

BELOW THE RED LINE

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

March 2025

A WORD FROM THE PRACTICE CHAIR

New chair, same great team!

This month's article is from [Ashley Broadstone](#), an associate in our Peoria office. From a defense perspective, getting a case dismissed sounds like a great result. Like most things, it's not quite that simple. Ashley's article takes a look at a recent Rule 23 decision addressing reinstatement of a case after dismissal. Ashley considers both factual and procedural circumstances that might affect your strategy on claim handling, especially when dismissal is possible.



[Jessica Bell](#)



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WHAT'S GOOD FOR THE GOOSE MAY NOT BE GOOD FOR THE GANDER:

Strategy Matters Even When Dismissal Is on the Table



BY ASHLEY BROADSTONE

The flexible nature of workers' compensation proceedings means there is no one-size-fits-all method for dismissing a claim in lieu of arbitration. It also means that dismissal, in and of itself, is not always the best option. In this article, we outline the few scenarios where dismissal of a workers' compensation claim may be appropriate while also recognizing the importance of strategic lawyering and when dismissal – without more – may not be the best solution given the unique facts of the case at hand. We also review a recent Rule 23 Order that affirmed the Commission's decision to allow a petitioner to reinstate her workers' compensation claim *436 days* after it was dismissed for want of prosecution and explore how this result may have been preempted with an arbitration hearing on the merits.

Opportunities for Dismissal

Respondents have limited opportunities to seek dismissal of a claim. Importantly, contrary to popular belief, there is no legal basis within the Act, Commission Rules, or Administrative Code that allows for a respondent to file a Motion to Dismiss. In fact, in instances where such motions are filed, arbitrators will often ignore the filing and may even ridicule or emphasize the improper nature

of such motions. The takeaway: Do not be tempted to file a Motion to Dismiss. It is an avoidable black mark. Instead, there are other, more effective ways to move a claim forward and encourage dismissal.

For starters, a redlined case may be ripe for dismissal during a status call if the petitioner has failed to adequately prosecute their case up until that point. Specifically, cases that are more than three years old can be dismissed during the status call if the petitioner or their counsel (1) fail to appear and (2) do not file a timely IC41 requesting a continuance for good cause. In situations where a petitioner is represented by counsel, we often see innocent explanations, such as a scheduling error or a case that is newly redlined, for why counsel failed to appear and/or file an IC41 leading to dismissal of the claim. Those cases are likely to be reinstated in a timely manner upon request of the petitioner's counsel. Thus, while dismissal of a redlined case should be explored, the likelihood that the dismissal sticks is dependent on the claim's progression to date. It would not be recommended to seek a dismissal at every possible opportunity as that might jeopardize an otherwise cordial relationship with opposing counsel. However, if it is a redlined case with a pro se petitioner

that has made no effort to move their case forward, then dismissal is more likely to be successful.

Another opportunity for dismissal arises when a petitioner’s attorney withdraws from the case. To streamline this process, respondents should ensure that prompt and proper notice is delivered to the petitioner during the first cycle following the attorney’s withdrawal and each status call, pretrial, or hearing thereafter. That notice should be accompanied by an explicit warning that the petitioner’s claim could be dismissed for failure to appear. Delivery and receipt of the notice should also be well documented, preferably with a certified mail return receipt. While a pro se petitioner might get the benefit of the doubt after a single failure to appear, it remains the petitioner’s responsibility to appear and move the claim forward.

A petitioner’s failure to appear at an arbitration hearing, whether represented or not, can also warrant dismissal, assuming proper notice was provided. A question to consider in this scenario is whether dismissal is the best option since it leaves petitioner the possibility to seek reinstatement. *Ryba v. Illinois Workers’ Comp. Comm’n*, a recent Rule 23 decision, illustrates how a dismissal can backfire against a respondent.

***Ryba v. Illinois Workers’ Comp. Comm’n*, 2025 IL App (2d) 230596WC-U**

In *Ryba*, the petitioner’s claim was set for a hearing on February 18, 2020, to determine whether it would proceed to trial or be dismissed. *Id.* ¶ 4. Petitioner failed to appear, and the arbitrator dismissed the case for want of prosecution. *Id.* The Illinois Administrative Code allows a party to file a Petition to Reinstate the case within 60 days *from receipt of the dismissal order*. Ill. Admin. Code, § 9020.90(a). However, the *Ryba* petitioner did not file a Petition to Reinstate until 436 days after the dismissal, claiming she never received notice of the dismissal, possibly due to the rise of the COVID-19 pandemic, and therefore, the 60-day time period had not yet run. *Ryba*, ¶ 5. Ultimately, the arbitrator reinstated the case, finding, in part, that

the redline was not being enforced during the COVID pandemic, which relieved the petitioner’s attorney of their duty to monitor their above-the-redline cases. *Id.* ¶ 7. The Commission affirmed and adopted the arbitrator’s decision. *Id.* ¶ 8.

On appeal, the respondent argued that reinstatement was improper. *Id.* However, the Appellate Court affirmed the Commission, finding: (1) the arbitrator retained jurisdiction because a question of fact existed as to when petitioner received notice of the dismissal, and (2) “[t]he exceptional disruption that was the COVID-19 pandemic led the Commission to make specific factual determinations and allow reinstatement of the case” which cannot be said to be an abuse of discretion. *Id.* ¶¶ 13-15. The court went on to note a key caveat:

While acknowledging the unique factual circumstances and our deferential standard, we however note that the extensive delay in this case pushes the limits of our finding of discretion. It is still the norm and expectation of this court that parties will exercise due diligence in pursuing their claims. *Id.* ¶ 15.

Ryba serves as a reminder that the 60-day reinstatement deadline has a critical qualifier: the clock only begins



to run when the notice of dismissal is received. To effectively manage this timeline, respondents must diligently secure evidence that establishes the tolling of the 60-day reinstatement period. Respondents should consider sending direct notice to the petitioner or their counsel, documenting the delivery and receipt of that notice, in addition to relying on CompFile’s electronic delivery methods. This proactive approach ensures that

should the need arise the respondent can demonstrate the validity of the dismissal and counter any subsequent reinstatement petitions.

Alternatively, if the petitioner fails to appear at an arbitration hearing, the respondent may choose to proceed with the hearing on the record and request that the arbitrator render a decision. This decision would be subject to the standard appeal procedures, including the 30-day deadline to file a Petition for Review, and would preclude the opportunity for reinstatement. Even if the arbitrator opts for dismissal over proceeding with the hearing on the merits, the respondent can still benefit by going on the record and presenting evidence to support the dismissal or to advocate for a hearing on the merits, thereby strengthening their position against potential reinstatement requests or appeals.



Conclusion

In summary, while dismissal for failure to prosecute is a tool available to respondents, it requires careful consideration and strategic planning to ensure that the 60-day reinstatement deadline is effectively managed and that the dismissal stands against any future challenges. Otherwise, proceeding with a hearing on the merits, even in the absence of the petitioner's appearance, can be a tactical alternative to dismissal.

The knowledgeable attorneys at Heyl Royster look forward to guiding you through any issues you may face with dismissal or any other issues you have with a claim. Please reach out to one of our workers' compensation attorneys with any questions.

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- Claims of permanent total disability and/or wage differentials
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- Illinois Workers' Compensation review and appeals
- Independent contractor issues
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- Psychological trauma claims

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- Healthcare
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- Professional Liability
- Workers' Compensation

Motivated, well-prepared, and with an eye for detail, Ashley is always ready to jump in and diligently advocate for her clients.

Ashley never takes the value of hard work and perseverance for granted. As a first-generation college and law student, she overcame many obstacles to accomplish her goals - all challenges that make her a better lawyer today. Now, with several years of prior work experience as a Paralegal and ten years of experience in the legal industry, she confidently approaches each case as its own with a carefully crafted plan to help achieve her client's goals. Ashley insists on being thorough, reliable, and honest, leading her clients through each step of the way. She focuses her practice on workers' compensation and civil litigation, including medical malpractice and other casualty/tort litigation, as well as unique transactional matters requiring creative problem-solving.

While in law school, Ashley devoted much of her time to developing and refining her oral advocacy skills by participating in interschool and intraschool competitions, including Negotiation, Client Counseling, Arbitration, and Mock Trials. She received various advocacy awards, including selection into The Order of Barristers and various CALI Excellence for the Future Awards® in Advanced Legal Research, Health Law, Workers' Compensation, Pretrial Litigation, and Trial Practice, demonstrating academic excellence in the same areas of law she now practices.

In her free time, Ashley enjoys getting outside for a nice walk or run, visiting local coffee shops, and spending time with her husband and son. She also tries to find ways to give back to the community, most recently serving as a Court Appointed Special Advocate for Heart of Missouri CASA.

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Heyl Royster Is Ready To Defend You

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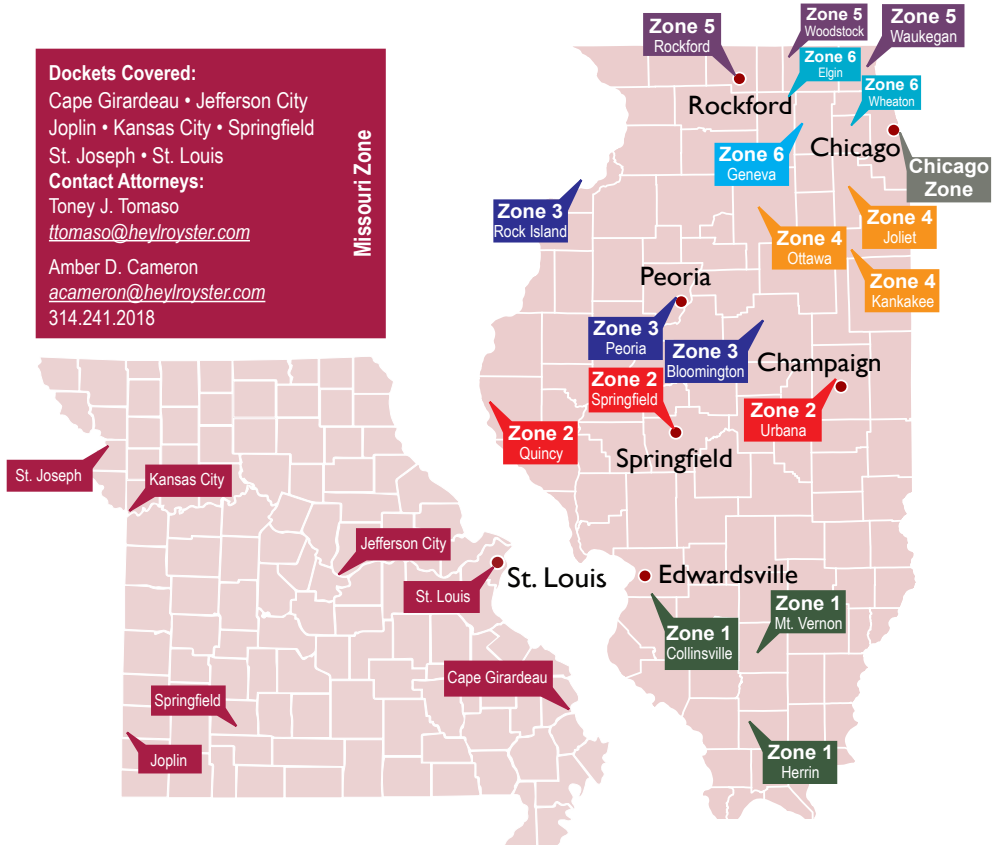
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TTD, DEATH, PERM. TOTAL & AMP. RATES

ACCIDENT DATE	MAX. RATE TTD, DEATH, PERM. TOTAL, AMP.	MIN. RATE DEATH, PERM. TOTAL, AMP.
7/15/18 to 1/14/19	\$1480.12	\$555.05
1/15/19 to 7/14/19	\$1506.81	\$565.06
7/15/19 to 1/14/20	\$1529.84	\$573.69
1/15/20 to 7/14/20	\$1549.07	\$580.90
7/15/20 to 1/14/21	\$1572.01	\$589.51
1/15/21 to 7/14/21	\$1613.93	\$605.23
7/15/21 to 1/14/22	\$1693.76	\$635.16
1/15/22 to 7/14/22	\$1734.83	\$650.56
7/15/22 to 1/14/23	\$1792.73	\$672.28
1/15/23 to 7/14/23	\$1848.20	\$693.08
7/15/23 to 1/14/24	\$1861.18	\$697.96
1/15/24 to 7/14/24	\$1897.92	\$711.72
7/15/24 to 1/14/25	\$1907.79	\$715.42
1/15/25 to 7/14/25	\$1936.86	\$726.34

MINIMUM TTD & PPD RATES

# of dependents, including spouse	7/15/10-1/14/20	1/15/20-7/14/20	7/15/20-1/14/21	1/15/21-1/14/22	1/15/22-1/14/23	1/15/23-1/14/24	1/15/24-1/14/25	1/15/25-7/14/25
0	\$220.00	\$246.67	\$266.67	\$293.33	\$320.00	\$346.67	\$373.33	\$400.00
1	\$253.00	\$283.67	\$306.67	\$337.33	\$368.00	\$403.88	\$429.33	\$460.00
2	\$286.00	\$320.67	\$346.67	\$381.33	\$416.00	\$456.04	\$485.33	\$520.00
3	\$319.00	\$357.67	\$386.67	\$425.33	\$464.00	\$508.04	\$541.33	\$580.00
4+	\$330.00	\$370.00	\$400.00	\$440.00	\$480.00	\$520.00	\$560.00	\$600.00

MAXIMUM PERMANENT PARTIAL DISABILITY RATES

ACCIDENT DATE	MAXIMUM RATE
7/1/15 to 6/30/16	\$755.22
7/1/16 to 6/30/17	\$775.18
7/1/17 to 6/30/18	\$790.64
7/1/18 to 6/30/19	\$813.87
7/1/19 to 6/30/20	\$836.69
7/1/20 to 6/30/21	\$871.73
7/1/21 to 6/30/22	\$937.11
7/1/22 to 6/30/23	\$998.02
7/1/23 to 6/30/24	\$1024.87
7/1/24 to 6/30/25	\$1045.92

MAXIMUM 8(D)(1) WAGE DIFFERENTIAL RATE

ACCIDENT DATE	MAXIMUM RATE
7/15/20 to 1/14/21	\$1179.01
1/15/21 to 7/14/21	\$1210.45
7/15/21 to 1/14/22	\$1270.32
1/15/22 to 7/14/22	\$1301.12
7/15/22 to 1/14/23	\$1344.55
1/15/23 to 7/14/23	\$1386.15
7/15/23 to 1/14/24	\$1395.92
1/15/24 to 7/14/24	\$1423.44
7/15/24 to 1/14/25	\$1430.84
1/15/25 to 7/14/25	\$1452.68

SCHEDULED LOSSES (100%)

Effective 2/1/06 (and 7/20/05 to 11/15/05)	Effective 2/1/06 (and 7/20/05 to 11/15/05)
Person as a whole	500 wks
Arm	253 wks
Amp at shoulder joint	323 wks
Amp above elbow	270 wks
Hand	205 wks
Repetitive carpal tunnel claims	190 wks
Benefits are capped at 15% loss of use of each affected hand absent clear and convincing evidence of greater disability, in which case benefits cannot exceed 30% loss of use of each affected hand.	
Thumb	76 wks
Index	43 wks
Middle	38 wks
Ring	27 wks
Little	22 wks
Leg	215 wks
Amp at hip joint	296 wks
Amp above knee	242 wks
Foot	167 wks
Great toe	38 wks
Other toes	13 wks
Hearing	
Both ears	215 wks
One ear	54 wks
Eye	
Enucleated	173 wks
One eye	162 wks
Disfigurement	162 wks

Death benefits are paid for 25 years or \$500,000 whichever is greater.

As of 2/1/06, burial expenses are \$8,000.

The current state mileage rate is \$0.70 per mile.

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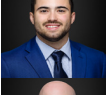
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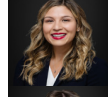
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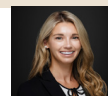


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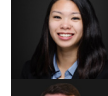
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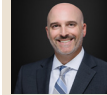


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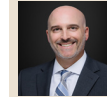


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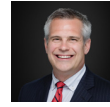
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