

Workers' Compensation Report

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Illinois Supreme Court Applies the Mailbox Rule to Circuit Court Reviews

When commencing a judicial review in the circuit court from a decision of the Illinois Workers' Compensation Commission (the Commission), Section 19(f)(1) of the Workers' Compensation Act (the Act) provides that "a proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission." 820 ILCS 305/19(f)(1). In *Gruszczyka v. Illinois Workers' Compensation Commission*, 2013 IL 114212, the Illinois Supreme Court found that Section 19(f)(1) was ambiguous and, therefore, subject to interpretation as to whether the mailbox rule, 5 ILCS 70/1.25, applied to filings on a circuit court review.

In *Gruszczyka*, the Illinois Appellate Court, Workers' Compensation Commission Division, vacated the judgment entered in McHenry County that confirmed the Commission's decision to deny the claimant's claim. *Gruszczyka v. Ill. Workers' Compensation Comm'n*, 2012 IL App (2d) 101049WC. The appellate court interpreted Section 19(f)(1) as requiring the actual filing of a petition for review in the circuit court within the 20-day deadline prescribed under Section 19(f)(1), as opposed to deeming a document filed on the day it was mailed. *Gruszczyka*, 2012 IL App (2d) 101049WC, ¶¶ 13-16. The appellate court noted that Section 19(f) provided for the review as a "commencement" of the proceeding and, as such, it was akin to a new filing as opposed to the continuation of an existing proceeding or an appeal. *Id.* 15-14 ¶¶

The Illinois Supreme Court disagreed and reversed the appellate court's ruling. In *Gruszczyka*, the judicial review documents were placed in the mail prior to their due date but were not filed by the McHenry County Circuit Court until 24 days after *Gruszczyka's* attorney received the Commission's decision. *Gruszczyka v. Ill. Workers' Compensation Comm'n.*, 2013 IL 114212, ¶¶ 3-4. The supreme court began its analysis by finding that Section 19(f)(1) was ambiguous and, therefore, subject to interpretation. *Gruszczyka*, 2013 IL 114212, ¶ 7. The court then noted that the mailbox rule applied to reviews to the Commission as well as appellate proceedings following the circuit court review. Applying the mailbox rule to judicial review proceedings "would bring harmony and consistency to the workers' compensation review process, with the same rules applying at every stage of review." *Id.* ¶ 28. The court noted that the legislature obviously was aware that courts had been construing the statute as containing the mailbox rule for decades and that a specific exception to the mailbox rule was not stated in Section 19(f).

In a dissent by Justices Clarence Freeman and Anne Burke, they argued that the mailbox rule should not apply to Section 19(f)(1) reviews, as the mailbox rule would effectively create an extension of the 20-day deadline. *Id.* ¶ 51 (Freeman, J., dissenting). They furthered argued that Section 19(f)(1) should be strictly construed as requiring actual filing within the 20-day filing deadline. *Id.*

The supreme court took exception to what has been a disturbing trend in appellate court decisions interpreting the Act—the appellate court’s reliance on “dictionary definitions” to resolve legal questions under the Act. The supreme court noted that, “[u]nlike the appellate court, we do not believe that this question can be answered nearly by consulting a dictionary.” *Id.* ¶ 15 .Hopefully the supreme court’s comments concerning dictionary references will have a chilling effect on the appellate court’s repeated reliance on “dictionary definitions” to resolve issues arising under the Act.

The Illinois Supreme Court’s decision in *Gruszczyka* is a victory for petitioners and respondents alike. Most workers’ compensation practitioners handle cases arising from accidents throughout multiple counties in Illinois. The only way to ensure that the circuit court review was actually filed within the 20-day deadline was to personally appear and file the judicial review documents in the circuit court. Applying the mail box rule to judicial reviews to the circuit court will significantly reduce the time and expense previously experienced when personally filing circuit court reviews. Furthermore, the supreme court’s ruling now creates a consistent standard throughout the workers’ compensation review/appeal process.

As a word of caution, however, employers will want to continue to use extra care when filing their judicial reviews due to the need to file a surety bond in accordance with Section 19(f)(2). 820 ILCS 305/19(f)(2). Employers seeking to review a decision of the Commission, as the party against whom the award was rendered, must file a bond supported by a surety. The surety must be approved by the circuit court clerk. Several counties, including Cook, Lake, and DuPage, have unique local provisions governing the filing of an appeal bond, such as only accepting surety bonds from approved sureties or approved surety agents, or both. Moreover, it is also of paramount importance to include a proof of filing and a certificate of service when you place documents in the mail.

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Bradford J. Peterson is a partner in the Urbana office of *Heyl, Royster, Voelker & Allen, P.C.* Brad concentrates his practice in the defense of workers’ compensation, construction litigation, auto liability, premises liability, and insurance coverage issues. In recent years, Brad has become a leader in the field on issues of Medicare Set Aside trusts and workers’ compensation claims. He has written and spoken frequently on the issue. He was one of the first attorneys in the State of Illinois to publish an article regarding the application of the Medicare Secondary Payer Act to workers’ compensation claims “Medicare, Workers’ Compensation and Set Aside Trusts,” *Southern Illinois Law Journal* (2002).

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