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# 15

## Workers' Compensation Appeals

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## I. [15.1] INTRODUCTION

The workers' compensation appeal process begins as soon as the arbitrator renders his or her decision and counsel receives a copy of the decision in the mail. The process commences with the filing of a petition for review, which notifies the parties and the Illinois Workers' Compensation Commission (Commission) of the intent to review and further identifies the issues for review. 50 Ill.Admin. Code §9040.10. Since the Commission reviews the arbitrator's decision de novo, the Commission's review is not a traditional appellate review in the sense that deference is given to the arbitrator's fact-findings. Rather, the Commission is empowered to evaluate credibility and to reweigh the evidence as it sees fit, based on the transcript of arbitration. *S & H Floor Covering, Inc. v. Illinois Workers' Compensation Commission*, 373 Ill.App.3d 259, 870 N.E.2d 821, 826 – 827, 312 Ill.Dec. 377 (4th Dist. 2007).

This chapter focuses on judicial review of a Commission decision before the circuit court under §19(f) of the Workers' Compensation Act, 820 ILCS 305/1, *et seq.*, on appeal to the Workers' Compensation Commission Division of the Illinois Appellate Court and also to the Illinois Supreme Court. The details for filing a petition for review from the arbitrator's decision to the Commission are set forth in ILLINOIS WORKERS' COMPENSATION PRACTICE, Ch. 5 (IICLE®, 2015).

## II. [15.2] JUDICIAL REVIEW FROM THE ILLINOIS WORKERS' COMPENSATION COMMISSION BEFORE THE CIRCUIT COURT

Taking a judicial review from a decision of the Illinois Workers' Compensation Commission to the circuit court can be one of the most difficult aspects of handling a workers' compensation appeal. The procedures governing judicial review are set forth in §19(f) of the Workers' Compensation Act, 820 ILCS 305/19(f), and Workers' Compensation Commission Rule 9060.10. These provisions should be reviewed each time judicial review is desired to ensure that all aspects of the statute and accompanying rules are satisfied. Moreover, local rules of the circuit court in which counsel intend to file the review should also be consulted. Many of the statutory requirements are considered jurisdictional, which means they are subject to a strict compliance standard and it is fatal if the requirements are not met.

As a starting point, the following steps should be taken immediately upon receipt of the Commission's decision:

- a. Document the date of receipt with a file-stamp — this date controls when the judicial review is due.
- b. Calculate the due date — 20 days from the date of receipt.
- c. Determine if the decision is final or interlocutory.
- d. Determine proper venue for the judicial review.
- e. Confirm the bond amount, appropriate surety, and signatory.

The steps to perfect a review must be completed within the 20-day statutory period. The details of the judicial review process, including what documents to must file and where and when to file those documents, are covered in §§15.15 through 15.39 below.

#### A. [15.3] Final or Interlocutory Orders

The first inquiry once the Illinois Worker's Compensation Commission's decision is received is whether the decision is final and appealable or interlocutory. A nonfinal decision of the Commission is interlocutory and is not immediately appealable, but it must first be remanded to the lower tribunal. *Honda of Lisle v. Industrial Commission*, 269 Ill.App.3d 412, 646 N.E.2d 318, 320, 206 Ill.Dec. 951 (2d Dist. 1995). While this statement seems obvious, it is not always easy in practice to spot a nonfinal decision or order.

The law governing this question is rather straightforward. Only final decisions of the Commission are appealable. *Bechtel Group, Inc. v. Industrial Commission*, 305 Ill.App.3d 769, 713 N.E.2d 220, 221, 238 Ill.Dec. 974 (2d Dist. 1999). "A judgment is final if it determines the litigation on the merits, and it is not final if the order leaves a case pending and undecided." *Supreme Catering v. Illinois Workers' Compensation Commission*, 2012 IL App (1st) 111220WC, ¶8, 976 N.E.2d 1047, 364 Ill.Dec. 484. In determining whether a decision of the Commission is final, the question is whether administrative involvement in the case has been terminated or the Commission has ordered further administrative proceedings. *International Paper Co. v. Industrial Commission*, 99 Ill.2d 458, 459 N.E.2d 1353, 1357, 77 Ill.Dec. 104 (1984).

Caselaw holds that a "final order" or "judgment" is one that "either terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate branch thereof." *Prado v. Evanston Hospital*, 72 Ill.App.3d 622, 390 N.E.2d 1270, 1272, 28 Ill.Dec. 680 (1st Dist. 1979). This reasoning applies with equal force to decisions of the arbitrator, Commission, or circuit court. "An order of the circuit court which reverses a decision of the Commission and remands the matter to the Commission is interlocutory and not appealable." *Wood Dale Electric v. Illinois Workers' Compensation Commission*, 2013 IL App (1st) 113394WC, ¶8, 986 N.E.2d 107, 369 Ill.Dec. 158.

One caveat is worth noting here. If the remand is solely to conclude simple calculations or other uncontroverted matters, the remand does not impact the finality of the order. Thus, if the circuit court instructions on remand require only that the Commission "act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or . . . make a mathematical calculation," then the court's order is final for purposes of appeal. *Edmonds v. Illinois Workers' Compensation Commission*, 2012 IL App (5th) 110118WC, ¶19, 986 N.E.2d 775, 360 Ill.Dec. 282. See also *A.O. Smith Corp. v. Industrial Commission*, 109 Ill.2d 52, 485 N.E.2d 335, 336, 92 Ill.Dec. 524 (1985); *Nava v. Illinois Workers' Compensation Commission*, 2012 IL App (2d) 111266WC-U, ¶29.

The appellate court can raise the issue of its jurisdiction sua sponte. *Rojas v. Illinois Workers' Compensation Commission*, 406 Ill.App.3d 965, 942 N.E.2d 668, 672, 347 Ill.Dec. 465 (1st Dist.