

Circuit Court for Prince George's County
Case No. CAL18-32544

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2153

September Term, 2019

ALLEN B. SIMMONS

v.

ROCKWELL COLLINS, ET AL.

Nazarian,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 11, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Under section 9-728 of the Labor and Employment Article (“LE”) of the Maryland Code (1991, 2016 Repl. Vol.), if an employer or its insurer does not begin to make payments of a workers’ compensation award within a specified period of time, the Workers’ Compensation Commission must impose a fine, unless the Commission finds “good cause.”

In this case, the Commission failed to impose the required fine even though the payment was indisputably late, the employer presented no evidence of “good cause,” and the Commission made no finding of “good cause.” On appeal, the Circuit Court for Prince George’s County affirmed.

For the reasons stated herein, we shall vacate the judgment and remand this case to the Workers’ Compensation Commission for a determination of how late the payment was and of whether the employer or its insurer had “good cause” for the delay.

BACKGROUND FACTS

On April 19, 2018, the Workers’ Compensation Commission granted appellant Allen Simmons’s request for additional temporary total disability benefits and for authorization for certain medical treatment. The award allowed only \$205.40 in attorneys’ fees, which apparently was considerably less than Mr. Simmons and his attorneys thought he deserved.

On April 25, 2018, Mr. Simmons, through counsel, filed a “request for document correction” on a form issued by the Commission. In that document, Mr. Simmons requested that the Commission correct the order of April 19, 2018, by awarding him \$5,545.80 in attorneys’ fees. The employer, appellee Rockwell Collins, has asserted that

Mr. Simmons violated the Commission’s regulations by filing the request for document correction without the employer’s consent.

Despite the alleged violation, the Commission issued a supplemental award on April 26, 2018. The supplemental award appears to be identical to the previous award, except that it allows \$5,545.80 in attorneys’ fees to Mr. Simmons’s counsel.

In response to the supplemental award, Rockwell Collins requested a rehearing. The record does not contain the request for rehearing, but it appears to have concerned Mr. Simmons’s alleged violation of the Commission’s regulations in filing the request for document correction without the employer’s consent. The Commission denied the request for rehearing on June 12, 2018.

Under LE section 9-727, an employer or its insurer must begin paying workers’ compensation benefits to an employee “within 15 days after the later of the date (a) an award is made; or (b) payment of an award is due.” Under LE section 9-726(c)(1), “[a] motion for rehearing,” such as the motion that Rockwell Collins filed after the issuance of the supplemental award, “does not stay . . . the decision of the Commission.”¹

¹ COMAR section 14.09.04.02(A) establishes a different regime for routine requests for attorneys’ fees. “If an appeal is not filed within 30 days, the party responsible for payment shall remit the approved fee to the attorney immediately after the expiration of the 30-day appeal period.” *Id.* § 14.09.04.02(A)(6). If a timely appeal is filed, the party responsible for payment must hold the amount of the approved fee in escrow pending the final determination of the appeal. *Id.* § 14.09.04.02(A)(7). “If the parties agree that an appeal will not be filed, the fee may be remitted to the attorney before expiration of the 30-day appeal period.” *Id.* § 14.09.04.02(A)(8).

Although the Commission issued the supplemental award on April 26, 2018, and denied the request for rehearing on June 12, 2018, Rockwell Collins did not pay the supplemental award until July 26, 2018. Both parties agree that the payment was late.

LE section 9-728 creates a remedy for an employee if the employer or its insurer fails, without good cause, to make a timely payment. Under section 9-728(a), the Commission must assess a fine “not exceeding 20% of the amount of the payment” if the payment is between 15 and 30 days late.² Under section 9-728(b), the Commission must assess a fine “not exceeding 40% of the amount of the payment” if the payment is more than 30 days late.³ Under section 9-728(c), the Commission must order that the fine be paid to the employee.

Mr. Simmons moved for the imposition of a fine on account of the late payment. On August 30, 2018, the Commission conducted a brief hearing on that motion. The

² Section 9-728(a) provides as follows:

If the Commission finds that an employer or its insurer has failed, without good cause, to begin paying an award within 15 days after the later of the date that the award is issued or the date that payment of the award is due, the Commission shall assess against the employer or its insurer a fine not exceeding 20% of the amount of the payment.

³ Section 9-728(b) provides as follows:

If the Commission finds that an employer or its insurer has failed, without good cause, to begin paying an award within 30 days after the later of the date that the award is issued or the date that payment of the award is due, the Commission shall assess against the employer or its insurer a fine not exceeding 40% of the amount of the payment.

Commission heard no evidence at the hearing. Instead, the hearing consisted almost exclusively of competing proffers from the attorneys. The words “good cause” do not appear in the transcript.

At the hearing, counsel for Mr. Simmons asserted that the period of delay ran from June 12, 2018 (the date of the denial of the request for rehearing), until July 26, 2018 (the date when the payment was finally made). In response, the Commissioner made the puzzling statement that the payment was only “two weeks late,”⁴ and counsel for the employer agreed. The Commissioner added that the employer or its insurer has “30 days” to pay, even though LE section 9-728 generally requires the payment to be made “within 15 days after the later of the date (a) an award is made; or (b) payment of an award is due.” Rockwell Collins made a brief reference to Mr. Simmons’s alleged transgression in the filing of the request for document correction, and the hearing abruptly concluded with the Commissioner’s comment that the employer or its insurer “paid it late, but it was late by two weeks.”

On September 6, 2018, the Commission issued a one-sentence order, in which it denied the motion for the imposition of a fine for late payment. The order contains no findings about when the payment was required to have been made or about how late it was when it was finally made. Nor does the order make any mention of good cause.

Mr. Simmons appealed to the Circuit Court for Prince George’s County. On cross-motions for summary judgment, the circuit court affirmed the Commission’s order.

⁴ Perhaps the Commissioner misunderstood what Mr. Simmons’s counsel had said and thought that the delay began on July 12, rather than June 12, 2018.

Mr. Simmons noted a timely appeal to this Court. He raises one issue: Did the circuit court and the Workers' Compensation Commission err in denying his request for penalties?

DISCUSSION

Upon judicial review of a decision of the Workers' Compensation Commission, this Court “must determine whether the Commission ‘misconstrued the law and facts applicable in the case decided.’” *Baltimore County v. Ulrich*, 244 Md. App. 410, 424 (2020) (quoting LE § 9-745(c)(3)). “[T]he decision of the Commission is presumed to be prima facie correct[.]” *Id.* (quoting LE § 9-745(b)(1)). “This presumption of correctness, however, does not extend to legal determinations.” *Id.* The appellate court “should not uphold the decision if it is premised solely upon an error of law.” *Id.*

“On review of the grant of summary judgment in a judicial review action, the appellate court considers the same matters decided by the trial court to determine whether the ruling was legally correct.” *Id.* at 425. In the context of this case, that standard requires us to determine whether the circuit court was legally correct in upholding the Commission’s decision that Rockwell Collins was not required to pay a fine in any amount.

To the extent that we can discern any basis for the Commission’s conclusion, it would appear to be the Commissioner’s statement, at the brief hearing, that Rockwell Collins paid the benefits late, but that it was late only “by two weeks.” At the hearing, Rockwell Collins endorsed the Commissioner’s statement, but it now agrees that the

statement was incorrect: the payment was quite a bit more than two weeks late. In view of that clear factual error alone, this case must return to the Commission.

The parties dispute how late the payment actually was. Rockwell Collins asserts that it was not required to make the payment until June 12, 2018, when the Commission denied the request for rehearing. Before the Commission, Mr. Simmons agreed that Rockwell Collins was not required to make the payment until June 12, 2018. Now, however, Mr. Simmons cites LE § 9-726(c)(1) for the proposition that the request for rehearing did not stay Rockwell Collins's payment obligation. Consequently, he now argues that Rockwell Collins was required to make the payment on April 26, 2018.

One could say that it doesn't matter whether Rockwell Collins was required to make the payment on April 26, 2018, or on June 12, 2018. In either case, the payment was more than 30 days late. In either case, therefore, LE section 9-728(b) would require the Commission to impose a fine "not exceeding 40%," unless it found "good cause." The amount of the delay may, however, have some bearing on question of whether the employer or its insurer had "good cause." Presumably, the longer the delay, the stronger the showing of "good cause" must be.

Here, the Commission heard no explanation about why the payment was late (perhaps in part because the Commissioner curtailed any such discussion and erroneously believed that the payment was less than 15 days late). Accordingly, we shall remand the case for the Commission to determine when Rockwell Collins was required to make the

payment and whether Rockwell Collins had good cause for not making the payment when it was required to be made.⁵

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
VACATED. CASE REMANDED TO THAT
COURT WITH INSTRUCTIONS TO
REMAND THE CASE TO THE WORKERS’
COMPENSATION COMMISSION FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY APPELLEE.**

⁵ At oral argument, Rockwell Collins suggested that the Commission might have found “good cause” in Mr. Simmons’s failure to attend the hearing on his motion for the imposition of a fine. We cannot imagine how Mr. Simmons’s absence from that hearing could retroactively create “good cause” for the employer or its insurer to delay the payments that they were obligated to make. In any event, the Commission did not find good cause, for that or for any other reason.