

Workers' Compensation Report

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Commission Lacks Jurisdiction Where Petition for Review Filed Prior to Ruling on Section 19(f) Petition

A recent Commission decision illustrates the dangers that lurk in filing a petition to correct or recall under section 19(f) of the Workers' Compensation Act. 820 ILCS 305/19(f). In *Preciado v. Danner Salads*, Nos. 08 WC 51164, 08 WC 51169 and 09 WC 42704, the Illinois Workers' Compensation Commission addressed the issue of whether it had jurisdiction to hear two Petitions for Review where those petitions were filed prior to resolution of a pending section 19(f) petition to correct a clerical error.

Case Background

On February 17, 2011, the arbitrator issued separate decisions on three consolidated cases filed by Carolyn Preciado. The claims had been filed against her employer, Danner Salads, but the claims spanned over two insurance carriers. On March 11, 2011, one of the respondent's insurance carriers (referred to as the second insurer) filed a section 19(f) motion to recall all three of the decisions in order to clarify a purported clerical error. Thereafter on March 15, 2011, the petitioner filed a Petition for Review on claim 08 WC 51164. The second insurer also filed a Petition for Review on March 28, 2011, relating to claim 08 WC 51169. A hearing was held on the motion to correct, and the arbitrator denied the section 19(f) petition on August 26, 2011. No additional Petition for Review was filed by any party after the issuance of the arbitrator's August 26 order. Before the Commission, the first insurance carrier filed a Motion to Dismiss all appeals for lack of jurisdiction. The carrier argued that the Petitions for Review filed during the pendency of the section 19(f) petition were premature. Moreover, because neither appealing party filed a new Petition for Review after the final order issued on the section 19(f) motion, the first carrier asserted that the Commission lacked jurisdiction to hear the merits of the Petition for Review.

Section 19(f)

Section 19(f) provides that a party may move to correct any clerical error or errors in computation in the Commission's or arbitrator's decision within fifteen days after receipt of that decision. 820 ILCS 305/19(f). Section 19(f) further provides that "where such correction is made the time for review herein shall begin to run from the date of the receipt of the corrected award or decision." *Id.* While section 19(f) purports to toll the time for filing a judicial review, this tolling occurs only where a corrected decision is issued. *International Harvester v. Industrial Comm'n*, 71 Ill. 2d 180, 186-187, 374 N.E.2d 182 (1978). The

Supreme Court had interpreted this section as applying to all rulings on section 19(f) motions, even if before the arbitrator. *Campbell-Peterson v. Industrial Comm'n*, 305 Ill. App. 3d 80, 82-83, 711 N.E.2d 1219 (2d Dist. 1999).

The Merits

In *International Harvester*, the supreme court addressed the issue of whether the circuit court had jurisdiction to hear an appeal from the Commission where that appeal was filed during the pendency of a section 19(f) petition. In its decision, the court stated that the purpose of a section 19(f) petition is to provide the Commission with an opportunity to correct its own clerical or computational errors. The court noted that section 19(f) vests continuing jurisdiction in the Commission to correct its alleged errors and that its decision is not final until the Commission determines whether or not to correct such errors. *International Harvester*, 71 Ill. 2d at 749-750.

In *Preciado v. Danner Salads*, the Illinois Workers' Compensation Commission held that *International Harvester* barred the two judicial reviews. According to the Commission, under *International Harvester* the arbitrator's decision was not final and, thus, not appealable until the section 19(f) motion had been resolved. As such, the Commission lacked jurisdiction to hear the petitioner's Petition for Review. Accordingly, the Commission dismissed the Petitions for Review filed by both the petitioner and the second insurance carrier as untimely.

It is imperative that counsel ensure that a timely petition for review is filed within 30 days after the resolution of a section 19(f) petition by the arbitrator or within the 20 days applicable to the filing of a judicial review. Although the filing of a section 19(f) petition tolls the deadline for filing a Petition for Review, any such Petition filed *prior to* resolution of a section 19(f) petition to recall or correct is void. Neither an arbitration nor Commission decision is final and appealable until that body rules upon a section 19(f) motion to recall or correct. *Kelly v. Industrial Comm'n*, 203 Ill. App. 3d 626, 629-630, 561 N.E.2d 327 (4th Dist. 1990).

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