

# BELOW THE RED LINE

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ROYSTER

## WORKERS' COMPENSATION UPDATE "WE'VE GOT YOU COVERED!"

*A Newsletter for Employers and Claims Professionals*

*May 2021*

### A WORD FROM THE PRACTICE CHAIR

I hope everyone is enjoying their Spring season and all it has to offer. I am sure many of you are also experiencing the beginning of Summer break and kids either leaving their classrooms, or maybe leaving their virtual classrooms, for a change of pace. If you have any Summer plans in store I wish you fun and sun to go with your rest and relaxation.

The Commission headquarters is moving! The Commission in Chicago is currently located at the Thompson Center. In a few months they will be moving (underground) a few blocks away to the Daley Center. We have been promised much nicer accommodations which we are excited to see come to fruition. It should be fairly seamless and not impact any dockets or handling of our claims.

You might have noticed a change to the flag on our newsletter this month. That is right, we have a new editor for our newsletter. Please join me in congratulating my partner, [Amber Cameron](#), of our Edwardsville and St. Louis offices, who will be taking over that important role for our Practice Group. I know Amber is more than up to the task and she is one of the best writers I know out there. This is going to be a great fit.

I want to take this time to introduce as well [Chris Drinkwine](#), of our Rockford office, who has taken over the handling of the appellate arm of our Workers' Compensation Practice Group. If you have been with us long, you may recall the name of my retired partner Brad Elward who formerly held that position. Chris has jumped in and is bringing his appellate expertise to our group and we are terribly excited to have him on the team. If you ever find yourself in a bind with a complex case that has risen to the level of an appeal

from the arbitration level, the Commission level, or the Circuit Court level and you need help, then I recommend you contact Chris. I know he can help you navigate the nuances and pitfalls which we face when dealing with appellate practice in our workers' compensation world. Chris has authored this month's article with, of course, an appellate focus on the key elements when wading through those choppy waters. Appellate practice is not something just any attorney should dabble in; expertise, such as our firm's, under Chris' leadership, is a necessary component to make sure it is done right and done well.



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### ***BOWEN V. IWCC: APPELLATE COURT REFUSES TO HEAR APPEAL BECAUSE THE CIRCUIT COURT DID NOT CONFIRM OR SET ASIDE THE COMMISSION'S DECISION***

By: Christopher Drinkwine  
*Co-Chair Appellate Practice Group*

Appealing a decision of the Illinois Workers' Compensation Commission to the Circuit Court is a complex process, which requires multiple filings within the short span of twenty days. See 820 ILCS 305/19(f).

## HEYL ROYSTER WORKERS' COMPENSATION UPDATE

May 2021

Editor, Amber Cameron

Once the appropriate Circuit Court issues its decision, a party may appeal to the Illinois Appellate Court, Workers' Compensation Commission Division, as the next level of judicial review. The Illinois Appellate Court jealously guards its appellate jurisdiction as we were reminded last month in *Bowen v. Illinois Workers' Compensation Commission*, 2021 IL App (4th) 200268WC, when the Appellate Court—not once but twice—dismissed appeals because the Circuit Court neither confirmed nor set aside the Commission's decision.

### *Bowen: The Facts*

After the Commission awarded Joseph Bowen benefits, his employer brought two actions for judicial review in the Circuit Court. In the first, the employer challenged the imposition of a § 19(l) penalty and the denial of a credit under § 8(e)(17). In the second, the employer challenged the denial of a § 19(f) motion to correct a reputed clerical error, namely, the omission of a credit under § 8(e)(17). The Circuit Court reversed the Commission's award of a penalty under § 19(l) reasoning that, effectively, the Commission had already allowed a credit under § 8(e)(17).

The parties appealed and the Appellate Court concluded that it lacked jurisdiction because three issues remained unaddressed by the Circuit Court: (1) the propriety of the Commission's decision to deny the employer a credit pursuant to § 8(e)(17); (2) the Commission's denial of the employer's § 19(f) motion; and (3) the Commission's vacation of the arbitrator's award of attorney fees to Bowen pursuant to § 16. The Appellate Court dismissed the consolidated appeals for lack of jurisdiction because the Circuit Court left these issues unresolved and, consequently, there was no final judgment for the Appellate Court to review.

Thereafter, the Circuit Court held that the Commission's failure to deduct the § 8(e)(17) credit from Bowen's award of permanent partial disability benefits was erroneous as a matter of law and against the manifest weight of the evidence. The Circuit Court also held that the Commission's denial of § 16 attorney

fees was neither against the manifest weight of the evidence nor an abuse of discretion, and affirmed that denial on review. The Circuit Court held further that Bowen was entitled to a credit of 22.5% loss of use of the right leg pursuant to § 8(e)(17), to be deducted from the Commission's award of 20% loss of use of the right leg pursuant to § 8.1b(b), resulting in no additional permanency payable. Finally, the Circuit Court found that the Commission's denial of the employer's § 19(f) motion was mooted by its order correcting the credit calculation.

### *Bowen: The Holding*

After the Circuit Court's new order was entered, Bowen appealed and the Appellate Court *sua sponte* held that it lacked jurisdiction. The Appellate Court explained that its jurisdiction is limited to deciding appeals from final judgments and under § 19(f)(2) of the Workers' Compensation Act. The Appellate Court explained that the Circuit Court's judgment is final, executable, and appealable only if the Circuit Court confirms the Commission's decision or, alternatively, sets aside the Commission's decision without a remand. The Appellate Court stressed that the Circuit Court may confirm part of the Commission's decision and set aside another part, but each part of the decision that comes under challenge in the Circuit Court must be either confirmed or set aside.

The Appellate Court determined that the Circuit Court neither confirmed nor set aside the Commission's denial of a § 8(e)(17) credit. The Appellate Court acknowledged that the Circuit Court characterized the Commission's denial of the credit as against the manifest weight of the evidence and as legally erroneous. It also acknowledged that the Circuit Court declared that the employer was entitled to a credit of 22.5% against the loss of use of petitioner's right leg, and thereby "entered such decision as" the court deemed to be "justified by law." However, according to the Appellate Court, before entering its own decision on this point the Circuit Court must set aside the Commission's decision on this point. The Appellate Court explained that unless the Circuit Court sets aside

## HEYL ROYSTER WORKERS' COMPENSATION UPDATE

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the part of the Commission's decision denying the credit, two opposing decisions on the credit will be in force: a decision by the Commission and a decision by the Circuit Court. The Appellate Court concluded that the respondent's claim to a § 8(e)(17) credit remained unresolved—and, hence, the Circuit Court's judgment remained nonfinal and nonappealable.

### Conclusion

The required filings and short deadline in expediting the appeal of a decision by the Commission are both friend and foe to our clients. Our careful attention to these requirements occasionally results in the dismissal of an appeal filed by a careless petitioner's counsel. Conversely, when the Commission's decision is adverse to our clients, we must immediately inform them of the pros and cons of appealing and quickly expedite an appeal to the Circuit Court where appropriate. Depending on where an accident occurs and/or where the party defendant is located, one of 23 Judicial Circuits has the power to review a Workers' Compensation Commission decision. The many Circuit Courts throughout the state are trial courts with Circuit and Associate Judges presiding over a wide variety of civil and criminal cases and consequently, the Judges do not necessarily hear disputes involving Commission decisions on the regular basis. It is rare that an appeal from the Commission ends at the Circuit Court level. *Bowen* makes clear that in order to have the Circuit Court's decision reviewed by the Appellate Court, we must be diligent in assuring that the Circuit Court is aware of the requirements under § 19(f) of the Workers' Compensation Act and either confirms the Commission's decision or sets it aside without remanding.



**Christopher Drinkwine**  
*Co-Chair Appellate Practice Group*

Chris was recently named Co-Chair of our Appellate Practice Group and will focus on appeals in Workers' Compensation cases. Chris comes to our firm after a lengthy career in government, including service as an assistant state's attorney, a law clerk to a two Justices of the Illinois Appellate Court, and as a senior law clerk to a United States District Judge. Chris has handled multiple appeals on behalf of our clients before the Illinois Appellate Court and the U.S. Court of Appeals for the Seventh Circuit and has argued before the Illinois Appellate Court, Workers' Compensation Commission Division, on multiple occasions.

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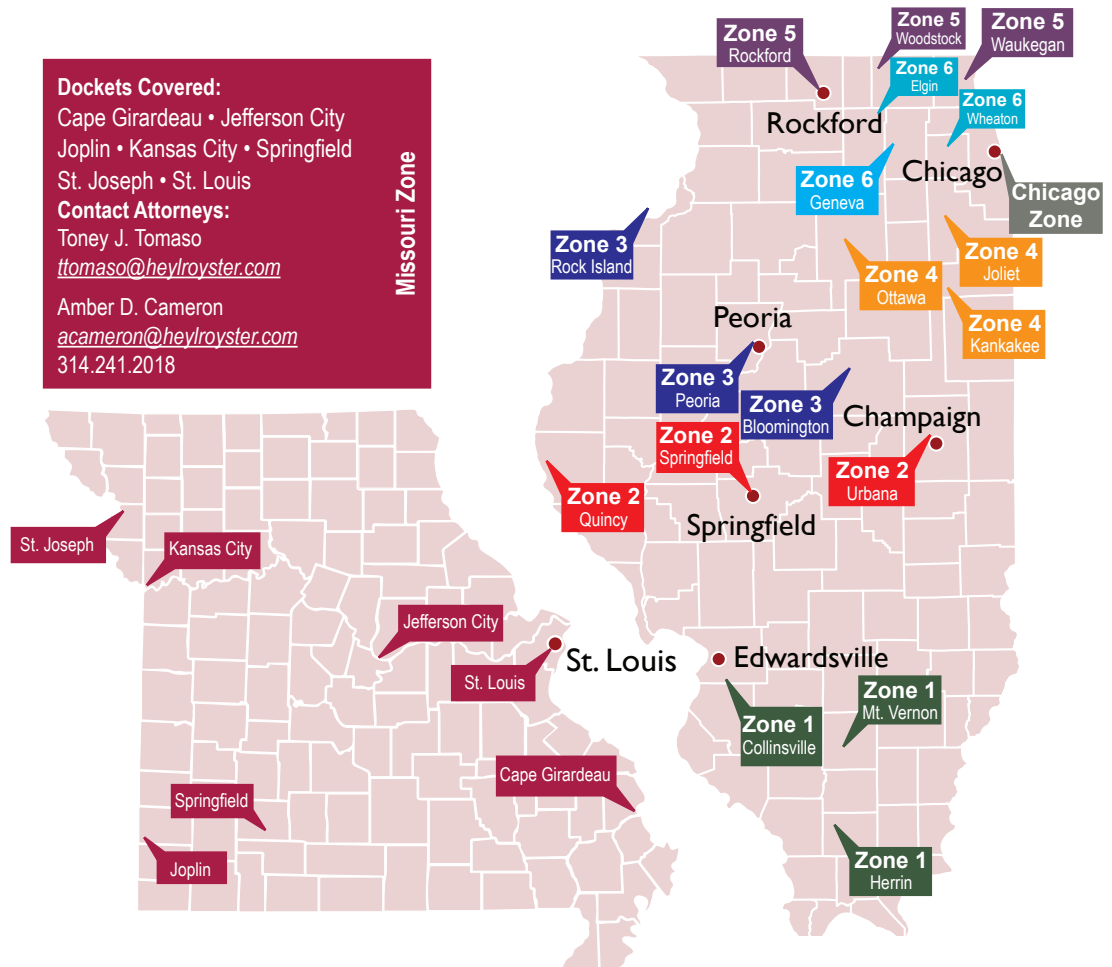
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