondent has disputed this case from its inception. The disputed nature of the case is not a good cause for continuance. On the contrary, it is a good reason to get the case tried and resolve the disputed issues as soon as possible. The Act and the Rules provide

procedures for just this purpose.

For the foregoing reasons, the **Petition to Reinstate** is denied.

Unless a *Petition for Review* is filed within 30 days from the date of receipt of this order, and a review perfected in accordance with the Act and the Rules, this order will be entered as the decision of the Workers' Compensation Commission.

Signature of arbitrator

November 10, 2008

Date

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2009 Ill. Wrk. Comp. LEXIS 1097, *

09 IWCC 1222

SAM GOLEMIS, PETITIONER, v. ARAMARK, RESPONDENT.

NO: 04WC 57456

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF KANE

2009 Ill. Wrk. Comp. LEXIS 1097

November 16, 2009

CORE TERMS: reinstare, arbitrator, notice, reinstatement, claimant, want of prosecution, properly served, red line

JUDGES: Molly C. Mason; Nancy Lindsay

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of the denial of Petitioner's Petition to **Reinstare**, and being advised of the facts and law, affirms the Decision of the Arbitrator.

The Commission corrects one of the Arbitrator's findings of fact. Petitioner filed his Petition to **Reinstare** on November 17, 2008, not November 17, 2007.

The Commission otherwise agrees with the Arbitrator's denial of the Petition to **Reinstare**, but supplies additional reasoning.

On a petition for reinstatement before the Commission, the burden is on the claimant to allege and prove facts justifying the relief sought. *Bromberg v. Industrial Commission*, 97 Ill.2d 395, 400 (1983). In the Commission's view, the claimant failed to meet this burden. Petitioner's counsel did not make a record when he argued the Petition before Arbitrator Akemann on December 10, 2008. Nor did he make a record when he argued his Motion for Reconsideration before Arbitrator Kinnaman on January 6, 2009. While counsel alleges that the Commission improperly sent the notice [*2] of dismissal to his prior address, and while the Substitution of Attorneys form in the Commission file bears a different address for Petitioner's counsel than the address on the notice, counsel did not provide testimony or an affidavit confirming his address at the time of the dismissal. Nor did he provide testimony or an affidavit indicating that he never received the notice of the dismissal. Nor did he make any representation, whether sworn or unsworn, as to the date on which he ultimately learned of the dismissal. Thus, even if the Commission's notice was misdirected and never received, as he has alleged, it is impossible to tell whether he filed his Petition to **Reinstare** within sixty days of the date on which he became aware that the claim had been dismissed.

Finally, as the Arbitrator correctly noted, this case was "above the red line" at the time of the dismissal. Petitioner's counsel filed his Substitution three months before the dismissal and knew, or should have known, of the case's "red line" status. He also knew, or should have known, that the case would appear on the Arbitrator's December 14, 2007 status call and that Rule 7020.60(b)(2)(C) required him to attend this call. [*3] Even if he had offered an explanation for his failure to meet this requirement, there can be no reasonable explanation for his failure to file the Petition to **Reinstare** until almost a year later. Rule 7020.60(b)(2)(C) imposes a duty of monitoring older claims. As such, it serves both a public and private purpose. Petitioner's counsel assumed this duty when he decided to take over the handling of a case that had been pending for some time.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator is hereby affirmed and adopted.

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

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION DECISION

The petitioner filed a *Motion for Reinstatement* on 11/14/2008 which was properly served on all parties. (Arb. Ex. 1) The respondent filed a *Motion to Deny the Petition to Reinstare* on 11/24/2008 which was properly served on the parties. (Arb. Ex. 2) The matter came before this arbitrator on 12/10/2008 in the city [*4] of Geneva. After hearing the parties' arguments and due deliberations:

I hereby deny the Petition to **Reinstare** and grant the Motion to Deny the Petition to **Reinstare**. A record of the hearing was not made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- 1.) The instant case was dismissed for want of prosecution on 12/14/2007.
- 2.) The petitioner to **reinstate** was not filed until 11/17/2007, a period of nearly one year after the dismissal.
- 3.) The arbitrator concludes that the petitioner's case was "above the line" and therefore the petitioner should be exercising due diligence to keep abreast of all aspects of this case, including its official status with the Illinois Workers Compensation Commission.

Unless a *Petition for Review* is filed within 30 days from the date of receipt of this order, and a review perfected in accordance with the Act and the Rules, this order will be entered as the decision of the Workers' Compensation Commission.

Date: 12/20/2008

Arbitrator Peter Akemann

CONCURBY: YOLAINE DAUPHIN




CONCUR: SPECIAL CONCURRENCE


The majority provides additional reasoning for the Arbitrator's denial of Petitioner's Petition to **Reinstate**. Upon review of the record, I agree with the majority [***5**] that the documents pertaining to the Petition to **Reinstate** do not allow a determination of the timeliness of the Petition. The Petition to **Reinstate** does not allege when Petitioner's counsel learned of the dismissal for want of prosecution.

Thus, it is impossible to tell whether the Petition was filed within the required sixty days. I end my analysis on that basis, however, and do not join the majority in the additional reasoning provided.

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2009 Ill. Wrk. Comp. LEXIS 1121, *

09 IWCC 1246

TIMOTHY HAMPTON, PETITIONER, v. KENNEY CONTRACTORS, INC., RESPONDENT.

NO: 02WC 17226

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF MONTGOMERY

2009 Ill. Wrk. Comp. LEXIS 1121

November 24, 2009

JUDGES: Paul W. Rink; Kevin W. Lamborn; Barbara A. Sherman**OPINION:** [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of the propriety of the denial of Petitioner's motion to **reinstate** and being advised of the facts and law, vacates the Decision of the Arbitrator as stated below remands this matter back to the Arbitrator for compliance with the Commission rule regarding petitions for reinstatement.

The Commission notes that the Commission file does not contain a Petition for Reinstatement, no record was made before the Arbitrator, and the Arbitrator's order denying reinstatement has no findings or explanation as to why he denied the petition for reinstatement. Under these circumstances, it is impossible for the Commission to determine whether the Arbitrator applied standards of fairness and equity and if he considered the following factors in denying reinstatement: the grounds relied on by the Petitioner for reinstatement and whether these grounds had any validity, the objections of Respondent against reinstatement, and the precedents of prior Commission decisions.

Further the Commission notes that, at oral argument, [*2] Petitioner did not have a copy of his petition to **reinstate** this matter. After Petitioner's attorney left, Respondent's attorney provided the Commission with what purports to be the petition for reinstatement. As this petition for reinstatement was not file stamped by the Commission and Petitioner's attorney was not present to confirm that, in fact, this was his petition for reinstatement, the Commission declines to rely on this document. Therefore the Commission remands this matter back to the Arbitrator to make a record of his findings so the Commission can conduct a meaningful review of his decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for further proceedings consistent with this Decision.

DATED: NOV 24 2009

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091WCC 1247

2009 Ill. Wrk. Comp. LEXIS 1122, *

CAROL SUE ST. VINCENT, PETITIONER, v. DAIMLER CHRYSLER CORPORATION, RESPONDENT,

NO: 07WC 29633

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF WINNEBAGO

2009 Ill. Wrk. Comp. LEXIS 1122

November 24, 2009

JUDGES: Paul W. Rink; Kevin Lamborn; Barbara Sherman

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission after considering the issue of a Motion to **Reinstate** and being advised in the facts and the law vacates the Arbitrator's denial of the Petition For The Reinstatement of The Case and remands the matter for a hearing and determination of the Motion to **Reinstate**.

A review of the facts discloses that on September 21, 2007, the Arbitrator entered two different dismissal orders. One order states that the case was dismissed for want of prosecution because Petitioner failed to appear on a status call or trial date. The second order consists of the checking of a box granting Respondent's Motion to Dismiss. Presumably, the second order was entered based upon the allegations in the Motion to dismiss (ie, claim barred by Respondent judicata).

A review of the records and evidence shows that neither the Motion to **Reinstate** filed by Petitioner nor the Order denying the reinstatement is present in the case file. However, the parties agree that the Arbitrator checked the box on the Notice of Motion and Order which denied the Petition for Reinstatement. [*2]

There is no record of a hearing on the Petition for Reinstatement. The Arbitrator gave no reasons for the denial of reinstatement.

In the absence of a record or any reasons in the order, it is impossible for the Commission to meaningfully review the decision.

The Commission remands the case for a hearing and determination in accordance with the rule governing Petitions to **Reinstate**.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's denial of the Petition for Reinstatement is vacated and the matter is remanded to the Arbitrator for a hearing and determination of the Motion to **Reinstate** the above-captioned case.

DATED: NOV 24 2009

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2009 Ill. Wrk. Comp. LEXIS 1336, *

MAGDA CASTENEDA, PETITIONER, v. CITY OF CHICAGO, RESPONDENT.

NO. 01WC 66509

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2009 Ill. Wrk. Comp. LEXIS 1336

December 7, 2009

09 IWC/1313

CORE TERMS: reinstate, want of prosecution, arbitrator, reinstatement, diligence, notice, arbitration, motion to reinstate, petitioner failed, trial date**JUDGES:** Yolaine Dauphin; Molly Mason; Nancy Lindsay**OPINION:** [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issue of the denial of Petitioner's Motion to **Reinstate** and being advised of the facts and law, affirms the Order of the Arbitrator denying reinstatement.

The Arbitrator dismissed Petitioner's claim on June 2, 2005. The Arbitrator's Order of that date states: "After this case was filed by the petitioner, all parties received due notice, but the petitioner failed to appear at a status call or trial date. Accordingly, as provided by law, I order that this case is dismissed for want of prosecution."

Petitioner filed a Motion to **Reinstate** on September 30, 2005, stating "Petitioner's counsel believe [sic.] he was present on June 2, 2005, but it is possible he failed to fill out form [sic.] requesting the matter to be RTC'd. Regardless, he was present on August 4, 2005 for trial at which time it was RTC'd. Petitioners [sic.] first knowledge of the DWP was from opposing counsel."

Never having called the 2005 Motion to **Reinstate** to hearing, Petitioner filed a second Motion to **Reinstate** on February 17, 2009. In the 2009 [*2] Motion to **Reinstate**; Petitioner's counsel explained he failed to pursue the 2005 Motion to **Reinstate** because he believed the case was already returned to the call on August 4, 2005. According to the 2009 Motion to **Reinstate**, "as a result of clerical errors this case was not reinstated."

The Arbitrator denied the 2009 Motion to **Reinstate** in an order entered on April 3, 2009, without comment. Petitioner seeks reversal of that denial.

In Petitioner's Statement of Exceptions, counsel argues that a former associate's mishandling of the case and subsequent departure from the firm, "coupled with the lack of or no communication from our client [caused] the case [to fall] off [the] radar." Petitioner's counsel states he immediately filed a motion to **reinstate** upon discovering the dismissal for want of prosecution. Therefore, in the interest of justice and equity, the Commission should **reinstate** the claim.

Respondent, however, argues the Arbitrator lacked jurisdiction to **reinstate** Petitioner's claim based on her failure to meet the statutory deadline. The Commission should also not allow the reinstatement of the claim because it would be unfair to ask Respondent to defend a case dormant for [*3] nearly four years, all on account of Petitioner's lack of diligence.

We agree with Respondent.

To begin, both motions to **reinstate** were filed more than 60 days after the dismissal for want of prosecution. See 50 Ill. Admin. Code, Ch. II, Sec. 7020.90(a) (1982) ("Where a cause has been dismissed from the arbitration call for want of prosecution, the parties shall have 60 days from receipt of the dismissal order to file a petition for reinstatement of the cause onto the arbitration call").

Petitioner's counsel has also not demonstrated the due diligence required for reinstatement. See Pazhampally v. Evanston Hospital, 8 IWCC 0705 ("It is axiomatic that a party is required to exercise due diligence in pursuing a claim before the Commission"). At the latest, Petitioner's counsel was aware of the dismissal by the time of filing of the first motion in September 2005. Yet, counsel failed to follow through on the 2005 Motion to **Reinstate** or to take any other steps to **reinstate** the case for more than three years, apparently, incorrectly, assuming no news was good news. See Bromberg v. Industrial Commission, 97 Ill. 2d 395, 401 (1983) [*4] ("While counsel complains that the record shows he had no notice of the June 9 or June 30 hearing dates, the responsibility was his to ascertain the status of his case after he failed to appear on the April 10 date to which the hearing had been continued at his request. [Citations.] So far as counsel knew, his case might have been dismissed or the proofs closed on that date; his is not entitled to assume that, in the face of his apparent lack of interest, a benevolent commissioner will automatically continue the case, fix a new

hearing date and notify him thereof"); Banks v. Industrial Comm'n, 345 Ill. App. 3d 1138 (2004) (observing that the failure to notice the motion for hearing can lead to the proper denial of a motion to **reinstate**, even when the filing of the motion itself is timely). Counsel's failure to monitor the status of this case demonstrates an inexcusable lack of due diligence.

IT IS THEREFORE ORDERED BY THE COMMISSION that the April 3, 2009 Order of the Arbitrator denying reinstatement is hereby affirmed.

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 [*5] Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: DEC 7 2009

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ORDER TO DISMISS CASE FOR WANT OF PROSECUTION


ATTENTION. The parties have 60 days from the receipt of this order to file a *Petition to Reinstate Case*.

After this case was filed by the petitioner, all parties received due notice, but the petitioner failed to appear at a status call or trial date. Accordingly, as provided by law, I order that this case is dismissed for want of prosecution.


Signature of arbitrator or commissioner

6/2/05

Date

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2009 Ill. Wrk. Comp. LEXIS 1370, *

09 IWCC 1347

LORENZO RODRIGUEZ, PETITIONER, v. ILLINOIS DEPARTMENT OF TRANSPORTATION, RESPONDENT.

NO: 05WC 54940

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF KANE

2009 Ill. Wrk. Comp. LEXIS 1370

December 16, 2009

CORE TERMS: reinstare, continuance, settlement, notice, timely filed, above-captioned, reinstated, negotiate**JUDGES:** Paul W. Rink; Barbara A. Sherman; Kevin W. Lamborn**OPINION:** [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after review of the stipulation of the parties, **reinstates** the above-captioned case and remands the matter to the Arbitrator for further proceedings. The Commission adopts the stipulation of the parties as follows:


1. The matter appeared "above the line" on Arbitrator Kinnaman's status call of March 13, 2009;
2. Although a continuance letter had been sent by Petitioner's then attorney, requesting a continuance when the matter appeared on the Arbitrator's status call, Arbitrator Kinnaman dismissed the matter for want of prosecution;
3. Notice of case dismissal dated March 30, 2009 was sent to Petitioner's then attorney and received by Petitioner's then attorney on or about April 1, 2009;
4. A Petition to **Reinstare** was thereafter timely filed on April 7, 2009;
5. The Petition to **Reinstare** was noticed for Arbitrator Kinnaman's May 5, 2009 status call in Geneva;
6. Due to inter-office miscommunication, Petitioner's present counsel was unaware that a hearing was set on the Petition to **Reinstare** on May 11, 2009;
7. Petitioner's counsel [*2] did not, therefore, appear in Geneva on May 11, 2009, but instead re-noticed the Petition to **Reinstare** for Arbitrator Kinnaman's June 2, 2009 status call in Geneva;
8. A hearing date of June 11, 2009 was thereafter set before Arbitrator Kinnaman on the Petition to **Reinstare**, and the parties appeared on that date before Arbitrator Kinnaman;
9. As the parties were trying to negotiate a settlement of the matter, Arbitrator Kinnaman entered and continued the hearing on the Petition to **Reinstare** to September 3, 2009. This September 3, 2009 date was thereafter continued to September 9, 2009 by agreement of the parties and the Arbitrator;
10. During the interim between June, 2009 and September, 2009, the parties continued to negotiate, reaching a tentative settlement agreement pending resolution of the issue of medical bills;
11. The parties therefore requested a continuance of the September 9, 2009 hearing to October 2009 in order to finalize settlement of the case;
12. Arbitrator Kinnaman, however, then notified the parties for the first time by e-mail on September 9, 2009 that there was a "problem". She found that she had issued an appealable order on May 15, 2009 denying the Petition [*3] to **Reinstare**. This order was never entered by the Commission, no notice of the order had ever gone to the parties, and Arbitrator Kinnaman had never mentioned the order to the parties prior to this time;
13. The order was thereafter entered by the Commission, and received by the Petitioner's attorney on September 30, 2009;
14. A Petition for Review was thereafter timely filed on October 2, 2009, and final settlement negotiations continue to date. The parties agree that the case should be reinstated, so that the imminent settlement may be finalized.

Based upon the above representations, the Commission **reinstates** the above-captioned case.


IT IS THEREFORE ORDERED BY THE COMMISSION that case 05 WC 054940 is hereby reinstated.

IT IS FURTHER ORDERED BY THE COMMISSION that case 05WC 54940 be remanded to the Arbitrator for further proceedings.

DATED: DEC 16 2009

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2010 Ill. Wrk. Comp. LEXIS 63, *

10 IWCC 58

PATRICIA ERUTEYA, PETITIONER, v. CITY OF CHICAGO, RESPONDENT.

NO. 04WC 41902

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2010 Ill. Wrk. Comp. LEXIS 63

January 19, 2010

CORE TERMS: reinstato, mainframe computer, timely filed, arbitrator, arbitration, justifying, reinstatement, re-assignment, laboratory, pro-se, muscle, legs**JUDGES:** Mario Basurto; James F. DeMunno; David L. Gore**OPINION:** [*1]

DECISION AND OPINION ON REVIEW

This matter comes before the Commission on Petitioner's review of Arbitrator Galicia's May 14, 2009 Order denying Petitioner's Motion to **Reinstato** the case. After due consideration, the Commission reverses Arbitrator Galicia's May 14, 2009 Order and grants Petitioner's Motion to **Reinstato** for the reasons set forth below.

1. Through her attorney, Petitioner filed an Application for Adjustment of Claim on August 31, 2004 which listed a date of accident of September 1, 2001. Petitioner claimed she wiped a powdered substance with a biological solution left in the laboratory she worked at and claimed she absorbed unknown chemicals in the laboratory. Petitioner listed her injuries as high CPK, thigh muscles, entire body, including lower legs bruised, painful legs, excruciating pain all over, right hand partially disabled and muscle damage.
2. On February 1, 2008, Petitioner's attorney filed a Motion to Withdraw as Petitioner's attorney due to differences. On February 26, 2008, Arbitrator Lammie granted the Motion to Withdraw.
3. In an Order dated January 9, 2009, Arbitrator Galicia noted that Respondent filed a petition or motion for dismissal of the [*2] case on December 23, 2008 which was properly served on the parties. The matter was heard on January 9, 2009 and a record of the hearing was not made. In his Order, Arbitrator Galicia noted that Petitioner had new attorneys as of February 7, 2006, but they withdrew on February 1, 2008. He noted that Petitioner spent 10 months looking for an attorney without success. Arbitrator Galicia noted that he informed Petitioner that she would have to try the case herself and ordered her to provide copies of all the evidence she intended to introduce at trial to Respondent's attorney at least 1 week before the trial date of January 9, 2009. Arbitrator Galicia noted that on January 8, 2009, he received a 2 inch packet of evidence which she had also supplied to Respondent's attorney. He noted that on January 9, 2009, Petitioner failed to appear and that Respondent's attorney was present. Arbitrator Galicia granted Respondent's motion to dismiss. He also noted that this Order was final and appealable.
4. There is no Notice of Case Dismissal in the file or noted on the mainframe computer system.
5. On May 14, 2009, a hearing was held before Arbitrator Galicia regarding Petitioner's Motion to **Reinstato**. [*3] During the hearing, Respondent's attorney submitted into evidence a certified letter dated January 21, 2009 that he had sent to Petitioner, enclosing Arbitrator Galicia's January 9, 2009 Order. In his letter, Respondent's attorney informed Petitioner that on January 9, 2009, Arbitrator Galicia had dismissed her claim. Respondent's attorney informed Petitioner that she had 30 days from the date of the receipt of this Order to file a Petition for Review of the Order. Petitioner signed the return of certified mailing receipt and it is dated January 29, 2009. Respondent's attorney also noted in his letter that there are some instances where a Motion to **Reinstato** a matter can be filed within 60 days of the date of receipt of the dismissal. He noted that the Arbitrator's Order was a final and appealable order and that it would be his position that the Order is the equivalent of an arbitration decision and that the 60 day period did not apply. He recommended Petitioner consult with an attorney immediately if she wished to pursue the matter. The letter and certified receipt were admitted into evidence as Rx1. Arbitrator Galicia's January 9, 2009 Order was admitted as Rx2. Admitted as Rx3 [*4] is a Notice of Motion and Order that was the February 1, 2008 Withdrawal of Attorney Motion, which had been crossed out and marked as Reinstatement of Case and noted Petitioner was pro-se and that a hearing would be held on April 27, 2009. The document was signed by Arbitrator Galicia and dated April 27, 2009 and indicated the matter would be continued to May 14, 2009.

During the May 14, 2009 hearing, Respondent's attorney argued that Petitioner's Motion to **Reinstato** was not timely filed and that she never actually filed a Motion to **Reinstato** and he had never received same (Tr 4-5). Petitioner argued that she had sent Respondent's attorney the Motion to **Reinstato** (Tr 5). Arbitrator Galicia informed Petitioner that the rules require that after the Order to Dismiss was entered, she had 60 days to file a Petition to **Reinstato** (Tr 6). Arbitrator Galicia asked Petitioner to show him the filing of her Petition to **Reinstato** and Petitioner replied that she did not have a copy of it (Tr 7). Respondent's attorney stated he did not have a copy of Petitioner's Petition/Motion to **Reinstato** (Tr 7). Arbitrator Galicia noted that he did not see anything in Petitioner's

paperwork to indicate that any [*5] motion was timely filed (Tr 9). Petitioner stated that she had been at the Commission several times and was told that because Arbitrator Galicia had not given a letter to dismiss, Petitioner could not file a Motion to **Reinstate** and would not give Petitioner a form to **reinstate** the case (Tr 9-10). Arbitrator Galicia denied Petitioner's Motion to **Reinstate** because it was not timely filed (Tr 10-11).

6. The mainframe computer system indicates that a Motion to **Reinstate** was filed by Petitioner on April 9, 2009. This is not in the Commission file.

7. On June 11, 2009, Petitioner filed a Petition for Review of Arbitrator Galicia's May 14, 2009 denial of Petitioner's Motion to **Reinstate**.

Based on the above, the Commission reverses Arbitrator Galicia's May 14, 2009 Order and grants Petitioner's Motion to **Reinstate** the case. Interpretory caselaw is well-settled and clear in these matters; that is, the burden is on Petitioner to allege and prove facts justifying the relief sought. See *Cranfield v. Industrial Commission*, 78 Ill.2d 251, 399 N.E.2d 1316 (1980); *Roberts v. Industrial Commission*, 96 Ill.2d 475, 451 N.E.2d 857 (1983); [*6] *Bromberg v. Industrial Commission*, 97 Ill.2d 395, 454 N.E.2d 661 (1983). Moreover, it is within the sound discretion of the Commission to grant or deny reinstatement. The Commission finds that Petitioner has proven facts justifying the reinstatement of her case.


The Commission notes that there was no problem with the Arbitrator's dismissal of the case on January 9, 2009 as Petitioner did not show up for the hearing. The problem becomes that the Commission did not issue a Notice of Dismissal to Petitioner, who is pro-se. Petitioner was not at the January 9, 2009 hearing, so she was not aware at that time that her claim had been dismissed. Without the Notice of Dismissal, Petitioner would not be aware that her claim had been dismissed at that time. Apparently, the dismissal was not inputted into the mainframe computer system and a Notice of Dismissal was not generated. Petitioner testified that she tried to file a Motion to **Reinstate**, but was not allowed to do so because the mainframe computer system showed that the case was ongoing. This correlates with there not being a Notice of Dismissal sent. The Commission notes that the 60 day time [*7] period to file a Motion/Petition to **Reinstate** does not begin to run until a Notice of Dismissal is received by the parties. Here, no Notice of Dismissal was sent. Respondent's attorney argued that his letter is equivalent to a Notice of Dismissal; however, this is not the case. A Notice of Dismissal by the Commission contains language informing the parties of the 60 day rule. Respondent's letter is confusing in this regard and is not a document generated by the Commission. The Commission finds that Petitioner was deprived of the opportunity to timely file her Motion to **Reinstate**. The Commission further remands the case to arbitration and re-assignment to another arbitrator in order to avoid any claim of prejudice.

IT IS THEREFORE ORDERED BY THE COMMISSION that Arbitrator Galicia's May 14, 2009 Order is hereby reversed and Petitioner's Motion to **Reinstate** the case is hereby granted.

IT IS FURTHER ORDERED BY THE COMMISSION that the case is remanded to arbitration and re-assignment to another arbitrator.

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 [*8] therefore and deposited with the Office of the Secretary of the Commission.

DATED: JAN 19 2010

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2010 Ill. Wrk. Comp. LEXIS 222, *

10 IWCC 0193

HANA ZDUNCZYK, PETITIONER, v. CARDINAL BUILDING MAINTENANCE, RESPONDENT,

NO: 09WC 7220

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF DUPAGE

2010 Ill. Wrk. Comp. LEXIS 222

February 24, 2010

JUDGES: Mario Basurto; James F. DeMunno; David L. Gore**OPINION:** [*1]

DECISION AND OPINION ON REVIEW

Petitioner reviews Arbitrator Lammie's Decision granting Respondent's Motion To Dismiss Application for Adjustment of Claim # 09 WC 7220. Both parties filed briefs. After due consideration, the Commission affirms Arbitrator Lammie's Decision granting Respondent's Motion To Dismiss Application for Adjustment of Claim # 09 WC 7220 for the reasons set forth below.

1. On May 15, 2006, Petitioner, through her attorney James Geraghty, filed an Application for Adjustment of Claim alleging she sustained accidental injuries arising out of and in the course of her employment with Respondent on May 5, 2006. This Application was assigned Claim # 06 WC 21174.
2. On November 20, 2006, Petitioner, through her attorney Peter Wachowski, filed an Application for Adjustment of Claim alleging she sustained accidental injuries arising out of and in the course of her employment with Respondent on May 5, 2006. This Application was assigned Claim # 06 WC 50141.
3. On April 13, 2007, Petitioner's attorney Peter Wachowski filed a Substitution of Attorney for Claim # 06 WC 21174. Subsequently, Claim # 06 WC 21174 and Claim # 06 WC 50141 were consolidated before Arbitrator [*2] Fratianni.
4. On December 3, 2007, Arbitrator Fratianni dismissed both Claim # 06 WC 21174 and Claim # 06 WC 50141 for want of prosecution.
5. On December 31, 2007, Petitioner filed a Petition to **Reinstate** Claim # 06 WC 21174. Respondent filed an objection to reinstatement. A hearing was held before Arbitrator Fratianni on November 13, 2008. At this hearing, the parties agreed that Claim # 06 WC 50141 be dismissed. As of August 11, 2009, Arbitrator Fratianni had not issued her decision on whether to **reinstate** Claim # 06 WC 21174.
6. On February 19, 2009, Petitioner, through her attorney Peter Wachowski, filed an Application for Adjustment of Claim alleging she sustained accidental injuries arising out of and in the course of her employment with Respondent on May 5, 2006. This Application was assigned Claim # 09 WC 7220.
7. On July 27, 2009, Respondent filed a Motion to Dismiss Application for Adjustment of Claim # 09 WC 7220. In his Motion, Respondent's attorney noted the above. Respondent's attorney argued that a petitioner is allowed to file only one Application for Adjustment of Claim for each date of accident and cannot file multiple Applications for the same date of accident [*3] against the same respondent, citing Rule 7020.20(b).
8. A hearing was held on August 11, 2009 before Arbitrator Lammie on Respondent's Motion to Dismiss Application for Adjustment of Claim # 09 WC 7220. At this hearing, Respondent's attorney presented his Motion. Petitioner's attorney indicated that the parties were still awaiting Arbitrator Fratianni's Decision and current status was both Claim # 06 WC 50141 and Claim # 06 WC 21174 were dismissed pending his Petition to **Reinstate** Claim # 06 WC 21174. Petitioner's attorney stated he filed the Application for Adjustment of Claim # 09 WC 7220 in order to insure Petitioner's rights and the 3 year Statute of Limitations period. After hearing the arguments made by the parties, Arbitrator Lammie granted Respondent's Motion to Dismiss Application for Adjustment of Claim # 09 WC 7220 and denied Respondent's request for attorney's fees and costs in bringing the Motion. Arbitrator Lammie's Decision was dated August 11, 2009.
9. On September 10, 2009, Petitioner's attorney filed a timely Petition for Review of Arbitrator Lammie's Decision.
10. On December 21, 2009, Petitioner's attorney filed her Statement of Exceptions and Supporting Brief, [*4] which contained Exhibits A through V. On January 5, 2010, Respondent's attorney filed a Motion to Strike Petitioner's Statement of Exceptions and Supporting Brief, arguing that the exhibits contained in Petitioner's Statement of Exceptions and Supporting Brief were not evidence introduced at the August 11, 2009 hearing before Arbitrator Lammie or admitted into evidence. On January 22, 2010, Petitioner's

attorney filed a Response to Respondent's Motion to Strike, arguing that while additional, these exhibits were not evidence and the Commission has discretion to consider them.

Regarding Respondent's Motion to Strike Petitioner's Statement of Exceptions and Supporting Brief, the Commission finds the following:

- Exhibit A: Application for Adjustment of Claim # 06 WC 21174. The Commission allows this exhibit.
- Exhibit B: Transcript of August 11, 2009 hearing before Arbitrator Lammie. The Commission allows this exhibit.
- Exhibit C: Application for Adjustment of Claim # 06 WC 50141. The Commission allows this exhibit.
- Exhibit D: Respondent's Motion to Dismiss Application and for Change of Venue Claims # 06 WC 21174 and # 06 WC 50141. The Commission strikes this exhibit.
- Exhibit E: Notice [*5] of Motion and Order of Respondent's Motion to Dismiss Application and for Change of Venue Claims # 06 WC 21174 and # 06 WC 50141 and Arbitrator Pulia's June 27, 2007 Order. The Commission allows this exhibit.
- Exhibit F: October 4, 2007 Agreed Motion to Dismiss Application Claim # 06 WC 50141. The Commission allows this exhibit.
- Exhibit G: December 5, 2007 letter from Respondent's attorney to Petitioner's attorney. The Commission strikes this exhibit.
- Exhibit H: December 3, 2007 Notice of Case Dismissal # 06 WC 50141. The Commission allows this exhibit.
- Exhibit I: December 3, 2007 Notice of Case Dismissal # 06 WC 21174. The Commission allows this exhibit.
- Exhibit J: December 31, 2007 Petitioner's Motion to Vacate DWP and **Reinstate** Claims # 06 WC 21174 and # 06 WC 50141. The Commission strikes this exhibit.
- Exhibit K: February 13, 2008 letter from Petitioner's attorney to Arbitrator Fratianni. The Commission strikes this exhibit.
- Exhibit L: November 6, 2008 Respondent's Response to Petition to **Reinstate** Claims # 06 WC 21174 and # 06 WC 50141. The Commission strikes this exhibit.
- Exhibit M: November 13, 2008 Petitioner's Reply to Respondent's Response to Petition to **Reinstate** [*6] Claims # 06 WC 21174 and # 06 WC 50141. The Commission strikes this exhibit.
- Exhibit N: November 25, 2008 Petitioner's Proposed Findings Regarding Petitioner's Motion to Vacate DWP and **Reinstate**. The Commission strikes this exhibit.
- Exhibit O: November 18, 2008 Respondent's Proposed Decision and correspondence to Arbitrator Fratianni. The Commission strikes this exhibit.
- Exhibit P: Transcript of November 13, 2008 hearing before Arbitrator Fratianni. The Commission allows this exhibit.
- Exhibit Q: Application for Adjustment of Claim # 09 WC 7220. The Commission allows this exhibit.
- Exhibit R: August 31, 2009 Arbitrator Fratianni's Decision on Claim # 06 WC 21174. The Commission allows this exhibit.
- Exhibit S: August 31, 2009 Arbitrator Fratianni's Decision on Claim # 06 WC 50141. The Commission allows this exhibit.
- Exhibit T: Petitioner's Petition for Review of Claim # 09 WC 7220. The Commission allows this exhibit.
- Exhibit U: Petitioner's Petition for Review of Claim # 06 WC 21174. The Commission allows this exhibit.
- Exhibit V: Petitioner's Petition for Review of Claim # 06 WC 50141. The Commission allows this exhibit.

The Commission did not consider those portions of Petitioner's [*7] Statement of Exceptions and Supporting Brief referencing the stricken exhibits. The Commission notes that Petitions for Review of Claims # 06 WC 21174 and # 06 WC 50141 are pending.

The Commission notes that Rule 7020.20(b) provides: "An Application for Adjustment of Claim must be limited to one accident or claim. After an Application has been filed with the Commission, any other Applications for Adjustment of Claim covering that accident, but naming a different employer, shall be assigned the same docket number as the original Application. Nothing herein shall bar the filing of an Amended Application for Adjustment of Claim."

The Commission finds that Petitioner's filing of the Application for Adjustment of Claim # 09 WC 7220 violated Rule 7020.20(b). The Commission finds that there was nothing improper in Arbitrator Lammie's granting of Respondent's Motion to Dismiss Application for Adjustment of Claim # 09 WC 7220.




IT IS THEREFORE ORDERED BY THE COMMISSION that Arbitrator Lammie's granting of Respondent's Motion to Dismiss Application for Adjustment of Claim # 09 WC 7220 is hereby affirmed and the Application for Adjustment of Claim # 09WC 7220 is hereby dismissed.

The probable [*8] 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 therefore and deposited with the Office of the Secretary of the Commission.

DATED: FEB 24 2010

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2010 Ill. Wrk. Comp. LEXIS 223, *

10 IWCC 0194

REYNALDO FIGUEROA, PETITIONER, v. STATE OF ILLINOIS, ILLINOIS DEPT. OF CORRECTIONS, RESPONDENT,

NO: 05WC 23191

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF KANE

2010 Ill. Wrk. Comp. LEXIS 223

February 24, 2010

JUDGES: Mario Basurto; James F. DeMunno; David L. Gore**OPINION:** [*1]

DECISION AND OPINION ON REVIEW

Petitioner reviews Arbitrator Kinnaman's Order denying Petitioner's Motion To **Reinstatement** the case. After due consideration, the Commission reverses Arbitrator Kinnaman's Order and **reinstates** the case for the reasons set forth below.


- Petitioner, through his attorney, filed an Application for Adjustment of Claim on May 24, 2005, alleging he sustained accidental injuries to his right ankle arising out of and in the course of his employment on November 12, 2003. The claim was assigned to Arbitrator Kinnaman.
- On October 13, 2005, Petitioner filed an amended Application for Adjustment of Claim which changed Respondent's address.
- In an Order dated March 13, 2009, Arbitrator Kinnaman dismissed Petitioner's claim for want of prosecution, noting that Petitioner failed to appear at a status call or trial date. The Commission sent Notice of Case Dismissal dated March 30, 2009 to all parties.
- Petitioner filed a Motion to **Reinstatement** the claim on May 13, 2009. In her Order filed with the Commission on July 28, 2009, Arbitrator Kinnaman noted that this claim was above the 3 year red line when it appeared on the Geneva docket on March 3, 2009. The claim [*2] was set for hearing on March 13, 2009. Petitioner failed to appear or request a continuance and the claim was dismissed for want of prosecution. Arbitrator Kinnaman noted that a Motion to **Reinstatement** was filed on May 13, 2009 and presented at the Geneva status call on June 2, 2009. The Motion to **Reinstatement** was set for hearing on June 10, 2009. On that date the matter was continued to July 13, 2009. On July 13, 2009, neither Petitioner nor his attorney appeared. Arbitrator Kinnaman denied Petitioner's Motion to **Reinstatement** the claim.
- On August 5, 2009, Petitioner filed a Petition for Review of Arbitrator Kinnaman's denial of Petitioner's Motion to **Reinstatement** the claim. On that date, Petitioner also filed a Motion to Reconsider Denial of Petitioner's Motion to **Reinstatement**. In his Motion to Reconsider, Petitioner's attorney noted that on June 10, 2009, he appeared before Arbitrator Kinnaman and informed her that Respondent did not object to Petitioner's Motion to **Reinstatement**, that Petitioner was receiving TTD benefits and that Petitioner continued to receive medical treatment. Petitioner's attorney also noted that he had informed Arbitrator Kinnaman that Petitioner had three open claims which [*3] needed to be consolidated. Arbitrator Kinnaman continued Petitioner's Motion to **Reinstatement** to July 13, 2009. Petitioner's attorney noted that he was to have filed a Motion to Consolidate for the same date and return for both motions and to inform Arbitrator Kinnaman about Petitioner's current treatment. Petitioner's attorney noted that at the July 7, 2009 status call, Arbitrator Kinnaman granted Petitioner's Motion to Consolidate and therefore, Petitioner's attorney did not obtain a hearing date on the Motion to Consolidate for July 13, 2009 as intended. Petitioner's attorney noted that as a result, neither Petitioner nor his attorney appeared on July 13, 2009. Petitioner's attorney noted that subsequently he received Arbitrator Kinnaman's July 28, 2009 Order denying Petitioner's Motion to **Reinstatement** the claim. Petitioner's attorney argued that Petitioner's failure to appear was inadvertent, based upon the Motion to Consolidate being granted on July 7, 2009, instead of being set for hearing on July 13, 2009. Petitioner's attorney requested that Arbitrator Kinnaman reconsider her denial of Petitioner's Motion to **Reinstatement** the claim and grant said Motion.
- On September 2, 2009, Petitioner [*4] filed the same Petition for Review of Arbitrator Kinnaman's denial of Petitioner's Motion to **Reinstatement** the claim and the Motion to Reconsider Denial of Petitioner's Motion to **Reinstatement**. The Motion to Reconsider Denial of Petitioner's Motion to **Reinstatement** was to be presented to Commissioner Rink on September 11, 2009. In her September 12, 2009 Order, Commissioner Sherman dismissed Petitioner's Motion to Reconsider Denial of Petitioner's Motion to **Reinstatement**. Commissioner Sherman noted that the Commission had no authority to reconsider, but the Petition for Review of Arbitrator Kinnaman's denial of Petitioner's Motion to **Reinstatement** the claim was pending and would be considered by the Commission.

Based on the above, the Commission reverses Arbitrator Kinnaman's Order denying Petitioner's Motion To **Reinstatement** the case and **reinstates** the case. The Commission notes that in his Motion to Reconsider, Petitioner's attorney noted that on June 10, 2009, he appeared before Arbitrator Kinnaman and informed her that Respondent did not object to Petitioner's Motion to **Reinstatement**. Therefore, the parties stipulated to reinstatement of the case.


IT IS THEREFORE ORDERED BY THE COMMISSION that Arbitrator [***5**] Kinnaman's Order denying Petitioner's Motion To **Reinstate** the case is hereby reversed and the claim is hereby reinstated.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the arbitrator for further proceedings consistent with this Decision.

DATED: FEB 24 2010

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2010 Ill. Wrk. Comp. LEXIS 286, *

10 IWCC 0258

JUAN SANCHEZ, PETITIONER, v. PHEASANT RUN INC., RESPONDENT.

NO: 05 WC 55567

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF KANE

2010 Ill. Wrk. Comp. LEXIS 286

March 11, 2010

JUDGES: David L. Gore; James F. DeMunno; Mario Basurto

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Petitioner seeks review of the Decision of Arbitrator Kinneman issued July 21, 2009 in which she denied Petitioner's Motion to **Reinstate**. A hearing on the motion was held on July 8, 2009. Petitioner's lawyer stated that on April 13, 2009 the case was above the black line and "due for docketing." However he did not appear due to a "docketing error." At that time the case was DWP'd. He filed a Motion to Vacate the DWP, after which Respondent first appeared, and indicated the "date on the application was incorrect." Petitioner filed an amended application correcting the date of accident from January 8, 2004 to October 8, 2004. Upon questioning by the Arbitrator, Petitioner's lawyer indicated that he was not ready for trial, but was ready to "work with Respondent's attorney for trial or settlement. There had been no Respondent until this point."

In her decision, the Arbitrator noted that the case was above the line on April 7, 2009 and set for trial on April 13, 2009. Petitioner did not appear and it was DWP'd. A Motion to **Reinstate** was timely filed and the matter was set for hearing for June 5, 2009. The Arbitrator indicated that Petitioner "initially, [*2] failed to appear and the motion to **reinstate** was denied. When Petitioner subsequently appeared, the motion was set for July 8, 2009." At that time, the Arbitrator noted that her denial of the Motion to **Reinstate** dated June 16, 2009 was issued in error and should be recalled.

In her eventual denial of the motion, the Arbitrator noted that the claim was nearly five years old and Petitioner did nothing to pursue the claim including determining the correct date of accident or identifying Respondent's representative.

The Commission certainly cannot condone the failure of Petitioner and his attorney to pursue his case diligently. Nevertheless, it appears that Petitioner actually missed only a single hearing date, which his attorney ascribed to "docketing error." Under these circumstances, the Commission considers the refusal to **reinstate** the case, thereby extinguishing Petitioner's claim completely, too harsh a sanction for Petitioner's tardiness and his attorney's apparent clerical error. Therefore the Commission reverses the Decision of the Arbitrator and **reinstates** this claim.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator issued July 21, 2009 is REVERSED. [*3]

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's claim in 05 WC 55567 is REINSTATED

IT IS FURTHER ORDERED BY THE COMMISSION that this case be REMANDED to the Arbitrator for adjudication.

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.

DATED: MAR 11 2010

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