STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [ ] PTD/Fatal denied
- [x] None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROGER SEYMOUR,)
Petitioner,)
)
vs.) No. 07 WC 17047
)
INGRASSIA INTERIOR ELEMENTS,)
Respondent.)

ORDER

This matter came before the Commission on December 9, 2008, in Rockford, Illinois, pursuant to Respondent's Motion to Strike for Lack of Subject Matter Jurisdiction. The Commission, upon review of the evidence presented, finds as follows:

This matter was originally heard as an Application for Adjustment of Claim before Arbitrator James Giordano. He found that Petitioner failed to show that the sustained injuries arose out of and in the course of employment. On July 25, 2008, Petitioner filed a Petition for Review of Arbitrator Decision taking exception to Arbitrator Giordano's finding.

The Petition for Review of Arbitration Decision contains Commission-authored language that provides the moving party an additional thirty days past the time allowed by statute or stipulation to file a transcript. In the instant matter, the transcript was due on or before September 22, 2008. On October 9, 2008, Respondent filed its Motion to Strike Review of Arbitration Decision for Lack of Subject Matter Jurisdiction premised on Petitioner's failing to file the transcript with the Commission.

Respondent noted in its Motion to Strike for Lack of Subject Matter Jurisdiction that the standard Stenographic Stipulation found in the preprinted Illinois Workers' Compensation Commission Request for Hearing form was objected to at the June 13, 2008 arbitration hearing. The Commission takes note of that objection. The Commission, also notes that, on April 11, 2008, Respondent agreed to the Stenographic Stipulation. Section 7030.40 of the Rules Governing Practice before the Illinois Workers' Compensation Commission does not require the parties to sign the Stenographic Stipulation. If the parties do, the "language of 7030.40 indicates that the

request for hearing is binding." Walker v. Industrial Commission, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004).

Just as Respondent mistakenly believes that it can deny the applicability of the Stenographic Stipulation after agreeing to be bound to it, Respondent also mistakenly contends Contreras v. Industrial Commission, 306 Ill. App. 3d 1071, 715 N.E.2d 701, 199 Il. App. LEXIS 538, 240 Ill. Dec. 14 (1st Dist. 1999), advances the notion that the Commission has lost jurisdiction to review the Arbitrator's decision. Respondent quotes Contreras, "The right to have an award reviewed by the Commission is lost by a failure to an agreed statement of facts or a transcript of evidence within the time period specified in 19(b)." Contreras at 1075. The court, two sentences later, however, stated that the "stenographic stipulation contained in the preprinted request for hearing form specifically provides that if either party files a petition for review of the arbitrator's decision, the opposite party will not raise the question of jurisdiction on the ground that the transcript was not timely filed." Id. at 1076. The court continued its analysis of the effect of the Stenographic Stipulation and found that the "stipulation clearly states that in the event either party fails to timely file a transcript, the other party will not challenge jurisdiction. The Commission's jurisdiction is not at issue." Id. Despite its proclamation to the contrary, Respondent's prior acceptance of the Stenographic Stipulation permitted the Commission to retain the jurisdiction Respondent claims it does not possess.

In addition to Contreras, Respondent also relies on Ronald Lane v. Pepper Construction, 6 IWCC 805, 2006 Ill. Wrk. Comp. LEXIS 841 (2006), to advance the proposition that an untimely filed transcript leads to the Commission losing subject matter jurisdiction. The Commission in Lane cited both Contreras and Gould Construction Co. v. Industrial Trail Commission, 311 Ill. 472, 143 N.E. 73, 1924 Ill. LEXIS 1063 (1924), in find that "the courts held that the right to have an award reviewed by the Commission is lost by a failure to file a transcript within the timeframe specified and that the timely filing is a prerequisite to the Commission's obtainment of jurisdiction." Lane at 3.

In Contreras, as stated above, the court found that the agreed-to Stenographic Stipulation preserved the Commission's jurisdiction despite an untimely filed transcript. In this instance case, both parties sight the Stenographic Stipulation prior to Respondent's repudiation of it. The Illinois Supreme Court in Gould found that the "requirement that the report should be filed within fifty days of the date of the award was left in the statute and governs all cases except where the failure to file the report of the proceedings has been caused by the failure of the reporter to furnish such report, and not the neglect of the party seeking review." Gould at 478-9. In the present case, the reason for Petitioner not timely filing the transcript with the Commission was due to Petitioner not having received it from the court reporter despite his efforts to secure the document in a timely manner.

Furthermore, a closer examination of Lane reveals that the failure to file a timely transcript was the dispositive issue. The Commission in Lane concluded that it did not have jurisdiction because of both case law and the particular facts of the case. Lane at 5.

The Commission in Lane noted that not only did the Petitioner's counsel not file a transcript in a timely manner, Petitioner's counsel failed to exercise due diligence in pursuing Petitioner's Review. Lane at 5. The Commission found that Petitioner's counsel filed a motion for an extension of time to file a transcript the same day the transcript was due, requested a continuance on the day that motion was to be heard and then failed to appear for the hearing on the motion. Again, in Lane, the Commission held that the both the case law and the facts of the case were controlling. The present case did not follow the same fact pattern.

In the case currently before the Commission, there is no evidence or accusation of attorney conduct similar to that in Lane. Here, Petitioner's counsel was confronted with a court reporter that did not provide him with the transcripts within the prescribed timeframe. Petitioner's counsel stated that requests for the transcripts were made to the court reporter before it was received on November 17, 2008. There was no allegation of any delay in tendering the transcript to Respondent. Although Petitioner's counsel did not file the transcript with the Commission upon receipt, he did tender a copy of the transcript a few weeks later directly to Commissioner Lamborn at Respondent's Motion to Strike for Lack of Subject Matter Jurisdiction hearing.

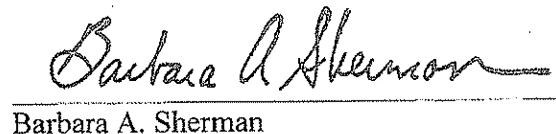
The Illinois Supreme Court in Gould found that the right to a review cannot be lost due to the failure of a court reporter to furnish a transcript. The Contreras court found that agreeing to the Stenographic Stipulation preserves the Commission's jurisdiction in the event of an untimely filed transcript. Lastly, the present case is not analogous to Lane as there was no hint of misconduct on the part of Petitioner's counsel that prevented a timely submission of the transcript.

IT IS THEREFORE ORDERED that Respondent's Motion to Strike Review of Arbitrator Decision for Lack of Subject Matter Jurisdiction is 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 and deposited with the Office of the Secretary of the Commission.

DATE: AUG 27 2010
KWL/mav
42

Kevin W. Lamborn



Barbara A. Sherman

STATE OF ILLINOIS
CIRCUIT COURT
SEVENTEENTH JUDICIAL CIRCUIT

J. Edward Prochaska
Circuit Judge

Winnebago County Courthouse
400 West State Street
Rockford, Illinois 61101
PHONE (815) 319-4804 * FAX (815) 319-4801

June 30, 2011

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Ingrassia Interior Elements v. Illinois Workers Compensation Commission and Roger Seymore

Case No. 2010 MR 644

MEMORANDUM DECISION AND ORDER

THIS matter comes on for Decision on Plaintiff Ingrassia Interior Elements' Motion to Strike Review of Arbitration Decision for Lack of Subject Matter Jurisdiction pursuant to 820 ILCS 305/19, and in opposition to Defendants, Illinois Workers Compensation Commission and Roger Seymour. The Court, having reviewed the briefs, exhibits, relevant case law and statutes, does hereby Find and Order as follows:

I. Background Information

Defendant Roger Seymour (hereinafter "Defendant") filed a workers' compensation claim whereupon he alleged that he sustained injuries while performing job-related functions for Plaintiff Ingrassia Interior Elements (hereinafter "Plaintiff") on March 23, 2007. At the pre-trial conference on April 11, 2008, Plaintiff was presented with a Request for Hearing form, which contained the following provision:

> "**STENOGRAPHIC STIPULATION.** Both parties agree that if either party files a Petition for Review of Abitration Decision and orders a transcript of the hearings, and if the Commission's court reporter does not furnish the transcript within the time limit set by law, the other party will not claim the Commission lacks jurisdiction to review the arbitration decision because the transcript was not filed timely."

Although Plaintiff signed the contained stipulation, this claim did not proceed to trial that day. Instead, this claim was tried before Arbitrator Giordano on June 13, 2008. Prior to the arbitration hearing, Plaintiff was again presented with a Request for Hearing form. This time, the plaintiff objected to the stenographic stipulation and did not sign it. The hearing proceeded on that date in the absence of a stenographic stipulation.

On July 7, 2008, the Arbitrator filed his decision with the Workers' Compensation Commission, denying Defendant's claim. Defendant received the Arbitrator's decision on July 17, 2008, and filed a Petition for Review of Arbitration Decision, along with a request for two copies of the transcript, on July 25, 2008. On November 6, 2008, the Commission issued the Notice of Return Date on Review, stating that Defendant shall submit the authenticated transcript on or before December 26, 2008. Defendant received the transcripts from the court reporter on November 17, 2008, and tendered both copies to Commissioner Lamborn in person on December 9, 2008.

However, on October 9, 2008, Plaintiff filed its Motion to Strike Review of Arbitration Decision for Lack of Subject Matter Jurisdiction, stating that since the deadline for the filing of either an agreed statement of facts or correct transcript of evidence pursuant to Section 19(b) of the Illinois Workers' Compensation Act (hereinafter "Act") had lapsed, the Commission was deprived of its jurisdiction to review the Arbitrator's findings. The Commission conducted a hearing on Plaintiff's Motion to Strike on December 9, 2008, and entered its order denying said motion on August 27, 2010.

In its Brief in Support of Arguments to Reverse the Illinois Workers' Compensation Commission Decision, Plaintiff raises two contentions:

1. The stenographic stipulation contained in the Request for Hearing form is improper, and, even if agreed to by the parties, is a nullity with no binding effect since subject matter jurisdiction can neither be waived nor consented to.
2. Even if the stipulation is valid, Plaintiff objected to the stenographic stipulation at trial.

II. Applicable Law

The Supreme Court has long held that the right to a review by the Industrial Commission is purely statutory, and the statute must be strictly followed. Benton Coal Min. Co. v. Industrial Comm'n, 321 Ill. 208, 151 N.E. 520 (1926); Cooke v. Industrial Comm'n, 340 Ill. 309, 340 Ill. 309 (1930); Gould Const. Co. v. Industrial Comm'n, 311 Ill. 472, 143 N.E. 73 (1924). The statutory authority that vests the power of the Commission to review an arbitrator's award comes from the Workers' Compensation Act, 820 ILCS 305/19 (2011), which "also contains limitation periods that preclude review of awards beyond the statutory time periods." Eschbaugh v. Industrial Comm'n, 286 Ill. App. 3d 963, 966 (Ill. App. Ct. 1996). Failure to strictly comply with sections 19(b) of the Act deprives the Commission the authority to review the arbitrator's decision. *See e.g.* Northwestern Steel & Wire Co. v. Industrial Comm'n, 37 Ill.2d 112, 115 (1967).

Section 19(b) of the Act provides in pertinent part:

> Unless a petition for review is filed by either party within 30 days after the receipt by such party of the copy of the decision and notification of time when filed, and unless such party petitioning for a review shall within 35 days after the receipt by him of the copy of the decision, file with the Commission either an agreed statement of the facts appearing upon the hearing before the Arbitrator, or if such party shall so elect a correct transcript of evidence of the proceedings at such hearings, then the decision shall become the decision of the Commission and in the absence of fraud shall be conclusive.... The Commission, or any member thereof, may grant further time not exceeding 30 days, in which to file such agreed statement or transcript of evidence.

820 ILCS 305/19 (2011).

Along with a timely filed petition for review, the timely filing of an agreed statement of facts or transcript of evidence is a prerequisite to the Industrial Commission's obtaining jurisdiction. Contreras v. Industrial Comm'n, 306 Ill. App. 3d 1071, 1075 (Ill. App. Ct. 1999). However, jurisdiction may be sustained when objection on these grounds are waived by participation in the proceedings on the merits without a motion to dismiss or by consent to a stenographic stipulation. Contreras, 306 Ill. App. 3d at 1076; Murphy v. Industrial Comm'n, 408 Ill. 612, 615 (1951).

Moreover, the Supreme Court has held that the right to a review cannot be lost due to the failure of a court reporter to furnish a transcript of the proceedings before the Arbitrator, and not by the party's own neglect. Gould, 311 Ill. at 477. Thus, Section 19(e) provides that if a reporter does not furnish a transcript within the fixed time limitations, the Commission may, in its discretion, order a trial de novo upon application of either party. 820 ILCS 305/19 (2011).

III. Analysis

The first matter before this Court is whether the stenographic stipulation is a valid device. Plaintiff asserts that the stenographic stipulation is improper, and, in essence, allows the Commission to retain subject matter jurisdiction where it does not exist. Plaintiff cites to Jones v. Industrial Comm'n, 335 Ill. App. 3d 340, 343; 780 N.E. 2d 697, 700 (2002), to support its contention by stating that subject matter jurisdiction cannot be waived, stipulated to, or consented to by the parties.

The Commission's subject matter jurisdiction is stated in Section 1(b) of the Workers' Compensation Act, and provides that any injury arising out of one's employment is covered for the purpose of the Act. 820 ILCS 305/1 (2011). To wit, the Commission exercises original jurisdiction over workers' compensation cases. Berry v. Industrial Comm'n, 99 Ill. 2d 401, 405, 459 N.E.2d 963, 965 (1984). Despite Plaintiff's contentions that the stipulation allows the

Commission to "abrogate its responsibility" and give the court reporter an "unlimited time" to furnish the transcript, this simply is not the case. Rather, the stipulation extends the time to file the transcript to the Commission prior to or on the Return Date on Review. 50 Ill. Adm. Code 7040.10 (2011). The Commission's responsibilities are in no way abrogated, and the reporter is not given an infinite amount of time to furnish the transcript. In fact, the Commission must notify the parties at least thirty days prior to the Return Date on Review. 50 Ill. Adm. Code 7040.10 (2011).

The stenographic stipulation has made its way into the commonplace procedure for Workers' Compensation cases, such that it is printed in the standardized Request for Hearing form, which the parties must complete and sign before a case proceeds to arbitration. Even secondary sources on perfecting a review before the Commission are replete with procedures based on the prior agreement to the stenographic stipulation. *See e.g.* 27 Ill. Prac., Illinois Workers' Compensation Law §25:72. Further, the Supreme Court has held that the objection to the untimely filing of the stenographic report is one that can be waived. Gregory v. Industrial Comm'n, 310 Ill. 409, 411, 141 N.E. 699, 700 (1923); Illinois Glass Co. v. Industrial Comm'n, 302 Ill. 388, 388, 134 N.E. 712, 713 (1922). Moreover, the Appellate Court in Contreras stated that, "the stipulation clearly states that in the event either party fails to timely file a transcript, the other party will not challenge jurisdiction. The Commission's jurisdiction is not at issue." Contreras, 306 Ill. App. 3d at 1076. The petition for leave to appeal by the Supreme Court was denied. Contreras v. Industrial Comm'n, 186 Ill.2d 567 (1999). Thus, the court in Contreras implicitly approved the use of the stenographic stipulation where agreed to by the parties.

Based on established precedent, the stenographic stipulation is recognized as an approved means to waive the objection to the untimely filing of the stenographic report. This Court does not see the need to address Plaintiff's argument that the stenographic stipulation is a nullity with no effect in the present case because the Court finds that there was no binding stenographic stipulation filed at the arbitration hearing. Plaintiff objected to the stenographic stipulation on the date of the arbitration, and in no way agreed to be bound by its terms. In fact, Defendant was advised on record that Plaintiff required strict compliance with Section 19(b) due to its objection to the stenographic stipulation. The Arbitrator sustained the objection as well. Defendant was aware that he had 65 days to file a transcript or a statement of facts if the Arbitrator's decision was to be appealed. When Defendant failed to adhere to the time requirements of Section 19(b), Plaintiff raised its objection to jurisdiction by filing a motion to strike.

The Commission contends that Plaintiff's consent to the stenographic stipulation presented on April 11, 2008, allowed the Commission to retain jurisdiction despite Plaintiff's objection to the stipulation at the June 13, 2008 arbitration hearing. On the earlier date, the matter did not proceed to trial by arbitration. §7030.40 of the Rules Governing Practice states that the parties must complete, sign, and file with the Arbitrator the Request for Hearing form before it is binding. 50 Ill. Adm. Code 7030.40 (2011). On the actual trial date, Plaintiff completed, signed, and filed the Request for Hearing form, but objected to the contained stenographic stipulation. This Court finds that Plaintiff's objection to the stenographic stipulation at the actual trial should be sustained. The earlier signed stenographic stipulation was a nullity because it was not filed with the Arbitrator. Therefore, the Commission erred in holding that the prior acceptance of the stenographic stipulation permitted the Commission to

retain jurisdiction notwithstanding Plaintiff's objections at the actual trial date.

In its decision, the Commission also held that since there is no attorney misconduct or failure to exercise due diligence by the Defendant, he should be entitled to review by the Commission. In support of its contention, the Commission cites to Gould Const. Co. v. Industrial Comm'n, 311 Ill. 472, 477, 143 N.E. 73, 73 ("The requirement that the report should be filed within 50 days of the date of the award... governs as to all cases except where the failure to file the report of the proceedings has been caused by the failure of the reporter to furnish such report."). Indeed, the legislature recognized that the right to a review cannot be lost due to the failure of a court reporter to furnish a transcript and amended Section 19(e) in 1921 to account for this type of mishap. The Supreme Court in Gould states that the provision for allowing a trial de novo in the discretion of the Commission was intended to apply to cases where a reporter, for any reason, failed to furnish a stenographic report, and the untimely filing of the transcript was not due to the negligence of the party. Id. Thus, the Commission mistakenly posits that the untimely filed transcript leads to the Commission losing jurisdiction *only* in instances where attorney misconduct is present. Clearly, the legislature and Supreme Court intended the Section 19(e) provision to be used as a remedy in instances such as the present case.

In addition to requesting a trial de novo pursuant to Section 19(e), Defendant could have filed an agreed statement of the facts appearing upon the hearing before the Arbitrator, as outlined in Section 19(b). Although Defendant ordered two copies of the transcript in a timely manner, the statute also requires the transcript be timely filed. Defendant asserts that once the transcript was ordered, it was the court reporter's responsibility to furnish the transcript in a timely fashion – aspects of perfecting a review that was not within his control. Section 16 states that it is the Commission's responsibility to provide an official court reporter who shall furnish a transcript upon request by either party. These facts are uncontested: 1) that the reporter did not provide Defendant with the transcript within the prescribed timeframe; and 2) that Defendant made telephone calls to the reporter to timely complete the transcript. Defendant mistakenly argues that he could only control filing a request for review. Although it may seem burdensome to pay for the transcript, and then either construct one's own statement of facts or request a trial de novo, these are the alternatives presented in the statute. It is clear that Defendant was aware and had notice that the stenographic stipulation was not signed, and, therefore, meeting the time requirements in Section 19(b) was essential for the Commission to obtain jurisdiction. While the responsibility lies solely with the Commission to furnish the transcript upon request, Defendant is not excused of his responsibility in adhering to the statutory requirements. Defendant was aware that he had other remedies available to him, and should have pursued them when made aware of the stenographer's delay in tendering the transcript.

Defendant erroneously relies on §7040.10 of the Rules Governing Practice to maintain that the time requirements for perfecting a review before the Commission were met, despite the language of Section 19(b) of the Act. §7040.10 states that the transcript shall be authenticated in the manner provided by statute and presented to the Commission by the Return Date on Review; "[t]he Return Date on Review shall be limited to the filing of the transcript." 50 Ill. Adm. Code 7040.10 (2011). The date designated by the Commission as the Return Date on Review was December 26, 2008; Defendant presented the authenticated transcript to the Commission prior to that date. However, the filing date pursuant to Section 19(b) was September 22, 2008. In the

absence of a stenographic stipulation, the filing date of the transcript cannot be extended to the Return Date on Review. The Rules Governing Practice is published by the Commission, which holds statutory authority pursuant to Section 16 of the Workers' Compensation Act. Section 16 authorizes the Commission to "make and publish procedural rules and orders for carrying out the duties imposed upon it by law." 820 ILCS 305/16 (2011). Nonetheless, the power and authority vested in the Commission, and, thus, the administrative code, is limited to those powers granted by the legislature. Cassens Transport Co. v. Industrial Comm'n, 218 Ill.2d 519, 525, 300 Ill. Dec. 416, 844 N.E.2d 414 (2006). Although the administrative code is given its due weight, the disputed issue here is a matter of law where the statute trumps the administrative code.

Moreover, the Supreme Court has long held that the failure to strictly comply with Section 19(b) of the Act deprives the Commission the authority to review the arbitrator's decision. *See e.g.* Northwestern Steel & Wire Co. v. Industrial Comm'n, 37 Ill.2d 112, 115 (1967). As stated above, Defendant had notice of Plaintiff's objections to the stenographic stipulation and was fully aware that a statement of facts or transcript of evidence must be filed within the statutory period pursuant to Section 19(b). Plaintiff never waived its objections to jurisdiction, and filed a motion to strike for lack of subject matter jurisdiction when Defendant failed to timely file a transcript or statement of facts. Where there is no agreement to be bound by the stenographic stipulation, the transcript must be filed within the time granted by statute. The Court finds that the Return Date on Review pursuant to §7040.10 of the Rules Governing Practice is inapplicable in these instances.

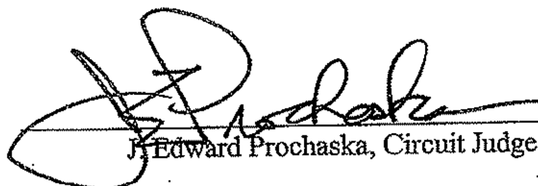
The Commission erred in denying Plaintiff's Motion to Strike Review of Arbitration Decision for Lack of Subject Matter Jurisdiction. Defendant failed to file a transcript of evidence within the prescribed time requirements of Section 19(b), and failed to avail himself of other remedies (i.e. statement of facts or request for trial de novo). Therefore, the Commission lost jurisdiction of the case when the 65 day period in which to file a statement of facts or transcript of evidence had lapsed. Pursuant to Section 19(b), the decision of the Arbitrator "shall become the decision of the Commission and in the absence of fraud shall be conclusive." 820 ILCS 305/19 (2011).

IV. Conclusion

For the foregoing reasons, the Court hereby finds and orders as follows:

1) The judgment of the Commission is reversed and Plaintiff Ingrassia Interior Elements' Motion to Strike Review of Arbitration Decision for Lack of Subject Matter Jurisdiction is granted.
2) The decision of the Arbitrator is final.

June 30, 2011
Date


J. Edward Prochaska, Circuit Judge

2012 IL App (2d) 110670WC
No. 02-11-0670WC
Opinion filed December 10, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Commission Division

INGRASSIA INTERIOR ELEMENTS,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Appellee,	)	
	)	No. 10-MR-644
v.	)	
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	J. Edward Prochaska,
(Roger Seymour, Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court, with opinion.
Justices Hoffman, Turner, and Stewart concurred in the judgment and opinion.
Justice Holdridge specially concurred, with opinion.

OPINION

¶ 1 I. INTRODUCTION

¶ 2 Claimant, Roger Seymour, filed with the Illinois Workers' Compensation Commission (Commission) a petition for review of an arbitrator's decision denying his claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)). The Commission denied a motion by respondent, Ingrassia Interior Elements, to strike the petition for lack of subject matter

jurisdiction due to claimant's failure to timely file a transcript of the proceedings before the arbitrator. Respondent sought review of the Commission's denial, in the circuit court of Winnebago County. The trial court concluded that the Commission lacked subject matter jurisdiction and held that the decision of the arbitrator was final. This appeal followed, and, for the reasons that follow, we reverse the trial court, reinstate the Commission's decision, and remand.

¶ 3 II. BACKGROUND

¶ 4 During a hearing before the arbitrator on April 11, 2008, claimant and respondent both signed a "request for hearing" form. Pertinent here, the form contained the following stipulation:

> "Both parties agree that if either party files a *Petition for Review of Arbitration Decision* and orders a transcript of the hearings, and if the Commission's court reporter does not furnish the transcript within the time limit set by law, the other party will not claim the Commission lacks jurisdiction to review the arbitration decision because the transcript was not filed timely." (Emphasis in original.)

An evidentiary hearing commenced on June 13, 2008. At the beginning of this hearing, respondent informed the arbitrator that it "would like to put a line through [the standard stenographic stipulation] and *** ask[ed that] the Commission follow the mandates under section 19(b) of the Act." See 820 ILCS 305/19 (West 2006) ("Unless a petition for review is filed by either party within 30 days after the receipt by such party of the copy of the decision and notification of time when filed, and unless such party petitioning for a review shall within 35 days after the receipt by him of the copy of the decision, file with the Commission either an agreed statement of the facts appearing upon the hearing before the Arbitrator, or if such party shall so elect a correct transcript of evidence of the

proceedings at such hearings, then the decision shall become the decision of the Commission and in the absence of fraud shall be conclusive."). The form was filed only thereafter.

¶ 5 The arbitrator's decision was adverse to claimant, so on July 25, 2008, he filed a timely petition to review the decision. Claimant promptly ordered a transcript of the proceeding and made telephone calls to the Commission's court reporter in an effort to file the transcript in a timely manner (claimant moved for and received an extension of time to file the transcript). The court reporter did not provide claimant with a transcript within the applicable time limit; therefore, a transcript was not filed with the Commission within the time set in section 19(b).

¶ 6 Respondent then moved to strike claimant's petition for review, arguing that the fact that a transcript was not timely filed left the Commission without subject matter jurisdiction. The Commission disagreed with respondent. It found that respondent was bound by the stenographic stipulation to which it had agreed on April 11, 2008, notwithstanding its attempted repudiation of the stipulation on the day the evidentiary hearing began. Relying on *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004), the Commission construed section 7030.40 of title 50 of the Illinois Administrative Code (Code) as making the stipulation binding at the time the parties signed it. 50 Ill. Adm. Code 7030.40 (1996). It also noted that claimant had been diligent in attempting to file the transcript.

¶ 7 Respondent sought judicial review, and the trial court reversed. It disagreed with the Commission's construction of section 7030.40 and instead held that section 7030.40 requires that a "request for hearing" form be filed with the arbitrator before it is binding on the parties. Thus, the trial court reasoned, "[t]he earlier signed stenographic stipulation was a nullity because it was not filed with the Arbitrator." It also rejected the Commission's reliance on claimant's due diligence,

noting that the Act provides for another remedy—specifically trial *de novo* before the Commission (820 ILCS 305/19(e) (West 2006))—when a transcript is not timely filed due to the fault of someone other than the party seeking review. The trial court held that the decision of the arbitrator was final. This appeal followed.

¶ 8 III. ANALYSIS

¶ 9 The sole issue before this court is whether the fact that a transcript was not filed within the time period specified in section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)) deprives the Commission of jurisdiction to review the decision of the arbitrator. Under the circumstances of this case, we conclude that it does not. Generally, we apply the *de novo* standard when we review a jurisdictional issue. *Smalley Steel Ring Co. v. Illinois Workers' Compensation Comm'n*, 386 Ill. App. 3d 993, 995 (2008). However, in this case, the meaning of an administrative regulation is also at issue. We owe substantial deference to an agency's construction of its own regulations. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2011 IL App (1st) 101776, ¶ 6; *cf. King v. Industrial Comm'n*, 189 Ill. 2d 167, 171 (2000) ("Moreover, courts afford considerable deference to the interpretation placed on a statute by the agency charged with its administration."). This is true regarding even questions of jurisdiction. See *Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n*, 95 Ill. 2d 142, 152 (1983). Thus, where reasonable minds could disagree as to the extent of an agency's jurisdiction, "we defer to the agency's interpretation if the interpretation is defensible." *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 362 Ill. App. 3d 652, 656 (2005).

¶ 10 To perfect review, section 19(b) of the Act requires that a party seeking review file with the Commission a transcript or agreed statement of facts within 35 days of the day upon which the party

received a copy of the arbitrator's decision. 820 ILCS 305/19(b) (West 2006). A party may obtain a 30-day extension of this deadline. *Id.* Strict compliance with the provisions of section 19(b) is required for the Commission to obtain jurisdiction to review an arbitration decision. *Northwestern Steel & Wire Co. v. Industrial Comm'n*, 37 Ill. 2d 112, 115 (1967); *Benton Coal Mining Co. v. Industrial Comm'n*, 321 Ill. 208, 211 (1926).

¶ 11 However, as our supreme court explained in *Pocahontas Mining Co. v. Industrial Comm'n*, 301 Ill. 462, 470-78 (1922), the type of jurisdiction at issue is not truly subject matter jurisdiction. Subject matter jurisdiction is, of course, "the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). In *Pocahontas*, like in this case, at issue was whether the failure to timely file with the Commission a transcript of proceedings before the arbitrator deprived the Commission of jurisdiction to review the arbitrator's decision. *Pocahontas Mining Co.*, 301 Ill. at 470-71. The supreme court observed that "the Commission has jurisdiction or the statutory right and power conferred upon it to hear and determine the class of cases to which this case belongs," that is, the class of cases involving review of the decision of an arbitrator. *Id.* at 474. The court continued, "It may not have jurisdiction of the particular case in hand, or it may lose jurisdiction for a number of reasons not necessary now to be stated, but there can be no question that it has jurisdiction of the subject matter of this case and all other cases of like character in its class." *Id.* at 474-75. Therefore, the court concluded:

> "Under the decisions of this court it may be broadly stated that where a court of original jurisdiction has jurisdiction of the subject matter of a suit, and the parties enter their appearance before the court and contest their rights before the court to a final judgment,

> without objection in any way to the right of the trial court to hear the cause and to render such final judgment, it does not matter in what manner the parties were brought before the court, and on appeal or review by writ of error to an appellate court or to this court the parties will be absolutely bound, so far as the question of jurisdiction of their persons and of the particular case asked to be reviewed is concerned." *Id.* at 475.

In other words, parties may waive objections to this sort of jurisdictional defect. *Id.* at 476-77; see also *Railway Express Agency v. Industrial Comm'n*, 415 Ill. 294, 297 (1953).

¶ 12 Thus, the question before this court is whether respondent waived its ability to object to the fact that neither a transcript nor an agreed statement of facts was filed within the statutory time period. To answer this question, we must consider whether the stenographic stipulation into which respondent and claimant entered on April 11, 2008, remains effective. This turns on whether the stipulation became binding at the time the parties, by signing the "request for hearing" form, exchanged their promises not to object to jurisdiction in the event the transcript was not timely filed or whether it was ineffective until the "request for hearing" form was filed with the arbitrator, which was after respondent's purported repudiation of the agreement.

¶ 13 Relevant to this question is section 7030.40 of title 50 of the Code (50 Ill. Adm. Code 7030.40 (1996)). This section provides as follows:

> "Before a case proceeds to trial on arbitration, the parties (or their counsel) shall complete and sign a form provided by the Industrial Commission called Request for Hearing. However, in the event a party (or his counsel) shall fail or refuse to complete and sign the document, the Arbitrator, in his discretion, may allow the case to be heard and may impose upon such party whatever sanctions permitted by law the circumstances may warrant. The

> completed Request for Hearing form, signed by the parties (or their counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case." *Id.*

Both respondent and the trial court read this regulation as clearly stating that a "request for hearing" form does not become binding until it is filed with the arbitrator. We see nothing in this provision that speaks to *when* a "request for hearing" form—and the stenographic stipulation contained therein—becomes binding. Moreover, we note that much of a "request for hearing" form consists of what are essentially requests for evidentiary admissions intended to limit the issues that are in dispute. *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 885 (1990). It would be an odd rule indeed that would allow a party to recant such an admission on the eve of a hearing, thereby depriving an opponent of the opportunity to conduct discovery on an issue.

¶ 14 Indeed, the Commission, citing *Walker v. Industrial Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004), concluded otherwise, holding that, where the parties have signed the stenographic stipulation, "the language of [section] 7030.40 indicates that the request for hearing is binding." It also stated, "Respondent mistakenly believes that it can deny the applicability of the Stenographic Stipulation *after agreeing to be bound to it.*" (Emphasis added.) Thus, for the Commission, it is the agreement between the parties that makes the stenographic stipulation binding. Nothing in the plain language of section 7030.40 precludes such an interpretation; the position taken by the Commission is not inconsistent with the plain language of that section. These circumstances present a strong case for deference to the Commission's construction of section 7030.40. See *Illinois Consolidated Telephone Co.*, 95 Ill. 2d at 152 ("An agency's interpretation of its enabling statute and regulations are usually entitled to deference, although agency action that is inconsistent with the statute or

regulations must be overturned." (citing *Shepherd v. Merit Systems Protection Board*, 652 F.2d 1040, 1043 (D.C. Cir. 1981)); *Cella v. Sanitary District Employees' & Trustees' Annuity & Benefit Fund*, 266 Ill. App. 3d 558, 564 (1994) ("Even in light of this deference, however, a court still has the authority to independently construe a statute and it will not adopt an agency's interpretation if it is inconsistent with the language of the statutory provision.").

¶ 15 Moreover, we note that the Commission's position is entirely consistent with ordinary principles of contract law. The stipulation clearly states that the parties were coming to an agreement; hence, the parties manifested mutual assent to the terms contained in the stipulation. *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991) ("An enforceable contract must include a meeting of the minds or mutual assent as to the terms of the contract."). Consideration exists in the form of the parties' reciprocal promises to forgo contesting jurisdiction should a transcript not be filed in a timely fashion. *Bishop v. We Care Hair Development Corp.*, 316 Ill. App. 3d 1182, 1198 (2000) ("Consideration *** may consist of a promise, an act or a forbearance."). Moreover, the parties' signatures manifest their acceptance of the contract. See *Zinni v. Royal Lincoln-Mercury, Inc.*, 84 Ill. App. 3d 1093, 1094-95 (1980). Finally, we note that there is no condition precedent to the stipulation becoming binding (*i.e.*, filing it with the arbitrator). *Catholic Charities v. Thorpe*, 318 Ill. App. 3d 304, 307 (2000) ("A 'condition precedent is one that must be met before a contract becomes effective ***.' " (quoting *McAnelly v. Graves*, 126 Ill. App. 3d 528, 532 (1984))).

¶ 16 In sum, the Commission's construction of section 7030.40 is reasonable. 50 Ill. Adm. Code 7030.40 (1996). Nothing in the plain language of the section conflicts with the Commission's interpretation, and the interpretation is entirely consistent with contract law. Accordingly, the trial

court should have deferred to it. *King*, 189 Ill. 2d at 171; see also *Board of Trustees of the University of Illinois v. Illinois Educational Labor Relations Board*, 2012 IL App (4th) 110836, ¶ 24 ("[T]he court should defer to the agency's interpretation if the interpretation is reasonably defensible.").

¶ 17 IV. CONCLUSION

¶ 18 In light of the foregoing, the order of the circuit court of Winnebago County is reversed, the decision of the Commission is reinstated, and this cause is remanded to the Commission for further proceedings.

¶ 19 Circuit court order reversed; Commission decision reinstated; cause remanded to Commission.

¶ 20 JUSTICE HOLDRIDGE, specially concurring.

¶ 21 I concur with the judgment to reverse the trial court, reinstate the Commission's decision, and remand the matter to the Commission for further proceedings. I write separately in order to state my position that our supreme court's holding in *Pocahontas Mining Co. v. Industrial Comm'n*, 301 Ill. 462 (1922), is directly on point in the instant matter. The court in *Pocahontas* observed that, when the term "jurisdiction" is utilized in discussing a question of filing of the transcript before the Commission, the term does not refer to the power of a court to hear cases but, rather, the term describes "the statutory authority given to [the Commission] to hear and consider cases under the Compensation act." *Id.* at 474.

¶ 22 The court in *Pocahontas* expressly rejected the same argument raised in the instant matter by respondent:

> "Counsel for defendant in error have presented this question upon the theory that the commission had no jurisdiction of the subject matter of this suit. This theory is entirely erroneous. The real question is whether or not the commission had jurisdiction of this particular case and of the parties to the suit when it made its decision. It obtained jurisdiction of the case when the petition for review was filed before it, ***. It obtained jurisdiction of the parties by their appearance and participation in the contest, and for that reason never lost jurisdiction of the case if it had jurisdiction of the subject matter. *** It cannot be doubted, and certainly will not for a moment be questioned, that the Commission has jurisdiction or the statutory right and power conferred upon it to hear and determine the class of cases to which this case belongs." *Id.* at 474.

¶ 23 In the instant matter, we could not be clearer in our holding than to repeat the words that our supreme court pronounced in 1922. It cannot be doubted and certainly will not, for a moment, be questioned that the Commission had subject matter jurisdiction and did not lose that jurisdiction simply because the transcript was not filed within the time period required under the Act. Thus, the only question in the instant matter, as the majority correctly points out, is whether the respondent waived its ability to object to the fact that neither a transcript nor an agreed statement of facts was filed within the statutory time period. I am in agreement with the majority's answer to that question. I, therefore, concur in the judgment of the court.