

10WC 34549

18IWCC 203

State of Illinois)

)

County of Peoria)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Cady,

Petitioner

Case No. 10WC 34549

vs.

18IWCC 203

Caterpillar, Inc.,

Respondent

ORDER UNDER SECTION 19(f)

A petition under Section 19(f) of the Act was filed by the Respondent herein, Caterpillar, Inc., on April 25, 2018. Upon consideration of the said Petition, the Commission denies said petition for the reason that the Commission's decision dated April 3, 2018 clearly shows that Respondent is entitled to a credit for any and all amounts paid on account of the injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MAY 2 - 2018

DATED:
r-4/12/18
TJT/pmo
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Thomas J. Tyrrell

STATE OF ILLINOIS)	BEFORE THE ILLINOIS WORKERS'
) SS	COMPENSATION COMMISSION
COUNTY OF PEORIA)	

Gary Puffpaff,
 Petitioner,

vs. NO. 09 WC 23472

Mark Weir &
 The Injured Workers' Benefit Fund (IWBF),
 as ex officio custodian,
 Respondent.

ORDER

This matter came before the Commission on Respondent's (Mark Weir) Motion to set aside Arbitrator's award for lack of jurisdiction, Motion to set aside Arbitrator's award for fraud, filed January 3, 2017. The matter came up before Commissioner Gore in Ottawa, Illinois, on several occasions and ultimately May 19, 2017. The Commission having jurisdiction over the persons and subject matter and after being advised in the premise finds:

- This matter was timely and properly filed before the Commission for an accident date of March 18, 2009. Respondent, IWBF subsequently added as a party Respondent, as Respondent, Mark Weir, was found to not have workers' compensation coverage.
- On July 27, 2016 the matter came for hearing before Arbitrator Doherty in Ottawa, Illinois. Respondent, IWBF was represented but neither Mark Weir, nor a representative were present for hearing. The Arbitrator filed her decision August 15, 2016, finding accident and causal connection and awarded Petitioner the reasonable and necessary medical expenses causally related, 53-3/7 weeks of temporary total disability at \$400.00 per week, and a permanent partial disability of 40% loss of use of Petitioner's left foot (66.8 weeks at \$360.00 per week). As the IWBF was a named co-Respondent, the award was entered against the IWBF to the extent permitted and the Respondent (Weir) to reimburse the IWBF for amounts they paid.
- Respondent, IWBF, filed for Review September 21, 2016. On November 18, 2016, Attorney Arthur Kingery, filed an appearance on behalf of Respondent, Mark Weir and filed their Petition for Review as well.
- Respondent, Weir, thereafter filed this, Motion to set aside Arbitrator's award for lack of jurisdiction, Motion to set aside Arbitrator's award for fraud, filed January 3, 2017. and

the parties appeared before Commissioner Gore, on a number of occasions on the Ottawa call, and the matter was taken under advisement May 19, 2017.

- Respondent, Weir, affidavit, indicated he had been doing business as B&M Concrete Construction, in Magnolia, Illinois and had never done business or lived at an address in Tiskilwa, Illinois and they had never received an Application for Adjustment of Claim or notice of filing of an Application. Respondent, Weir, affidavit stated that they did not receive the Arbitrator's decision filed August 15, 2016 until he received a copy of that decision from the Assistant Attorney General on October 27, 2016.
- Respondent, Weir, stated that an *ex-parte* hearing was held July 27, 2016 and the Arbitrator rendered a decision that was filed August 15, 2016. Respondent, Weir, stated the Adjustment of Claim, was filed June 3, 2009 with a certificate of service indicating Respondent at 17902 Kentville Road, Tiskilwa, Illinois 61368. Respondent, Weir, claimed to have never received the Application as Petitioner failed to serve a copy to his correct address at 9341 Taylor Road, Magnolia, Illinois 61336. Respondent, Weir claimed Petitioner did not comply with Section 9020.20(a) of the Commission rules and that failure deprived the Commission of personal jurisdiction in the case. Respondent, Weir, further stated a second Application was filed (09 WC 23497) for the same date of accident with Respondent as Deborah Blue, so the Commission was denied personal jurisdiction over Respondent given two different employers for the same accident date. Respondent, Weir, further argued that Petitioner failed to comply with Section 9020.20(d) as Petitioner failed to provide a proper address for Respondent, Weir which prevented the Commission from sending required notice and further deprived the Commission of personal jurisdiction of Respondent, Weir. Respondent, Weir, stated as Commission rules were not complied with, the Commission never obtained personal jurisdiction and the award should be set aside and vacated.
- Petitioner's counsel stated that the original hearing date was July 27, 2016 in Ottawa, Illinois at which time Respondent, Weir, nor a representative appeared, and the Arbitrator awarded benefits. Petitioner noted Respondent, IWBF, filed their Petition for Review September 21, 2016 and then November 18, 2016 an appearance was filed on behalf of Respondent Weir, also filing for Review. Petitioner set out the history of his hiring by Respondent, Weir, and the history of his job injury March 18, 2009 when he fell off a ladder and suffered his injuries and subsequent treatment, as noted in the decision of the Arbitrator. Petitioner stated that the Arbitrator's decision was correct and should be affirmed in its entirety. Petitioner had indicated Respondent's address was wrong on the Application but Respondent, Weir, was later served prior to hearing and then did not appear for the hearing so their motion should be denied.
- The decision of the Arbitrator noted that after the accident a co-worker and Mr. Weir immediately put Petitioner into a truck and Mr. Weir brought Petitioner to the hospital and then left indicating he was going to the truck for the insurance card. Mr. Weir did not return and Petitioner had been unable to contact Mr. Weir since that time.
- Thereafter, the Commission took the matter under advisement.

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The Commission notes that the IWBF became a party Respondent with finding that Respondent, Weir, had no workers' compensation insurance. Respondent, Weir, did not address the question of a notice for hearing being served or not, just that no Application was received. The Commission finds that, per Respondent's affidavit, they did receive a copy of the decision from the Assistant Attorney General on October 27, 2016 and did file for Review November 18, 2016. The motion here in question, was not filed until January 3, 2017. This motion regarding the decision, questioning jurisdiction and requesting setting aside the decision for alleged fraud, was not timely filed. The Commission finds that the Commission had personal jurisdiction to hear the matter July 27, 2016, against Respondent, IWBF, and, Respondent, Weir, and the Arbitrator rendered a decision based on that hearing. The Commission, herein, denies Respondent's (Mark Weir) Motions to set aside the Arbitrator's award for lack of jurisdiction and for fraud.

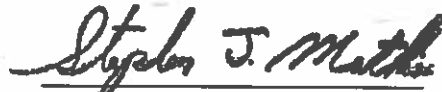
IT IS THEREFORE ORDERED BY THE COMMISSION that the Respondent's Motion to set aside the Arbitrator's award for lack of jurisdiction and Motion to set aside the Arbitrator's award for fraud is hereby denied.

DATED: **MAY 15 2018**

DLG/jsf
5/19/17
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David L. Gore



Stephen Mathis



Deborah Simpson