

## Feature Article

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# Workers' Compensation: Never Pay Judgment Interest if You are Not Facing a Section 19(g) Judgment

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The past 18 months have seen a marked increase in the frequency at which claimant's attorneys are demanding, and sometimes petitioning for, nine percent judgment interest on a workers' compensation award at the conclusion of a judicial review of the Illinois Workers' Compensation Commission's (Commission) decision. In such cases, the usual scenario is as follows—the Commission enters an award in favor of the claimant for benefits and the employer appeals to the circuit court and beyond. At the conclusion of the unsuccessful appeal, the employer pays the award due and owing and issues a check for the outstanding amount of the award plus interest at the section 19(n) rate set forth in the arbitrator's decision. 820 ILCS 305/19(n).

Section 19(n) interest rates, being tied to the yield on indebtedness issued by the United States Government with a 26-week maturity on the auction date prior to the date on which the decision is filed, are extremely low. *Id.* For example, if the arbitrator's decision was rendered on May 8, 2016, the auction rate as of May 6, 2016 was 0.38 percent. Thus, for every \$1,000 of an award owed, interest would accrue at the rate of \$3.80 per year.

If we assume the appeal of the May 8, 2016 Commission decision concluded following an appellate court review at 18 months, using our example above, a \$200,000 benefits award would generate section 19(n) interest of \$760 annually (\$2.08 per day). Our employer would then issue a check for the award plus interest in the amount of \$201,140.

The recent trend, however, has been for claimant's attorneys to demand payment of nine percent judgment interest under section 2-1303 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1303. While some are limiting the nine percent demand to the period of time after the entry of the circuit court's order confirming the Commission's decision, many are seeking the higher nine percent rate for the entire period from the arbitrator's award to the date of tender. In our example, applying the nine percent judgment interest rate to the \$200,000 benefits award would yield \$18,000 annually in interest (\$49.32 per day). Using an 18-month appeal period, total interest under section 2-1303 would total \$27,000.

As you can see, the differences are striking—there is a \$25,860 gap between the section 19(n) rate and the nine percent judgment rate of section 2-1303. This article provides a quick overview of the law governing this area and provides some useful tips for defending your employer when the claimant's attorney asks for judgment interest.

## The Status of the Law on Interest

Section 19(n) interest applies to all Commission awards until paid. 820 ILCS 305/19(n); *Radosevich v. Indus. Comm'n*, 367 Ill. App. 3d 769, 777 (4th Dist. 2006). This, of course, assumes that the employer/carrier has not actually refused to pay the award and justifiably found themselves in a true section 19(g) scenario. But that is a separate discussion. Interest under section 19(n) is set at the rate found on U.S. governmental treasury bills with a 26-month maturity as of

the last auction date prior to the arbitrator's award. Over the past few years, this rate, which was set by the Illinois General Assembly by amendment to section 19(n) in 1984, has been as low as 0.11 percent; roughly, \$1.10 per \$1,000 of award.

Section 2-1303 of the Illinois Code of Civil Procedure addresses judgment interest and provides, in relevant part:

Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied or 6% per annum when the judgment debtor is a unit of local government, as defined in Section 1 of Article VII of the Constitution, a school district, a community college district, or any other governmental entity. When judgment is entered upon any award, report or verdict, interest shall be computed at the above rate, from the time when made or rendered to the time of entering judgment upon the same, and included in the judgment.

735 ILCS 5/2-1303.

That same \$1,000 award of benefits, using the section 2-1303 interest rate, now translates to \$90 in interest.

According to the claimant's bar, section 2-1303 judgment interest applies because they believe the circuit court's order confirming the Commission's decision is a judgment, which, therefore, falls under the first sentence section of 2-1303.

### **The Commission Decision is Not a Judgment**

Contrary to what many claimants' counsel argue, a Commission's decision, standing alone, is not a judgment. *Blacke v. Indus. Comm'n*, 268 Ill. App. 3d 26, 28 (3d Dist. 1994); *Radosevich*, 367 Ill. App. 3d at 780; *Aurora East Sch. Dist. v. Dover*, 363 Ill. App. 3d 1048, 1054-1055 (2d Dist. 2006). The sole means to enter judgment on a Commission award is via a section 19(g) proceeding. 820 ILCS 305/19(g); *Juergens Bros. Co. v. Indus. Comm'n*, 290 Ill. 420, 424 (1919).

### **The Circuit Court's Order Confirming the Commission's Award is Not a Judgment**

When presented with a demand for section 2-1303 judgment interest, the claimant's bar often argues that the circuit court's order confirming the Commission's decision creates a "judgment" providing the foundation for application of section 2-1303. Here, the claimant's bar overlooks the limited nature of the circuit court's jurisdiction on judicial review. Section 19(f)(2) of the Workers' Compensation Act (Act), which governs judicial reviews from the Commission to the circuit court, vests the circuit court with limited power to review the Commission's decision; in essence, restricting the court to either affirm or reverse and remand, or to make such rulings as permitted by law. *Esquivel v. Ill. Workers' Comp. Comm'n*, 402 Ill. App. 3d 156, 159 (2d Dist. 2010); *Nierman v. Indus. Comm'n*, 329 Ill. 623, 627 (1928).

In fact, a line of Illinois Supreme Court decisions has specifically held that a circuit court on judicial review cannot enter judgment, lacks the power to tax costs or interest and cannot authorize enforcement. *Interlake Steel Corp. v. Indus. Comm'n*, 60 Ill. 2d 255, 262 (1975); *Juergens Bros. Co.*, 290 Ill. at 424; *Grand Trunk W. Ry. Co. v. Indus. Comm'n*, 291 Ill. 167, 178 (1919); *Nierman*, 329 Ill. at 627; *J.E. Crowder Seed Co. v. Indus. Comm'n*, 347 Ill. 86, 91 (1931); see also 3 T. ANGERSTEIN, ILLINOIS WORKMEN'S COMPENSATION § 2150, pp. 34-45 (rev. ed. 1952). In each case, the Illinois Supreme Court based its decision on the limited scope of judicial review, as provided for by section 19(f) of the Act. 820 ILCS 305/19(f)(2). While circuit courts are courts of general jurisdiction, when they exercise a special jurisdiction not

arising out of the common law but of a purely statutory origin, they are limited by the language of the statute. *Esquivel*, 402 Ill. App. 3d at 159. Where such a statute prescribes a specific form of review, all other forms are excluded. *Id.*

Some have suggested that the circuit court possesses power to enter judgment based on application of section 3-111(a)(8) of the Illinois Administrative Review Law (ARL). 735 ILCS 5/3-111(a)(8). Yet, the law is clear that the ARL does not apply to workers' compensation appeals, which are governed exclusively by section 19(f) of the Act. *Farris v. Ill. Workers' Comp. Comm'n*, 2014 IL App (4th) 130767WC, ¶ 46. Indeed, section 3-111(a)(8) confers much greater jurisdiction on a circuit court reviewing an administrative ruling under the scope of the ARL than does section 19(f) of the Workers' Compensation Act.

The long and short is simple—a circuit court's order confirming a Commission award creates a final judgment solely for the purposes of finality and subsequent appeal, and has no impact on its enforceability. As such, judgment interest cannot be based on the circuit court's order confirming a Commission award.

### **Nine Percent Judgment Interest is Only Available Following the Entry of a Section 19(g) Judgment Order, and Then Only on Those Amounts Outstanding at that Time**

There is no question that once a judgment order is entered under section 19(g), any benefit amounts that remain due and owing at that time is then subject to the higher nine percent judgment interest rate. *Sunrise Assisted Living v. Banach*, 2015 IL App (2d) 140037, ¶¶ 32, 35. Thus, if an employer fails to timely pay an award in full, the claimant may file a section 19(g) petition and obtain entry of judgment on the Commission's award, with that order reflecting the outstanding amount due and imposing section 2-1303 judgment interest. *See* 820 ILCS 305/19(g).

In our example, assume the employer has a \$200,000 benefits award and pays a portion of that during the pendency of the appeal (because certain issues are not in dispute), but fails to make timely payment of the balance following the conclusion of the appeal. In our hypothetical, assume the employer failed to pay \$50,000 of the award. At the time of the circuit court section 19(g) judgment order, judgment will be entered on the Commission's order and will note that \$50,000 remains due and owing. Moreover, section 2-1303 judgment interest at the rate of nine percent per annum applies to the outstanding amount *and* from the date of the original arbitration award. *Radosevich*, 367 Ill. App. 3d at 777.

Again, using our above example, if the arbitrator's award was entered on May 8, 2016, a timely payment of the full amount following the conclusion of an 18-month appeal would result in the employer paying \$190 per year in interest on the remaining \$50,000, for a total interest amount of \$285. However, if that amount is not timely paid and a section 19(g) proceeding follows, the nine percent interest yields \$4,500 per year, for a total amount of interest of \$6,750.

Nine percent judgment interest cannot apply prior to the entry of a section 19(g) order entering judgment on the Commission's decision. A claimant is entitled to section 2-1303 judgment interest "if and when the arbitrator's award or the Commission decision becomes an enforceable judgment." *Sunrise Assisted Living*, 2015 IL App (2d) 140037, ¶ 32. It cannot be based on the circuit court's affirmance order.

Despite this body of law, the claimant's bar is nevertheless filing section 19(g) petitions even where an employer has tendered the entire award plus section 19(n) interest. Counsel then argue that the employer has refused to pay the higher rate of interest (based on the circuit court's affirmance order) and is therefore acting unreasonably and vexatiously. Yet recent case law holds that where an award is paid at the time a section 19(g) petition is filed, there is no refusal to pay, and the petition should be denied. *Id.* ¶ 35. Thus, a section 19(g) judgment cannot be entered.

Another issue with claimants' efforts to proceed under section 19(g) is the fact that some petitioners' attorneys wrongly believe that such a petition may be filed as an ancillary pleading in a judicial review case following the conclusion of the appeal. In other words, the claimants are filing the section 19(g) motion to enforce *in the judicial review captioned case*; this is wrong. A circuit court cannot entertain section 19(g) relief in a judicial review proceeding; a separate proceeding filed in the circuit court, and noticed via the Commission, must be filed and served. 820 ILCS 305/19(g). This distinction is important because any proceedings before the circuit court on an improperly filed section 19(g) petition would be deemed void and a separate filing would have to follow. The result is a waste of the employer's and carrier's time and money.

### **How to Respond to Demands for Nine Percent Judgment Interest**

Avoiding the application of section 2-1303's higher nine percent judgment interest rate begins with the simple act of paying an award as soon as it is due and owing and further appeal is ruled out. Moreover, the check should include all interest due on all amounts owed in accordance with section 19(n). If these principles are followed, an employer will be in the best position moving forward. If the tendered interest is accepted, the case is over and the file may be closed. If not, there can be no real argument that the employer has refused to pay the award when it became due.

If the claimant's counsel argues for application of section 2-1303 (in whole or in part), the response should be a resounding "no," followed by a summary of the points noted above—nine percent interest is only due on those amounts outstanding at the time a section 19(g) proceeding reduces a Commission decision to a judgment. Prior to that time, section 19(n) interest applies.

There were certainly a number of odd decisions concerning section 19(n) during the late 1980s and 1990s, which blurred the lines of when section 19(n) applied and when section 2-1303 interest commenced. Brad A. Elward & Dana Hughes, *Understanding Interest and Enforcement Issues in Workers' Compensation Cases Following an Award of Benefits*, 39 S. ILL. U. L. J. 687, 698-692, 701-703 (2015); R. Wayne Harvey, *The "Thankless Task" of Computing Interest on Workers' Comp. Awards*, 80 ILL. B. J. 510, 512 (1992). But the fact remains that section 2-1303 is conditioned on a judgment, which does not exist unless and until the Commission's decision is reduced to judgment under section 19(g).

If only a portion of the amounts owed are readily determinable—such as where medical bills subject to the medical fee schedule remain to be determined—the known amounts should be paid and accompanied by a letter to opposing counsel explaining that the known benefits are being paid with applicable section 19(n) interest. The letter should also state that the employer intends to pay all remaining amounts of medical due in accordance with the Commission's decision, but that the medical bills have been submitted for medical fee schedule review. In that instance, it is very difficult to make a claim that the employer has acted unreasonably. Moreover, if the claimant's attorney decides to push for higher judgment interest, the foundation will at least be set to defeat any subsequent section 19(g) proceeding filed in the circuit court.

In defending a section 19(g) proceeding, the fact of payment in full must be stressed, as well as the law stating that the circuit court on judicial review does not have the power to enter judgment or to enforce the Commission's decision; thus, section 2-1303's judgment interest (which must be based on an entry of judgment) cannot apply. A circuit court sitting on judicial review has only those powers conferred by section 19(f), which do not include the power to enter judgment, award interest, or authorize execution. A separate proceeding under section 19(g) must be filed.



Many employers are unnecessarily paying the higher judgment interest rate when the section 19(n) rate clearly applies. Employers should never find themselves in this predicament. Awards should be paid timely and interest should be tendered and explained in an accompanying letter. And in all cases, all conversations must be properly documented. Be alert for this recent tactic and make your message clear—no judgment interest unless and until a Commission’s decision is reduced to judgment.

### About the Author

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