2025 IL App (1st) 241200WC-U

Workers' Compensation
Commission Division
Order Filed: March 21, 2025

No. 1-24-1200WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

EXECUTIVE MAILING SERVICES, Appellant, Cross-Appellee, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al*., (Maria Rodriguez, Appellee, Cross-Appellant).	)))))))))))	Appeal from the Circuit Court of Cook County. No. 23-L-050473 Honorable Daniel P. Duffy, Judge, Presiding.

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

ORDER

¶ 1 *Held*: We reverse the decision of the circuit court setting aside the Commission's award of section 19(k) penalties and section 16 attorney fees and reinstate that portion of the Commission's decision in full. We affirm the circuit court's order confirming the Commission's decision in all other respects, where employer's appellant brief violates Rule 341 and therefore forfeits all arguments.

¶ 2 Employer, Executive Mailing Services, appeals from an order of the circuit court of Cook County, confirming the decision of the Illinois Workers' Compensation Commission

(Commission) on all issues except section 19(k) penalties under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/19(k) (West 2020)), and section 16 attorney fees under the Act (820 ILCS 305/16 (West 2020)). Claimant, Maria Rodriguez, cross-appeals, arguing the court erred by setting aside the Commission's section 19(k) penalties and section 16 attorney fees. For the following reasons, we reverse the decision of the circuit court setting aside the Commission's award of section 19(k) penalties and section 16 attorney fees, reinstate that portion of the Commission's decision in full, and affirm all other aspects of the circuit court's order confirming the Commission's decision (the awards of vocational rehabilitation expenses, odd-lot permanent total disability benefits, and section 19(*l*) penalties).

¶ 3 I. Background

¶ 4 As detailed below, employer forfeited review of its claims on appeal for violations of briefing standards found in Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020). Therefore, our recitation of the facts is limited to those necessary to dispose of claimant's cross-appeal.

¶ 5 The following evidence and testimony was adduced at the July 22, 2022, arbitration hearing. Claimant testified, through an interpreter, that she was born in Mexico and attended school through the sixth grade. On November 9, 2015, while working for employer as a mail handler, claimant felt a "pulling" in her right shoulder while lifting a box of mail. Following this incident, employer sent claimant to the Little Company of Mary (LCM) Care Station in Oak Lawn, Illinois, for medical attention. Providers at LCM diagnosed claimant with right arm myalgia and placed limitations on her to avoid lifting over five pounds and no pulling and/or pushing. Claimant continued light work duty. Claimant followed up at LCM until her provider referred her to Dr. Sujal Desai, an orthopedist, on December 3, 2015. Dr. Desai placed claimant on restricted work

duty, recommending she avoid working with her right arm. Claimant underwent an MRI on February 9, 2017, which revealed a tear of the distal supraspinatus tendon.

¶ 6 Dr. Jorge Cavero, claimant's primary care physician, referred claimant to Dr. Erling Ho, an orthopedic surgeon, of Orthopedic Associates of Riverside. In January 2017, claimant stopped working and began receiving temporary total disability (TTD) benefits. Dr. Ho confirmed that claimant suffered a rotator cuff tear in the distal supraspinatus tendon. After failing to progress under steroid injections and physical therapy, Dr. Ho performed two surgeries on claimant, including a right shoulder arthroscopic rotator cuff repair surgery with biceps tenodesis and a manipulation under anesthesia with arthroscopic extraction of adhesions and an arthroscopic subacromial decompression. Following her second surgery in January 2018, claimant remained off of work. Despite treatment and surgeries, claimant testified that she could not fully lift her arm, experienced pain, and that daily activities, such as performing chores, dressing herself, exercising, and reaching above her head to reach high cabinets, were difficult.

¶ 7 On September 29, 2018, claimant underwent a work conditioning evaluation (WCE) at Chicago Rehabilitation Services. The WCE determined claimant could perform work within the sedentary physical demand category, which was below claimant's job requirements for employer. Chicago Rehabilitation Services recommended that claimant participate in four weeks of "skilled work hardening," also known as work conditioning, to potentially return to full duty work. Claimant presented to Dr. Ho on November 12, 2018, advising him that she completed work conditioning but still experienced shoulder pain. Dr. Ho ordered an MRI and issued claimant work restrictions of lifting no more than 10 pounds, no pushing/pulling more than 10 pounds, and no over-the-shoulder work until after the next recommended MRI.

¶ 8 On November 20, 2018, claimant underwent a section 12 independent medical examination (IME) with Dr. Taizoon Baxamusa of the Illinois Bone and Joint Institute, at the request of employer. Dr. Baxamusa diagnosed claimant with status post right shoulder rotator cuff repair with adhesive capsulitis and opined her injury was work-related. Dr. Baxamusa believed claimant underwent appropriate and necessary treatment. Dr. Baxamusa believed that claimant would reach maximum medical improvement (MMI) after she completed work conditioning. Dr. Baxamusa recommended claimant undergo a functional capacity evaluation (FCE).

¶ 9 On January 7, 2019, claimant presented to Dr. Ho complaining of shoulder pain. Dr. Ho determined claimant reached MMI at that time and placed claimant on permanent restrictions of no lifting more than 15 pounds with the right arm and no over-the-shoulder work. Dr. Ho indicated that claimant could return to work with said restrictions. Later, on August 28, 2020, claimant underwent a second FCE/WCE at Chicago Rehabilitation Services.

¶ 10 On August 21, 2021, employer requested that claimant participate in a vocational assessment with Edward Minnich, a vocational rehabilitation consultant with Select Case Management Services. Claimant, however, refused to participate in the assessment, noting that Mr. Minnich "changed the [work restrictions] that my original doctor [Dr. Ho] had given me." Claimant authorized her counsel to provide a list of vocational rehabilitation professionals to employer in an effort to agree upon one for a reevaluation. An agreement could not be reached. After claimant's refusal to participate in a vocational rehabilitation assessment with Mr. Minnich, employer stopped all benefits payments to claimant on September 30, 2021.

¶ 11 Mr. Minnich testified to the following on behalf of employer at the arbitration hearing. Mr. Minnich testified that, in his opinion, claimant could work at the light functional level and would

benefit from direct job placement assistance. Mr. Minnich denied that neither claimant's sixth grade education nor her inability to speak English made her unemployable. In his initial vocational assessment, Mr. Minnich modified claimant's restrictions, noting that Dr. Ho "did not note in his report any injury or restrictions relative to the left arm," and "[w]ith this it can be assumed that [claimant] can lift at minimum the same amount of weight on the left (uninjured side) giving her an ability to lift at minimum 30 [pounds] bilaterally. The fact is she can probably lift up to 50lbs bilaterally."

¶ 12 Mr. Minnich believed claimant could find employment in fast food or housekeeping. He also noted in his report that he "[does] not address the recommendations of [claimant]-hired vocational counselors in my reports as I have found that they have only three possible outcomes: PTD, unrealistic educational recommendations, *** and/or huge wage differential claims." He disagreed with both the physical restrictions in the August 28, 2020, WCE and with Mr. Grzesik's opinions on claimant's employability, noting that he believed Mr. Grzesik improperly relied upon the WCE. During cross-examination, the following colloquy occurred:

> "Q. [COUNSEL FOR CLAIMANT]: So the only people that are reliable and are credible that you would review upon would be vocational experts that agree with you?
> A. [MR. MINNICH] No. My opinion is correct, and if my – and when I give my opinion, if they agree with me, then their opinion will be the same as mine. You see? Because my opinion is correct.
> Q. Okay. So only your opinion is correct?
> A. Well, I'm a professional expert. That's exactly right. My opinion is correct.
> Q. So the opinions of anybody that disagrees with you is incorrect?
> A. Yes. Doesn't that make sense?"

¶ 13 On November 3, 2021, Thomas Grzesik, a certified vocational counselor chosen by claimant's counsel, evaluated claimant. Thomas Grzesik, a certified rehabilitation counselor, testified by way of deposition on February 22, 2022. Mr. Grzesik prepared a report after evaluating

claimant on November 3, 2021, and reviewing her prior treatment records. Claimant reported to Mr. Grzesik that she spoke and understood very little English and completed schooling in Mexico through the sixth grade. Specific to this appeal, claimant worked for employer as a mail sorter for approximately eight to nine years, prior to her evaluation with Mr. Grzesik, which Mr. Grzesik characterized as unskilled and in the medium physical demand level. In this position, claimant was not required to speak English.

¶ 14 Mr. Grzesik reviewed Mr. Minnich's labor market survey report and used vocational rehabilitation industry software to review the jobs that Mr. Minnich opined claimant could perform. Mr. Grzesik testified that the jobs exceeded the physical reaching and handling restrictions set by Dr. Ho. Mr. Grzesik testified that he believed Mr. Minnich provided medical opinions outside the areas of expertise for a certified rehabilitation counselor, and that Mr. Minnich provided opinions that "[certified rehabilitation counselors] would seek from a medical source—a qualified medical source." According to Mr. Grzesik, claimant was not a candidate for vocational rehabilitation and therefore unemployable. Mr. Grzesik testified that he reached his opinion after taking into consideration claimant's work injury, vocational profile, age, sixth grade education, work history, lack of transferable skills, very limited ability to understand and speak English, and work restrictions set by Dr. Ho.

¶ 15 On April 20, 2022, Dr. Ho testified by way of deposition. Dr. Ho testified that his treatment of claimant was causally related to claimant's work injury. Dr. Ho believed claimant reached MMI on December 10, 2021, thus, he released claimant to work with permanent restrictions set forth in the WCE, which included occasional: (1) lifting from a squatted position of up to 17 pounds; (2)

bilateral shoulder lifting of up to 22.5 pounds; (3) 7-pound overhead lifting; (4) carrying up to 27.5 pounds; (5) forward and shoulder reaching with the right arm.

¶ 16 On December 21, 2022, the arbitrator issued her decision. Specifically, the arbitrator found Mr. Minnich's report "deficient" because "Mr. Minnich did not meet with [claimant] in preparation of his report, and he relied on inaccurate permanent restrictions for his opinions." The arbitrator found that this obligated claimant to "obtain a more thorough vocational assessment with Mr. Grzesik." The arbitrator found the services rendered by Mr. Grzesik "reasonable and necessary" and therefore found employer liable for payment of Mr. Grzesik's services ($3,815.62). The arbitrator also awarded claimant odd-lot permanent total disability (PTD) benefits of $517.40 per week for life.

¶ 17 Next, the arbitrator noted that claimant argued she was entitled to TTD benefits through November 3, 2021, when employer terminated claimant's benefits on September 30, 2021, in reliance on Mr. Minnich's report. The arbitrator found that employer did not accommodate claimant's permanent restrictions when it relied upon Mr. Minnich's "deficient" report and terminated her benefits. As a result, the arbitrator awarded claimant TTD benefits of $286.00 per week for 249 weeks commencing January 26, 2019, through November 3, 2021 ($71,214.00), with credit awarded to employer for $69,784.00 in paid TTD benefits.

¶ 18 In assessing potential penalties and fees, the arbitrator noted that section 19(*l*) penalties were mandatory, while section 19(k) penalties and section 16 attorney fees were discretionary and intended to address deliberate delays or delays in bad faith. *McMahan v. Industrial Commission*, 183 Ill. 2d 499, 514-16 (1998). The arbitrator found that employer's refusal to pay TTD benefits after September 30, 2021, "was not adequate, where Mr. Minnich's opinions were based on

assumed and inaccurate permanent restrictions," and therefore warranted mandatory section 19(*l*) penalties under the Act totaling $8,880.00. Next, in assessing discretionary section 19(k) penalties and section 16 attorney fees, the arbitrator noted that claimant refused to participate in vocational rehabilitation with Mr. Minnich, due to Mr. Minnich "chang[ing] the restrictions given to [claimant] by Dr. Ho." The arbitrator found that employer "was aware of issues with Mr. Minnich's report of physician[] medical reports," yet employer refused to pay for the services of any other vocational rehabilitation professional. The arbitrator concluded that employer had "no objectively reasonable basis to deny payment of benefits." As a result, the arbitrator awarded claimant section 19(k) penalties totaling $715.00 and section 16 attorney fees totaling $286.00.

¶ 19 On August 18, 2023, the Commission unanimously affirmed and adopted the decision of the arbitrator. Employer timely appealed to the circuit court of Cook County.

¶ 20 On May 9, 2024, the circuit court confirmed the Commission's decision on all issues, except the award of section 19(k) penalties and section 16 attorney fees. In setting aside such awards, the court found, contrary to the Commission's determination, that section 19(k) "does not impose any burden of proof on [employer] and requires a showing differing from that of Section 19(*l*)." The court reasoned that the Commission "seemingly misapplied the Section 19(*l*) standard to an award based on Section[s] 19(k) and 16 which, instead, required [claimant] to make an affirmative showing of bad faith or improper purpose on the part of [employer]." Employer timely filed a notice of appeal, and claimant timely filed a notice of cross-appeal.

¶ 21 II. Analysis

¶ 22 On appeal, employer argues that (1) the Commission's reliance "on a therapist's conjectural [WCE]" was against the manifest weight of the evidence, (2) awarding claimant

vocational rehabilitation expenses was against the manifest weight of the evidence because Mr. Grzesik's report "improperly relied" on the WCE, (3) awarding odd-lot PTD was against the manifest weight of the evidence because claimant had not exhausted vocational rehabilitation, and (4) awarding penalties and fees was against the manifest weight of the evidence because employer reasonably relied upon Mr. Minnich's report. Claimant cross-appeals, arguing that the circuit court erred when it set aside the Commission's awards of section 19(k) penalties and section 16 attorney fees.

¶ 23 Employer's brief fails to comply with certain requirements set forth in Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020), which requires the appellant's brief to "contain the contentions of the appellant and the reasons therefor, *with citations to authorities *** relied on*." (Emphasis added.). As a reviewing court, we are entitled to have the issues clearly defined, relevant authority cited, and proper legal arguments presented. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 5. "This court is not a repository into which a party may dump the burden of argument and research." *In re Marriage of Reicher*, 2021 IL App (2d) 200454, ¶ 33. This court has the discretion to strike a brief for failure to comply with the supreme court rules and dismiss the appeal (*Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77), or to find arguments not supported with citations to authority forfeited. *TTC Illinois, Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 355 (2009).

¶ 24 Here, employer cites very little pertinent authority in its argument section. In fact, the portions of employer's opening brief pertaining to vocational rehabilitation expenses, odd-lot PTD, and penalties and fees are short paragraphs that contain only conclusory arguments and absolutely no citation to authority whatsoever. In employer's first issue pertaining to the WCE, employer

relies on a decision of the Commission; however, decisions of the Commission are not precedential and thus should not be cited. *Glob. Products v. Workers' Comp. Comm'n*, 392 Ill. App. 3d 408, 413 (2009). Such violations of the Illinois Supreme Court's rules provide ample support for this court to exercise its discretion and strike the brief or find unsupported arguments forfeited. We choose to do so. Employer's arguments on all issues, except employer's reply brief addressing claimant's cross-appeal concerning section 19(k) penalties and section 16 attorney fees, are forfeited.

¶ 25 The only issue remaining for this court to address is claimant's cross-appeal concerning the circuit court's decision to set aside the Commission's awards of section 19(k) penalties and section 16 attorney fees. Claimant argues that the evidentiary record supports the Commission's awards, where the circuit court's " 'burden of proof analysis' [under section 19(*l*)] has no application to the matter," given the delay of payment exceeded more than 14 days and the Commission determined employer's explanation for terminating benefits insufficient. Employer argues that section 19(k) penalties and section 16 attorney fees are not warranted because it had a "good faith challenge to liability" because the WCE and Mr. Grzesik improperly relied on "non-work-related limitations."

¶ 26 Section 19(k) penalties and section 16 attorney fees address situations where there is not only delay, but the delay is deliberate or the result of bad faith or improper purpose. *Zitzka v. Industrial Comm'n*, 328 Ill. App. 3d 844, 849 (2002). This court reviews the decision of the Commission, not the order of the circuit court. *Roadway Exp., Inc. v. Indus. Comm'n*, 347 Ill. App. 3d 1015, 1020 (2004). "We will affirm a decision of the Commission if there is any basis in the record to do so, regardless of whether the Commission's reasoning is correct or sound." *Ameritech*

Services, Inc. v. Illinois Workers' Comp. Comm'n, 389 Ill. App. 3d 191, 208 (2009). A review of the Commission's decision to deny penalties and attorney fees, pursuant to sections 19(k) and 16 of the Act, involves a two-step analysis. *Jacobo v. Illinois Workers' Comp. Comm'n*, 2011 IL App (3d) 100807WC, ¶ 25. First, we must determine whether the Commission's finding that the facts justify section 19(k) penalties and section 16 attorney fees is "contrary to the manifest weight of the evidence." *McMahan*, 183 Ill. 2d at 516. Second, we must determine whether "it would be an abuse of discretion to refuse to award such penalties and fees under the facts present here." *Id*.

¶ 27 We reverse the circuit court's decision to set aside the Commission's award of section 19(k) penalties and section 16 attorney fees and reinstate the Commission's decision as to these issues in full. The circuit court is correct that the Commission applied the incorrect standard for section 19(k) penalties and section 16 penalties, where the Commission incorrectly stated that employer bears the burden of proving it acted in an objectively reasonable manner. Despite this, we note that the Commission, citing *McMahan*, 183 Ill.2d at 514-16, demonstrated an understanding of the purpose of these discretionary penalties: "They are 'intended to address situations where there is not only a delay but the delay is deliberate or the result of bad faith or improper purpose.' " In finding that section 19(k) penalties and section 16 attorney fees were justified, the Commission took note of Mr. Minnich's deliberate disregard of the restrictions placed upon claimant by Dr. Ho. The Commission found that, even if it only considered the restrictions related to claimant's right shoulder, Mr. Minnich's opinions were based on overestimated physical restrictions and also discounted and disregarded Mr. Grzesik's opinions.

¶ 28 In reaching its decision, the Commission pointed out that both testimony and the record "reflects that [employer] was not in agreement with paying for the services of any other vocational

counselor besides Mr. Minnich and also reflects that [employer] was aware of issues with Mr. Minnich's report of physician's medical reports." We agree. A detailed review of the record demonstrates a deliberate, bad faith delay, where employer possessed knowledge of Mr. Minnich's flaws, yet continued to deny benefits—even going so far as to argue on appeal that Mr. Minnich "properly ignored" the permanent restrictions. As such, the manifest weight of the evidence justifies the Commission's award of section 19(k) penalties and section 16 attorney fees. Moreover, despite the Commission's flawed misapplication of the standard for determining section 19(k) penalties and section 16 attorney fees, the Commission did not abuse its discretion in awarding claimant such penalties and fees. See *Ameritech Services, Inc.*, 389 Ill. App. 3d at 208 ("We will affirm a decision of the Commission if there is any basis in the record to do so, regardless of whether the Commission's reasoning is correct or sound.").

¶ 29 III. Conclusion

¶ 30 For the reasons stated, we reverse the decision of the circuit court setting aside the Commission's award of section 19(k) penalties and section 16 attorney fees, reinstate that portion of the Commission's decision in full, and affirm all other aspects of the circuit court's order confirming the Commission's decision (the awards of vocational rehabilitation expenses, odd-lot permanent total disability benefits, and section 19(*l*) penalties).

¶ 31 Reversed in part; affirmed in part; Commission's decision reinstated.