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*386 Ill. App. 3d 993, *; 900 N.E.2d 1161, **;
 2008 Ill. App. LEXIS 1255, ***; 326 Ill. Dec. 914*

SMALLEY STEEL RING COMPANY, Appellant, v. **ILLINOIS WORKERS' COMPENSATION COMMISSION**, et al. (Harry Diaz, Appellee).

No. 2-07-1050WC

APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, ILLINOIS WORKERS' COMPENSATION COMMISSION DIVISION

386 Ill. App. 3d 993; 900 N.E.2d 1161; 2008 Ill. App. LEXIS 1255; 326 Ill. Dec. 914

December 12, 2008, Filed

SUBSEQUENT HISTORY: Released for Publication January 23, 2009.

PRIOR HISTORY: [***1]
 Appeal from the Circuit Court of Lake County. No. 06-MR-1535. Honorable Mary S. Schostok, Judge, Presiding.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellee claimant applied for adjustment of claim under the Illinois Workers' Compensation Act, 820 ILCS 305/1 et seq. (2002). An arbitrator initially found for the claimant, but, on appellant employer's motion, denied the claimant compensation. Appellee, the Illinois Workers' Compensation Commission, made the arbitrator's first decision the final decision. The Circuit Court of Lake County (Illinois) confirmed the decision. The employer appealed.

OVERVIEW: After the arbitrator issued his initial decision awarding benefits to the claimant, but prior to the expiration of the time within which employer could have filed a petition for review, the employer filed a motion to recall the arbitrator's decision and reopen proofs. Based upon new evidence that was presented by the employer, the arbitrator determined that the claimant lied and gave false testimony at the initial arbitration hearing. The arbitrator therefore denied the claimant's claim for compensation. However, the Commission found that the arbitrator lacked jurisdiction to recall his first decision, reopen proofs, and reissue the decision. On appeal, the court found that the Illinois Workers' Compensation Act expressly provided for recall of an arbitrator's decision in only one instance, i.e., to correct clerical or computational errors pursuant to 820 ILCS 305/19(f) (2004). Thus, the arbitrator did not have statutory authority to act and, therefore, was without jurisdiction to recall his decision, reopen proofs, and issue a second decision. The Commission was correct in its assessments and its decision was not to be overturned on review.

OUTCOME: The circuit court's judgment was affirmed.

CORE TERMS: arbitrator, claimant, arbitrator's decision, reopen, statutory authority, computational errors, fraudulent, clerical, arbitration hearing, absence of fraud, conclusive, jurisdiction to recall, compensation claims, injuries arising, medical expenses, initial decision, case presents, time frame, expressly provides, appropriate forum, fraudulently, expiration, reopening, recalled, reopened, issuing, nullity, null and void, final decision, security number

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 HN1 ✚ A question of law is subject to de novo review. [More Like This Headnote](#)

[Workers' Compensation & SSDI > Administrative Proceedings > Alternative Dispute Resolution](#) ⓘ
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 HN2 ✚ Under the Illinois Workers' Compensation Act, 820 ILCS 305/1 et seq. (2002), unless a party files a petition for review of an arbitrator's decision within 30 days after the party's receipt of a copy of the decision and notification of when it was filed, the arbitrator's decision shall become the decision of the Illinois Workers' Compensation Commission and in the absence of fraud shall be conclusive. 820 ILCS 305/19(b) (2004). Section 19(f) of the Act, 820 ILCS 305/19(f) (2004), permits the arbitrator and the Commission to recall their respective decisions to correct clerical or computational errors. [More Like This Headnote](#)

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 HN3 ✚ 820 ILCS 305/19(f) provides for petitions to recall in the event of clerical or computational errors. [More Like This Headnote](#)

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HN4 Only § 19(f) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 et seq. (2002), specifically provides for recall of decisions by an arbitrator or the Illinois Workers' Compensation Commission, and then only to correct clerical or computational errors. 820 ILCS 305/19(f) (2004). [More Like This Headnote](#)

Workers' Compensation & SSDI > Administrative Proceedings > Alternative Dispute Resolution

Workers' Compensation & SSDI > Administrative Proceedings > Awards > General Overview

HNS Fraud is not a basis for extending the statutory authority of an arbitrator or the Illinois Workers' Compensation Commission. Sections 19(b) and 19(f) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 et seq. (2002), provide for the finality of the arbitrator's and the Commission's decision, respectively, when further review has not been sought by either party within a particular time frame. 820 ILCS 305/19(b) and 820 ILCS 305/19(f) (2004). Each section also provides for conclusive decisions in the absence of fraud. 820 ILCS 305/19(b) and 820 ILCS 305/19(f). The Illinois Legislature did not intend the "in the absence of fraud" language to give the Commission the authority to set aside its orders on the ground of fraud. [More Like This Headnote](#)

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Workers' Compensation & SSDI > Administrative Proceedings > Alternative Dispute Resolution

Workers' Compensation & SSDI > Administrative Proceedings > Awards > General Overview

Workers' Compensation & SSDI > Administrative Proceedings > Fraud

HNS A party may maintain an action before a circuit court to procure relief from a judgment of the Illinois Workers' Compensation Commission based on fraud. In such circumstances, a court can review an otherwise conclusive decision by the Commission, even if the procedures and time limitations set forth in § 19(f)(1) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 et seq. (2002), have not been followed. 820 ILCS 305/19(f) (2002). [More Like This Headnote](#)

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Workers' Compensation & SSDI > Administrative Proceedings > Awards > General Overview

Workers' Compensation & SSDI > Administrative Proceedings > Fraud

HN7 Section 25 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 et seq. (2002), expressly provides for criminal penalties and civil liability in the event of fraudulent workers' compensation claims. 820 ILCS 305/25 (2004). [More Like This Headnote](#)

JUDGES: JUSTICE McCULLOUGH delivered the opinion of the court. B. E. GORDON, GROMETER, HOLDRIDGE, and DONOVAN, JJ., concur.

OPINION BY: McCULLOUGH

OPINION

[*994] [1162]** JUSTICE McCULLOUGH delivered the opinion of the court:

On August 31, 2004, claimant, Harry Diaz, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2002)), seeking benefits from employer, **Smalley Steel Ring** Company. Following a hearing, the arbitrator determined claimant sustained injuries arising out of and in the course of his employment on July 9, 2004, and awarded him (1) 14 weeks' temporary total disability (TTD) benefits and (2) \$ 21,543.52 for medical expenses. Later, on employer's motion, the arbitrator recalled his decision and reopened proofs. Following a second hearing, he reissued his decision and found claimant was not entitled to compensation under the Act.

The Workers' Compensation Commission (Commission) concluded the arbitrator erred by reopening proofs and issuing a second decision. It declared that the arbitrator's second decision was null and void and that **[***2]** his first decision was the final decision of the Commission. The circuit court of Lake County confirmed the Commission's decision. Employer appeals, arguing the Commission erred by finding the arbitrator did not have the statutory authority to recall his first decision, reopen proofs, and issue a second decision.

The parties are familiar with the evidence and we discuss it only to the extent necessary to put their arguments in context. On August 31, 2004, claimant filed his application for adjustment of claim, stating his name was Harry Diaz and alleging he injured his left upper extremity while pulling a rack at work. On January 31, 2005, an arbitration hearing was conducted in the matter. Employer requested a 30-day continuance, in part to obtain verification of claimant's identity. Employer asserted claimant provided a social security number that belonged to a person who died in New York on September 1, 2003. Claimant objected and the arbitrator denied employer's motion. The matter proceeded with an arbitration hearing.

On April 7, 2005, the arbitrator issued his decision, finding claimant proved he sustained accidental injuries arising out of and in the course of his employment. **[***3]** He awarded claimant 14 weeks' TTD benefits and medical expenses, totaling \$ 21,543.52. Neither party sought review with the Commission; however, on May 10, 2005, employer filed an emergency motion to recall the arbitrator's decision and reopen proofs. Employer alleged it discovered new evidence from one of claimant's coworkers that claimant's true identity was Alejandro Atilano and that he previously worked for Westech Automation System (Westech). Employer further alleged that on August 8, 2002, while working at Westech, claimant allegedly suffered a work-related injury to his left shoulder and underwent left-shoulder surgery. It **[*995]** stated claimant sought benefits under the Act for his injury and his claim was settled for 25% loss of use of his left arm.

On May 13, 2005, the arbitrator conducted a hearing on employer's motion. Despite receiving notice of the hearing, neither claimant nor his attorney appeared. At the conclusion of the hearing, the arbitrator granted employer's motion; recalled his April 7, 2005, decision; and reopened proofs.

On August 23, 2005, the arbitrator conducted a hearing and heard additional evidence in the matter. Again, notice was **[**1163]** provided to claimant but neither **[**4]** claimant nor his attorney appeared at the hearing. On November 15, 2005, the arbitrator issued his second decision. He determined the additional evidence presented at the August 23, 2005, arbitration hearing showed claimant lied and gave false testimony at the initial arbitration hearing. The arbitrator also noted that medical records following claimant's July 2004 injury showed he lied to his treating physicians. He stated claimant was completely lacking in credibility and failed to prove he sustained accidental injuries that arose out of and in the course of his employment with employer. The arbitrator denied claimant's claim for compensation under the Act.

Claimant sought review of the arbitrator's decision with the Commission. On October 30, 2006, the Commission issued its decision. It found the arbitrator lacked jurisdiction to recall his first decision, reopen proofs, and reissue his decision. The Commission stated the arbitrator's first decision was the Commission's final decision and his second decision was null and void. The circuit court confirmed the Commission's decision.

This appeal followed.

On appeal, employer argues the Commission erred by finding the arbitrator lacked **[**5]** jurisdiction to recall his initial decision, reopen proofs, and issue a second decision.

The issue raised in this case presents **HN1** a question of law and is subject to *de novo* review. *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d 519, 524, 844 N.E.2d 414, 418-19, 300 Ill. Dec. 416 (2006).

HN2 Under the Act, unless a party files a petition for review of the arbitrator's decision within 30 days after the party's receipt of a copy of the decision and notification of when it was filed, the arbitrator's decision "shall become the decision of the Commission and in the absence of fraud shall be conclusive." 820 ILCS 305/19(b) (West 2004). Section 19(f) of the Act (820 ILCS 305/19(f) (West 2004)) permits the arbitrator and the Commission to recall their respective decisions to correct clerical or computational errors.

In *Wilson-Raymond Constructors Co. v. Industrial Comm'n*, 79 Ill. 2d 45, 49, 402 N.E.2d 584, 586, 37 Ill. Dec. 582 (1980), the employer filed a petition to **[*996]** recall the Commission's decision and requested reconsideration of the merits and to present further evidence. Its petition was filed prior to the expiration of the time frame within which it could seek judicial review of the Commission's decision. *Wilson-Raymond*, 79 Ill. 2d at 49, 402 N.E.2d at 586.

The **[**6]** supreme court, however, noted the Act contained no authorization for the filing of such a petition. *Wilson-Raymond*, 79 Ill. 2d at 56, 402 N.E.2d at 590. It stated that, although **HN3** section 19(f) provided for petitions to recall in the event of clerical or computational errors, no such error was involved in the case. *Wilson-Raymond*, 79 Ill. 2d at 56, 402 N.E.2d at 590. Further, the court found that, "[b]ecause there [was] no provision for recall [in the Act] other than that provided by section 19(f), [the employer's] petition to recall was a nullity." *Wilson-Raymond*, 79 Ill. 2d at 56, 402 N.E.2d at 590.

Here, the arbitrator issued his initial decision on April 7, 2005. Prior to the expiration of the time within which employer could file a petition for review, it filed a motion to recall the arbitrator's decision and reopen proofs. Although *Wilson-Raymond* involved a petition to recall the Commission's decision rather than that of the arbitrator, the supreme **[**1164]** court's reasoning in that case is no less applicable. **HN4** Only section 19(f) of the Act specifically provides for recall of the arbitrator's or the Commission's decisions, and then only to correct clerical or computational errors. No such **[**7]** errors were present in this case and section 19(f) is inapplicable. No other provision of the Act provided for the filing of employer's motion or the arbitrator's actions in granting that motion, reopening proofs, and issuing a second decision. As in *Wilson-Raymond*, employer's motion and the arbitrator's second decision were nullities.

Additionally, as noted by the Commission, **HN5** fraud is not a basis for extending the statutory authority of the arbitrator or the Commission. Sections 19(b) and 19(f) of the Act (820 ILCS 305/19(b), (f) (West 2004)) provide for the finality of the arbitrator's and the Commission's decision, respectively, when further review has not been sought by either party within a particular time frame. Each section also provides for conclusive decisions "in the absence of fraud." 820 ILCS 305/19(b), (f) (West 2004). In *Michelson v. Industrial Comm'n*, 375 Ill. 462, 469, 31 N.E.2d 940, 943 (1941), the supreme court declined to find that the legislature intended the "in the absence of fraud" language to give the Commission the authority to set aside its orders on the ground of fraud. It continued that, without express authority, the Commission was without jurisdiction to **[**8]** so act and the parties were "relegated to a court of equity for relief under a charge of fraud." *Michelson*, 375 Ill. at 469, 31 N.E.2d at 943.

[*997] The Act expressly provides for recall of an arbitrator's decision in only one instance, *i.e.*, to correct clerical or computational errors. The arbitrator did not have statutory authority to act and, therefore, was without jurisdiction to recall his decision, reopen proofs, and issue a second decision. The Commission was correct in its assessments and its decision should not be overturned on review.

As we stated in *Ming Auto Body v. Industrial Comm'n*, No. 1--07--1125WC, 387 Ill. App. 3d 244, 899 N.E.2d 365, 2008 Ill. App. LEXIS 1132, *20, 326 Ill. Dec. 148 (November 18, 2008):

HN6 "[A] party may maintain an action before the circuit court to procure relief from a judgment of the Commission based on fraud. See [*Roadside Auto Body, Inc. v. Miller*, 285 Ill. App. 3d 105, 111, 673 N.E.2d 1145, 1149, 220 Ill. Dec. 724 (1996)] (declaratory judgment action seeking to vacate, as fraudulent, a settlement agreement approved by the Commission); [*Daugherty v. National Union Electric Corp.*, 160 Ill. App. 3d 747, 749, 514 N.E.2d 196, 197, 112 Ill. Dec. 730] (1987) (action for fraud alleging that the plaintiff's employer had fraudulently understated his wages, which resulted **[**9]** in an award that was substantially below the amount to which the plaintiff would otherwise have been entitled.) In such circumstances, a court can review an otherwise conclusive decision by the Commission, even if the procedures and time limitations set forth in section 19(f)(1) have not been followed. 820 ILCS 305/19(f) (West 2002); [*Roadside Auto Body Inc.*, 285 Ill. App. 3d at 111, 673 N.E.2d at 1149]; [*Daugherty*, 160 Ill. App. 3d at 749, 514 N.E.2d at 197-98]."

Employer may seek recourse for claimant's fraudulent conduct. The appropriate forum for its allegations is in the circuit court. More specifically, we note, **HN7** section 25 of the Act (820 ILCS 305/25 (West 2004)) expressly provides for criminal penalties and civil liability in the event of fraudulent workers' compensation claims. The record suggests claimant acted fraudulently in pursuing his

workers' compensation [**1165] claim, and employer should seek relief in the appropriate forum.


We note that the facts of this case present an unfortunate scenario. Although employer possessed strong evidence of fraud, the arbitrator lacked the statutory authority to act. Such deficiencies in the Act should be addressed by the legislature.

In retrospect, [***10] the issue would be properly before this court if employer's request for a continuance to verify claimant's social security number had been granted. It is also noted that that request informed claimant and his counsel of the asserted fraudulent conduct.

For the reasons stated, we affirm the circuit court's judgment.

Affirmed.

R. E. GORDON, GROMETER, HOLDRIDGE, and DONOVAN, JJ., concur.







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2006 Ill. Wrk. Comp. LEXIS 907, *

HARRY DIAZ, PETITIONER, PETITIONER, v. SMALLEY STEEL RING COMPANY & UNITED HEARTLAND, RESPONDENT

NO. 04 WC 41924

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2006 Ill. Wrk. Comp. LEXIS 907; 06 IWCC 0947

October 30, 2006

CORE TERMS: reopen, jurisdiction to recall, motion to reopen, final decision, emergency, first order, lump sum, computation, settlement, claimant, motion to recall, final award, approving, modify, statutory authority, absence of fraud, true identity, null and void, fraudulently, continuance, conclusive, reissue, issuing

JUDGES: Barbara A. Sherman; Yolaine Dauphin

OPINION: [*1] DECISION AND OPINION ON REVIEW

Petitioner filed a Petition for Review arguing that Arbitrator Erbacci lacked jurisdiction to recall his first decision, reopen proofs, and reissue a decision. In Arbitrator Erbacci's first decision that was filed on April 7, 2005, the Arbitrator found Petitioner's case compensable. Arbitrator Erbacci issued a second decision, filed on November 15, 2005, finding that Petitioner acted fraudulently and lacked credibility, and the Arbitrator denied compensation. The issue on review is whether, after filing his initial decision with the Commission, the Arbitrator had the authority to reopen proofs and issue a second decision. After considering the record, the Commission finds that the first decision that the Arbitrator issued is the final decision of the Commission, that the Arbitrator erred in reopening proofs and issuing a second decision, and that the second decision issued is null and void. Commissioner Sherman, Commissioner Dauphin, and Commissioner Ulrich were all in the consideration of this case.

On January 31, 2005, the date of the Section 19(b) arbitration hearing, the Arbitrator closed proofs. The Arbitrator issued a decision, filed on April [*2] 7, 2005. Subsequently, on May 10, 2005, Respondent filed an emergency motion to recall the Arbitrator's decision and to reopen proofs. Respondent's emergency motion was set for hearing before Arbitrator Erbacci on May 13, 2005. On May 13, 2005, the Arbitrator issued a "Notice of Re-Opening of Proofs" indicating as follows:

I originally closed proofs on 1/31/05, however, I re-opened proofs for the following reasons: Respondent presented a motion to reopen proofs and presented evidence in support of that motion which indicated that the Petitioner actively concealed his true identity and may have perjured himself before the Commission.

Petitioner filed a Petition for Review, which is the subject of this decision, contending that the Arbitrator was without jurisdiction to recall his first decision that was filed on April 7, 2005, to reopen proofs, and to issue a second decision that was filed on November 15, 2005. In support of his contention, Petitioner notes that the time provided for under Section 19(f) had elapsed. Respondent argues, in its brief, that the case law dictates that the Arbitrator was within his jurisdiction to recall a decision prior to the expiration of the 30 day [*3] review period provided under Section 19(f) and to reissue his decision.

The Commission agrees with Petitioner's position that the Arbitrator did not have statutory authority (i.e., jurisdiction) to recall his final decision, to reopen proofs, and to issue a second decision. Section 19(b) of the Act provides, in relevant part, as follows:

[u]nless a petition for review is filed by either party within 30 days after the receipt by such party of the copy of the [Arbitrator's] decision and notification of the time when filed,... then the decision shall become the decision of the Commission and in the absence of fraud shall be conclusive.

820 ILCS 309/19(b). Section 19(f) provides in pertinent part:

The decision of the Commission acting within its powers, according to the provisions of paragraph (e) of this Section shall, in the absence of fraud, be conclusive.... However, the Arbitrator or the Commission may on his or its own motion, or on the motion of either party, correct any clerical error or errors in computation within 15 days after the date of receipt of any award by such Arbitrator or any decision on review of the Commission, and shall have the power to recall the original award [*4] on arbitration or decision on review, and issue in lieu thereof such corrected award or decision.

820 ILCS 305/19(f). We find that Section 19(f) of the Act is the only provision under which an Arbitrator has jurisdiction to recall decisions. Section 19(f) provides for two circumstances when the Commission may reopen or modify a final award. Further, in *Alvarado v. Industrial Comm'n*, 216 Ill.2d 547, 837 N.E.2d 909 (2005), the court noted that there are two instances when the Commission may reopen or modify a final award: pursuant to Section 19(f) for clerical errors or errors in computation and pursuant to Section 19(h) for review of a claimant's change in his condition. We find that once Arbitrator Erbacci filed his decision, the case could have been reviewed by filing a petition for review within 30 days of the receipt of the Arbitrator's decision, could have been reviewed

and modified, if warranted, under Section 19(f), and could have been reviewed under Section 19(h). None of these instances occurred in the present case. Respondent did not file a petition for review of Arbitrator Erbacchi's [*5] decision and did not file a motion to correct any clerical or errors in computation under Section 19(f).

Respondent contends that its motion to recall the decision and reopen proofs "was the only remedy available to the Respondent to introduce newly discovered vital evidence in this fraudulently filed workers' compensation claim." Respondent also notes that this "remedy" was preserved at the original hearing by Respondent's specific request for a continuance. We reject Respondent's contention that it had only one remedy, which was to file its emergency motion to recall the original decision and reopen proofs. Instead of filing an emergency motion to reopen proofs on May 10, 2005, Respondent could have filed a petition for review of the case, arguing that the Arbitrator erred in denying Respondent a continuance of the matter so that Respondent could have obtained some relevant and important information relating to Petitioner's true identity. Additionally, as further discussed below, Respondent can avail itself of equitable remedies in the circuit court.

Respondent argues that it was Petitioner's deceitful behavior that prevented Respondent from discovering evidence of Petitioner's fraudulent [*6] conduct. We decline to adopt Respondent's argument that fraud is a basis to find that a Commission decision is not final. In *Michelson v. Industrial Comm'n*, 375 Ill. 462, 31 N.E.2d 940 (1941), the claimant protested the Commission's first order, which had approved a lump sum settlement, on the ground of fraud in the procurement. The Commission had entered a second order, setting aside the first order. The issue presented before the Michelson court was whether the Commission had jurisdiction to set aside its order approving a lump sum settlement on the basis of fraud. The employer in Michelson contended that if the Commission had power to set aside its order because of fraud, the Commission would have the authority to overturn any of its decisions on the basis of fraud at any time and that such authority is not provided for in the Act. *Michelson*, 375 Ill. at 465, 31 N.E.2d at 941. The court held that the Commission was without jurisdiction to set aside its first order approving a lump sum settlement. *Michelson*, 375 Ill. at 469, 31 N.E.2d at 943. [*7] In so holding, the court declined to interpret that Section 19(f) of the Act grants and reserves jurisdiction for the Commission to set aside its orders based on fraud. *Id.* The court noted that the claimant's recourse was to present his fraud case in a court of equity. The Commission concludes that fraud is not a basis to extend our statutory authority.

Respondent asserts that it would be inequitable to require Respondent to pay this award and then require Respondent to pursue a return of those monies through an action in equity before the circuit court. This is essentially the same argument that was rejected in *Michelson*, and which we consequently reject here in reliance on *Michelson*. We further rely on *Roadside Auto Body, Inc. v. Miller*, 285 Ill.App.3d 105, 673 N.E.2d 1145 (1996). In finding that the circuit court was the proper forum to hear the employer's allegations of fraud, the Roadside court made the following statement: "the statute plainly indicates that fraud is a basis upon which a Commission decision may be reexamined and the supreme court has long held that a party may maintain a complaint before the circuit [*8] court in equity to procure relief from a judgment of the Commission based on fraud." *Roadside*, 285 Ill.App.3d at 111, 673 N.E.2d at 1149 (1996), citing, *Daugherty v. National Union Electric Corp.*, 160 Ill.App.3d 747, 749, 112 Ill.Dec. 730 (1987).

Turning to the cases upon which Respondent relies in support of its contention that the Arbitrator had jurisdiction to recall his first decision and reopen proofs, the Commission finds that the cases Respondent cited are distinguishable and unpersuasive. Respondent cited *Roberts v. Bridgestone Firestone, Inc.*, 02 IIC 0663 (2002). We find that the facts in *Roberts* are not similar to the facts in this case. In *Roberts*, the respondent's motion to reopen proofs was presented while the case was under advisement and still pending before the Arbitrator. The Commission, in *Roberts*, therefore was not confronted with a motion to reopen proofs after a final decision from the Arbitrator had been filed. Respondent also cited *Radulescu v. LSG Sky Chefs*, 03 IIC 0884 (2003), to illustrate how Respondent differs from the employer in *Radulescu* [*9]. As in *Roberts*, however, it is clear that the motion to reopen proofs was filed and heard prior to the Arbitrator's issuance of a decision.

The Commission finds that the Arbitrator erred in ordering the recall of his first decision and issuing a second decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that the second decision, filed on November 15, 2005, is null and void, and the Arbitrator's first decision, filed on April 7, 2005, is the final decision of the Commission.

The probable cost of the record to be filed as return to Summons is the sum of \$ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: October 30, 2006

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2005 Ill. Wrk. Comp. LEXIS 1005, *

HARRY DIAZ, PETITIONER, v. SMALLEY STEEL RING CO., RESPONDENT

No. 04 WC 41924

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF LAKE

2005 Ill. Wrk. Comp. LEXIS 1005; 05 IWCC 0979

December 16, 2005

JUDGES: Barbara A. Sherman; Paul W. Rink; Ilonka Ulrich

OPINION:

[*1] DECISION AND OPINION ON PETITION FOR PENALTIES

This matter coming before the Commission pursuant to Petitioner's Petition for Penalties and Attorneys' Fees, due notice having been given, the parties having appeared and been heard on September 1, 2005, and the Commission being advised in the premises, the Commission denies the Petition for the reasons that follow:

1. An Arbitrator entered his decision in this claim on March 24, 2005; it was filed with the Commission on April 7, 2005.
2. On May 10, 2005, Respondent filed an "Emergency Motion To Recall the Decision of the Arbitrator and Re-Open Proofs" which was heard and granted by the Arbitrator on May 13, 2005. His order states that his original decision was recalled and that he considered additional evidence and would issue a final and appealable decision as he deemed appropriate. As of September 1, 2005, the date of hearing of the instant Petition, no such decision had been issued.
3. Petitioner contends that the Arbitrator had no jurisdiction to recall the decision and reopen proofs and that consequently all proceedings before the Arbitrator subsequent to his issuance of the decision were a nullity.

The Commission finds [*2] that regardless of whether the Arbitrator had authority to recall his decision, reopen proofs and receive additional evidence, he had entered an order doing so. Under these circumstances, Respondent did not act unreasonably or vexatiously in relying on the Arbitrator's order and in not making payment in accordance with the recalled decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Petition for Penalties and Attorneys Fees is therefore, hereby, denied.

The probable cost of the record to be filed as return to Summons is the sum of \$ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefore and deposited with the Office of the Secretary of the Commission.

DATED: December 16, 2005

Barbara A. Sherman

Paul W. Rink

Ilonka Ulrich

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