2012 IL App (2d) 110670WC
No. 02-11-0670WC
Opinion filed December 10, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Commission Division

INGRASSIA INTERIOR ELEMENTS,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Appellee,	)	
	)	No. 10-MR-644
v.	)	
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	J. Edward Prochaska,
(Roger Seymour, Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court, with opinion.
Justices Hoffman, Turner, and Stewart concurred in the judgment and opinion.
Justice Holdridge specially concurred, with opinion.

OPINION

¶ 1 I. INTRODUCTION

¶ 2 Claimant, Roger Seymour, filed with the Illinois Workers' Compensation Commission (Commission) a petition for review of an arbitrator's decision denying his claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2006)). The Commission denied a motion by respondent, Ingrassia Interior Elements, to strike the petition for lack of subject matter

jurisdiction due to claimant's failure to timely file a transcript of the proceedings before the arbitrator. Respondent sought review of the Commission's denial, in the circuit court of Winnebago County. The trial court concluded that the Commission lacked subject matter jurisdiction and held that the decision of the arbitrator was final. This appeal followed, and, for the reasons that follow, we reverse the trial court, reinstate the Commission's decision, and remand.

¶ 3 II. BACKGROUND

¶ 4 During a hearing before the arbitrator on April 11, 2008, claimant and respondent both signed a "request for hearing" form. Pertinent here, the form contained the following stipulation:

> "Both parties agree that if either party files a *Petition for Review of Arbitration Decision* and orders a transcript of the hearings, and if the Commission's court reporter does not furnish the transcript within the time limit set by law, the other party will not claim the Commission lacks jurisdiction to review the arbitration decision because the transcript was not filed timely." (Emphasis in original.)

An evidentiary hearing commenced on June 13, 2008. At the beginning of this hearing, respondent informed the arbitrator that it "would like to put a line through [the standard stenographic stipulation] and *** ask[ed that] the Commission follow the mandates under section 19(b) of the Act." See 820 ILCS 305/19 (West 2006) ("Unless a petition for review is filed by either party within 30 days after the receipt by such party of the copy of the decision and notification of time when filed, and unless such party petitioning for a review shall within 35 days after the receipt by him of the copy of the decision, file with the Commission either an agreed statement of the facts appearing upon the hearing before the Arbitrator, or if such party shall so elect a correct transcript of evidence of the

proceedings at such hearings, then the decision shall become the decision of the Commission and in the absence of fraud shall be conclusive."). The form was filed only thereafter.

¶ 5 The arbitrator's decision was adverse to claimant, so on July 25, 2008, he filed a timely petition to review the decision. Claimant promptly ordered a transcript of the proceeding and made telephone calls to the Commission's court reporter in an effort to file the transcript in a timely manner (claimant moved for and received an extension of time to file the transcript). The court reporter did not provide claimant with a transcript within the applicable time limit; therefore, a transcript was not filed with the Commission within the time set in section 19(b).

¶ 6 Respondent then moved to strike claimant's petition for review, arguing that the fact that a transcript was not timely filed left the Commission without subject matter jurisdiction. The Commission disagreed with respondent. It found that respondent was bound by the stenographic stipulation to which it had agreed on April 11, 2008, notwithstanding its attempted repudiation of the stipulation on the day the evidentiary hearing began. Relying on *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004), the Commission construed section 7030.40 of title 50 of the Illinois Administrative Code (Code) as making the stipulation binding at the time the parties signed it. 50 Ill. Adm. Code 7030.40 (1996). It also noted that claimant had been diligent in attempting to file the transcript.

¶ 7 Respondent sought judicial review, and the trial court reversed. It disagreed with the Commission's construction of section 7030.40 and instead held that section 7030.40 requires that a "request for hearing" form be filed with the arbitrator before it is binding on the parties. Thus, the trial court reasoned, "[t]he earlier signed stenographic stipulation was a nullity because it was not filed with the Arbitrator." It also rejected the Commission's reliance on claimant's due diligence,

noting that the Act provides for another remedy—specifically trial *de novo* before the Commission (820 ILCS 305/19(e) (West 2006))—when a transcript is not timely filed due to the fault of someone other than the party seeking review. The trial court held that the decision of the arbitrator was final. This appeal followed.

¶ 8 III. ANALYSIS

¶ 9 The sole issue before this court is whether the fact that a transcript was not filed within the time period specified in section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)) deprives the Commission of jurisdiction to review the decision of the arbitrator. Under the circumstances of this case, we conclude that it does not. Generally, we apply the *de novo* standard when we review a jurisdictional issue. *Smalley Steel Ring Co. v. Illinois Workers' Compensation Comm'n*, 386 Ill. App. 3d 993, 995 (2008). However, in this case, the meaning of an administrative regulation is also at issue. We owe substantial deference to an agency's construction of its own regulations. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2011 IL App (1st) 101776, ¶ 6; *cf. King v. Industrial Comm'n*, 189 Ill. 2d 167, 171 (2000) ("Moreover, courts afford considerable deference to the interpretation placed on a statute by the agency charged with its administration."). This is true regarding even questions of jurisdiction. See *Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n*, 95 Ill. 2d 142, 152 (1983). Thus, where reasonable minds could disagree as to the extent of an agency's jurisdiction, "we defer to the agency's interpretation if the interpretation is defensible." *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 362 Ill. App. 3d 652, 656 (2005).

¶ 10 To perfect review, section 19(b) of the Act requires that a party seeking review file with the Commission a transcript or agreed statement of facts within 35 days of the day upon which the party

received a copy of the arbitrator's decision. 820 ILCS 305/19(b) (West 2006). A party may obtain a 30-day extension of this deadline. *Id.* Strict compliance with the provisions of section 19(b) is required for the Commission to obtain jurisdiction to review an arbitration decision. *Northwestern Steel & Wire Co. v. Industrial Comm'n*, 37 Ill. 2d 112, 115 (1967); *Benton Coal Mining Co. v. Industrial Comm'n*, 321 Ill. 208, 211 (1926).

¶ 11 However, as our supreme court explained in *Pocahontas Mining Co. v. Industrial Comm'n*, 301 Ill. 462, 470-78 (1922), the type of jurisdiction at issue is not truly subject matter jurisdiction. Subject matter jurisdiction is, of course, "the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). In *Pocahontas*, like in this case, at issue was whether the failure to timely file with the Commission a transcript of proceedings before the arbitrator deprived the Commission of jurisdiction to review the arbitrator's decision. *Pocahontas Mining Co.*, 301 Ill. at 470-71. The supreme court observed that "the Commission has jurisdiction or the statutory right and power conferred upon it to hear and determine the class of cases to which this case belongs," that is, the class of cases involving review of the decision of an arbitrator. *Id*. at 474. The court continued, "It may not have jurisdiction of the particular case in hand, or it may lose jurisdiction for a number of reasons not necessary now to be stated, but there can be no question that it has jurisdiction of the subject matter of this case and all other cases of like character in its class." *Id*. at 474-75. Therefore, the court concluded:

> "Under the decisions of this court it may be broadly stated that where a court of original jurisdiction has jurisdiction of the subject matter of a suit, and the parties enter their appearance before the court and contest their rights before the court to a final judgment,

> without objection in any way to the right of the trial court to hear the cause and to render such final judgment, it does not matter in what manner the parties were brought before the court, and on appeal or review by writ of error to an appellate court or to this court the parties will be absolutely bound, so far as the question of jurisdiction of their persons and of the particular case asked to be reviewed is concerned." *Id*. at 475.

In other words, parties may waive objections to this sort of jurisdictional defect. *Id*. at 476-77; see also *Railway Express Agency v. Industrial Comm'n*, 415 Ill. 294, 297 (1953).

¶ 12 Thus, the question before this court is whether respondent waived its ability to object to the fact that neither a transcript nor an agreed statement of facts was filed within the statutory time period. To answer this question, we must consider whether the stenographic stipulation into which respondent and claimant entered on April 11, 2008, remains effective. This turns on whether the stipulation became binding at the time the parties, by signing the "request for hearing" form, exchanged their promises not to object to jurisdiction in the event the transcript was not timely filed or whether it was ineffective until the "request for hearing" form was filed with the arbitrator, which was after respondent's purported repudiation of the agreement.

¶ 13 Relevant to this question is section 7030.40 of title 50 of the Code (50 Ill. Adm. Code 7030.40 (1996)). This section provides as follows:

> "Before a case proceeds to trial on arbitration, the parties (or their counsel) shall complete and sign a form provided by the Industrial Commission called Request for Hearing. However, in the event a party (or his counsel) shall fail or refuse to complete and sign the document, the Arbitrator, in his discretion, may allow the case to be heard and may impose upon such party whatever sanctions permitted by law the circumstances may warrant. The

> completed Request for Hearing form, signed by the parties (or their counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case." *Id.*

Both respondent and the trial court read this regulation as clearly stating that a "request for hearing" form does not become binding until it is filed with the arbitrator. We see nothing in this provision that speaks to *when* a "request for hearing" form—and the stenographic stipulation contained therein—becomes binding. Moreover, we note that much of a "request for hearing" form consists of what are essentially requests for evidentiary admissions intended to limit the issues that are in dispute. *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 885 (1990). It would be an odd rule indeed that would allow a party to recant such an admission on the eve of a hearing, thereby depriving an opponent of the opportunity to conduct discovery on an issue.

¶ 14 Indeed, the Commission, citing *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004), concluded otherwise, holding that, where the parties have signed the stenographic stipulation, "the language of [section] 7030.40 indicates that the request for hearing is binding." It also stated, "Respondent mistakenly believes that it can deny the applicability of the Stenographic Stipulation *after agreeing to be bound to it*." (Emphasis added.) Thus, for the Commission, it is the agreement between the parties that makes the stenographic stipulation binding. Nothing in the plain language of section 7030.40 precludes such an interpretation; the position taken by the Commission is not inconsistent with the plain language of that section. These circumstances present a strong case for deference to the Commission's construction of section 7030.40. See *Illinois Consolidated Telephone Co.*, 95 Ill. 2d at 152 ("An agency's interpretation of its enabling statute and regulations are usually entitled to deference, although agency action that is inconsistent with the statute or

regulations must be overturned." (citing *Shepherd v. Merit Systems Protection Board*, 652 F.2d 1040, 1043 (D.C. Cir. 1981)); *Cella v. Sanitary District Employees' & Trustees' Annuity & Benefit Fund*, 266 Ill. App. 3d 558, 564 (1994) ("Even in light of this deference, however, a court still has the authority to independently construe a statute and it will not adopt an agency's interpretation if it is inconsistent with the language of the statutory provision.").

¶ 15 Moreover, we note that the Commission's position is entirely consistent with ordinary principles of contract law. The stipulation clearly states that the parties were coming to an agreement; hence, the parties manifested mutual assent to the terms contained in the stipulation. *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991) ("An enforceable contract must include a meeting of the minds or mutual assent as to the terms of the contract."). Consideration exists in the form of the parties' reciprocal promises to forgo contesting jurisdiction should a transcript not be filed in a timely fashion. *Bishop v. We Care Hair Development Corp.*, 316 Ill. App. 3d 1182, 1198 (2000) ("Consideration *** may consist of a promise, an act or a forbearance."). Moreover, the parties' signatures manifest their acceptance of the contract. See *Zinni v. Royal Lincoln-Mercury, Inc.*, 84 Ill. App. 3d 1093, 1094-95 (1980). Finally, we note that there is no condition precedent to the stipulation becoming binding (*i.e.*, filing it with the arbitrator). *Catholic Charities v. Thorpe*, 318 Ill. App. 3d 304, 307 (2000) ("A 'condition precedent is one that must be met before a contract becomes effective ***.' " (quoting *McAnelly v. Graves*, 126 Ill. App. 3d 528, 532 (1984))).

¶ 16 In sum, the Commission's construction of section 7030.40 is reasonable. 50 Ill. Adm. Code 7030.40 (1996). Nothing in the plain language of the section conflicts with the Commission's interpretation, and the interpretation is entirely consistent with contract law. Accordingly, the trial

court should have deferred to it. *King*, 189 Ill. 2d at 171; see also *Board of Trustees of the University of Illinois v. Illinois Educational Labor Relations Board*, 2012 IL App (4th) 110836, ¶ 24 ("[T]he court should defer to the agency's interpretation if the interpretation is reasonably defensible.").

¶ 17 IV. CONCLUSION

¶ 18 In light of the foregoing, the order of the circuit court of Winnebago County is reversed, the decision of the Commission is reinstated, and this cause is remanded to the Commission for further proceedings.

¶ 19 Circuit court order reversed; Commission decision reinstated; cause remanded to Commission.

¶ 20 JUSTICE HOLDRIDGE, specially concurring.

¶ 21 I concur with the judgment to reverse the trial court, reinstate the Commission's decision, and remand the matter to the Commission for further proceedings. I write separately in order to state my position that our supreme court's holding in *Pocahontas Mining Co. v. Industrial Comm'n*, 301 Ill. 462 (1922), is directly on point in the instant matter. The court in *Pocahontas* observed that, when the term "jurisdiction" is utilized in discussing a question of filing of the transcript before the Commission, the term does not refer to the power of a court to hear cases but, rather, the term describes "the statutory authority given to [the Commission] to hear and consider cases under the Compensation act." *Id.* at 474.

¶ 22 The court in *Pocahontas* expressly rejected the same argument raised in the instant matter by respondent:

> "Counsel for defendant in error have presented this question upon the theory that the commission had no jurisdiction of the subject matter of this suit. This theory is entirely erroneous. The real question is whether or not the commission had jurisdiction of this particular case and of the parties to the suit when it made its decision. It obtained jurisdiction of the case when the petition for review was filed before it, ***. It obtained jurisdiction of the parties by their appearance and participation in the contest, and for that reason never lost jurisdiction of the case if it had jurisdiction of the subject matter. *** It cannot be doubted, and certainly will not for a moment be questioned, that the Commission has jurisdiction or the statutory right and power conferred upon it to hear and determine the class of cases to which this case belongs." *Id.* at 474.

¶ 23 In the instant matter, we could not be clearer in our holding than to repeat the words that our supreme court pronounced in 1922. It cannot be doubted and certainly will not, for a moment, be questioned that the Commission had subject matter jurisdiction and did not lose that jurisdiction simply because the transcript was not filed within the time period required under the Act. Thus, the only question in the instant matter, as the majority correctly points out, is whether the respondent waived its ability to object to the fact that neither a transcript nor an agreed statement of facts was filed within the statutory time period. I am in agreement with the majority's answer to that question. I, therefore, concur in the judgment of the court.