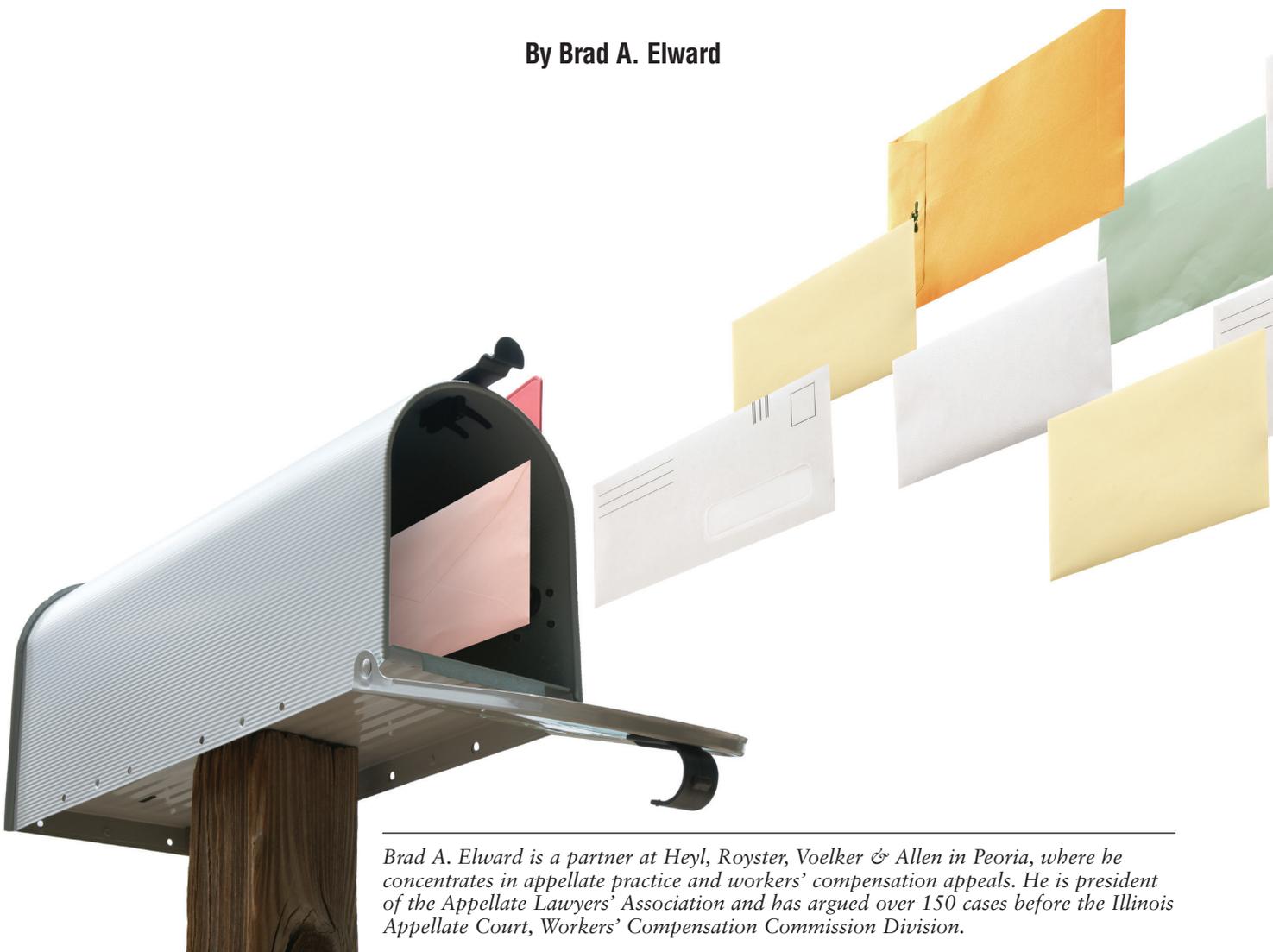


The Mailbox Rule and Workers' Comp: A Better Route for Circuit Court Review

The Illinois Supreme Court recently applied the mailbox rule to filings for circuit-court review of Workers' Compensation Commission rulings. That means circuit court appeals are filed as soon as they're mailed, not when they're received – and that's good news. But beware: lawyers still must show proof of filing, make sure the clerk actually got the documents, and do other follow up.

By Brad A. Elward



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In a much anticipated ruling, the Illinois Supreme Court held recently that appeals to the circuit court of Workers' Compensation Commission rulings are effectively filed as soon as they are placed in the mail, not later when they are file-stamped by the court. In *Gruszczyka v. Illinois Workers' Compensation Comm'n*, the high court applied the so-called mailbox rule to judicial review filings associated with appealing a Workers' Compensation Commission decision to the circuit court.¹ By so doing, the court took a much-needed step to simplify the procedures for perfecting judicial review of a Commission decision.

Judicial reviews from the Commission to the circuit court are governed by section 19(f) of the Workers' Compensation Act, which provides that "[a] proceeding for review shall be commenced within 20 days of the receipt of notice of the decision of the Commission."² The word "commenced" is not defined in the Act, but section 19(f) requires the filing of specified documents, including a written request to commence proceedings, summons to the party defendant and the Commission, and a notice of intent to file for review in circuit court.³ An employer has the added burden of presenting approval of a surety bond.⁴

The question used to be whether these documents had to be physically file-stamped before the expiration of the 20-day period or whether it was enough to simply place them in the mail within that time. A section 19(f) judicial review constitutes the first true appellate review of a Commission decision.

Background

In *Gruszczyka v. Alliance Corp.*, the claimant Gruszczyka filed an application for adjustment of claim against his employer, Alliance Contractors, for injuries allegedly sustained on July 21, 2004. The arbitrator denied benefits and the commission affirmed.

The claimant's counsel received the commission's decision on April 20, 2009. The employee then sought judicial review before the circuit court under section 19(f) of the Act. Per the 20-day filing period imposed by section 19(f), the judicial review filing was due on May 10, 2009.

The claimant's counsel placed his documents in the U.S. mail on May 4, 2009, addressed to the DeKalb County Circuit Clerk. There was no issue about the sufficiency of the documents, but they were not file-stamped by the circuit court until May 14, 2009, 24 days after the claimant received the decision and four days after the expiration of the 20-day filing period.

The employer moved to dismiss the judicial review based on untimely filing and also argued improper venue. The DeKalb County circuit court denied the jurisdictional motion but granted the motion to transfer venue to McHenry County, where the employer resided. Once there, the motion was renewed by the employer, but was again denied by the circuit court. The Commission's decision was confirmed.

On appeal, a 3-2 majority of the appellate court, Workers' Compensation Commission Division, dis-

missed the case for want of jurisdiction, finding that the judicial review documents, which were file-stamped after the due date, were untimely.⁵ In reaching its decision, the appellate court majority rejected the claimant's argument that the mailbox rule applied to a filing under section 19(f). Specifically, the majority found that section 19(f), as written, contained no mailbox rule and that the court lacked the authority to impose one on the statute.⁶

After *Gruszczyka*, a party seeking review of a Commission's decision meets the deadline by placing the appropriate documents in the mail within the 20-day statutory filing period.

The majority refused to apply the supreme court's decision in *Harrisburg-Raleigh Airport Authority v. Department of Revenue*,⁷ noting that the court had interpreted its own Supreme Court Rule, not a legislative enactment. The majority also equated the commencement of a proceeding to the filing of a new action, such as a complaint.⁸

Justices William Holdridge and Bruce Stewart dissented, arguing separately that the mailbox rule should apply to section 19(f). In support, both pointed

1. *Gruszczyka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212.

2. 820 ILCS 305/19(f) (West 2012).

3. *Id.* at § 19(f)(1). The notice of intent to file, which the Act was amended to allow on June 28, 2013 by P.A. 98-40, must first be filed with the Commission in Chicago, then the file-stamped copy presented to the circuit court as part of the judicial review filing. The filing of this notice may be shown via an affidavit stating that it was filled.

4. *Id.*

5. *Gruszczyka v. Illinois Workers' Compensation Comm'n*, 2012 IL App (2d) 101049WC, ¶¶ 14, 16.

6. *Id.* ¶ 14 ("[T]he legislature certainly knows how to provide for such a rule when it desires to do so.")

7. *Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326 (1989).

8. *Gruszczyka*, 2012 IL App (2d) 101049WC, at ¶¶ 14-15.

to the obvious conveniences of using the mailbox rule and Justice Stewart further observed that reviews filed at both ends of the appellate spectrum are governed by the mailbox rule. Petitions for review from the arbitrator to the Commission are already governed by the mailbox rule per the appellate court's decision in *Norris v. Industrial Comm'n*,⁹ and *Harrisburg-Raleigh* and Supreme Court Rule

a significant question warranting consideration by the supreme court. The court granted petition for leave to appeal in September 2012 and the case was argued on January 26, 2013.

The supreme court: the mailbox rule applies

In a 5-2 decision authored by Justice Robert R. Thomas, the supreme court reversed the appellate court, and remanded the case for further consideration on the merits.¹⁰ In applying the mailbox rule, the majority was careful to note that it was not excusing strict compliance with the statute, but rather was clarifying that a party strictly complies by placing the documents in the mail within the 20-day period.¹¹ Finding the term “commenced” ambiguous, the majority framed the question as whether a proceeding for review is commenced when the request for summons is placed in the mail or when it is file-stamped.

In concluding that “commenced” in-

cludes placing the document in the mail, the majority determined that the filing under section 19(f)(1) was not a new filing as is a complaint or a section 2-1401 petition; both of those actions must be affirmatively pleaded and require filing within a statute of limitations. The filing of a judicial review under section 19(f)(1) is, instead, the continuation of a prior proceeding akin to an appeal. The court concluded that “[a] review of the plain language of section 19(f) leaves no doubt that a proceeding for judicial review under that section is an appeal of the Commission's decision.”¹²

Seizing on Justice Stewart's dissent below, the majority further noted that the mailbox rule “already applies at the first [arbitrator to Commission] and third [circuit court to appellate court] stages of the workers' compensation review process.”¹³ Applying the mailbox rule to the second stage – from the Commission to the circuit court – brings “harmony and consistency to the workers' compensation review process, with the same rules applying at every stage of review.”¹⁴

Justices Charles E. Freeman and Anne M. Burke dissented, criticizing the majority for having looked for guidance beyond the confines of the Workers' Compensation Act.¹⁵ The dissent focused instead on decisions interpreting the proof-of-payment provisions of section 19(f), which require payment of the probable cost of preparing the report of proceedings within the 20 days. The dissent noted that in these decisions, even though alternative means of proving payment were authorized, payment was nevertheless made within the 20-day period.

What *Gruszeczka* means for practitioners

After *Gruszeczka*, a party seeking review of a Commission's decision meets the filing deadline by placing the appropriate documents in the mail within the 20-day period set forth in section 19(f). The documents do not have to be file-stamped within the 20-day period. *Gruszeczka* thus eliminates the need to

9. *Norris v. Industrial Comm'n*, 313 Ill. App. 3d 993 (3d Dist. 2000).

10. *Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212. The appellate court has since affirmed the Commission's decision on the merits. *Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 101049WC-UB.

11. *Gruszeczka*, 2013 IL 114212, ¶ 13, n. 1.

12. *Id.* ¶ 23.

13. *Id.* ¶ 28.

14. *Id.*

15. *Id.* ¶ 41.

Even after *Gruszeczka*, it's still good practice to file the appropriate documents as early as possible and to confirm the receipt and filing by the circuit court.

373 applies the mailbox rule to notices of appeal to the appellate court.

On petition, two appellate court justices issued a Supreme Court Rule 315(a) statement finding that the case presented

Sample 19(f) proof of service

The proof of service accompanying a 19(f) judicial review filing should look essentially as follows. This language identifies exactly what was filed and when, and otherwise complies with the standard proof of service. You can modify it as needed for non-USPS mailings.

The undersigned hereby certifies that the original section 19(f) judicial review documents (and ___ copies of each document) consisting of the following:

- Written Request to Commence Proceedings;
- Summons directed to the respondent on review, the respondent's attorney, and the Illinois Workers' Compensation Commission;
- Certificate of mailing written request and summons;
- Notice of Intent to File for Review in Circuit Court;
- Appeal Surety Bond; and
- Filing fee and certified mail fee of \$_____.

_____ were placed in the mail today, the ___ day of _____, 2013, at a United States Post Office Box in _____, Illinois, with postage fully pre-paid and addressed to the Clerk of the Circuit Court of _____ County, Illinois, and that a copy of the above-listed documents was served upon the Illinois Workers' Compensation Commission, all parties to the above cause and the attorneys of record of all parties, by enclosing said documents in an envelope addressed to said entities and their attorneys at the addresses listed below, with postage fully prepaid, by depositing said envelope in a U.S. Post Office Box in _____, Illinois, on the _____ day of _____, 2013.

– Brad Elward

physically appear in the courthouse of the appropriate county to present the documents for filing.

From the claimant's perspective. For the petitioner's bar, this decision is a huge timesaver. Now claimant's counsel can simply place the documents in the mail before the 20-day period expires.

Nonetheless, counsel must include a proof of service (see the sidebar for a sample) and should use a mailing method that allows him or her to track the documents and confirm the clerk's receipt. Doing so is essential in proving you actually placed the documents in the mail within the 20-day period.¹⁶

You should also make a follow-up call to the circuit court clerk or, where appropriate, check online records. If you are close to your filing due date, consider driving the documents to the courthouse and physically filing to be on the safe side. In all cases, file the documents as early as you can.

From the employer's perspective. The *Gruszeczka* decision is good for employer's counsel, too. But counsel for employers must take care to properly present the appeal bond. Section 19(f)(1) specifically requires the party against whom the decision is rendered to file a surety bond. Applicable to non-municipal employers, this provision reads as follows:

"No such summons shall issue unless the one against whom the Commission shall have rendered an award for the payment of money shall upon the filing of his written request for such summons file with the clerk of the court a bond conditioned that if he shall not successfully prosecute the review, he will pay the award and the costs of the proceedings in the courts. The amount of the bond shall be fixed by any member of the Commission and the surety or sureties of the bond shall be approved by the clerk of the court. The acceptance of the bond by the clerk of the court shall constitute evidence of his approval of the bond."¹⁷

Counsel for an employer may use the mailbox rule, but must take care to comply with the surety bond provisions – i.e., acceptance and approval of the bond.

Filing by mail could result in an appeal bond that is not file-stamped or is not stamped with the seal of the circuit court, which indicates its approval. Many lawyers, myself included, put a

signature block on the surety bond for the clerk's office to sign indicating the bond has been accepted and approved.

In fact, case law provides that the lack of the circuit clerk's signature on a bond is not fatal to proper jurisdiction; the supreme court has held that where the clerk accepts a surety bond tendered by a party seeking review by certiorari of a Commission award and files bond without objection, it is presumed to be approved and the clerk need not endorse approval upon the bond to confer court jurisdiction.¹⁸ Nevertheless, an abundance of caution never hurts.

Given these concerns, an employer relying on the mailbox rule to file a judicial review supported by a surety bond should at a minimum do the following: (1) obtain the surety bond early and make sure it complies with section 19(f) (2) and case law governing surety bonds; (2) file the documents, including your surety bond, as early in the 20-day period as possible; (3) send the bond by a trackable mail method; (4) call the circuit clerk to ensure both receipt and approval of the bond; and (5) have a backup plan for compliance in case the bond is rejected for some reason.

It's also essential that you: (1) work in advance with your employer client, insurance carrier, and surety; (2) consult the Illinois Department of Insurance regulations to ensure your surety is authorized to write policies in Illinois; and (3) apprise yourself of local circuit court bonding rules. If there is *any* question about your surety bond, or if your time is short, file your section 19(f) documents in person.

Note that several counties – Cook, DuPage, and Lake among them – have specialized local rules governing approval of a surety bond and its power of attorney agent. Sureties and their agents must be listed on those counties' approved surety lists. In these jurisdictions, it may be best to continue in-person filing in the event the bond or its agent is not approved.

Concerns for both parties. Clerks in some counties do not see many section 19(f) judicial reviews. They may have questions about what truly does and does not need to be filed. It can help if you are present to answer those questions. Likewise, there have been instances

where documents were returned without having been filed because the full filing fee was not included. Here, a call to the clerk's office confirming receipt and filing will help avoid such problems.

An additional word of caution about the designated return date (not less than 10 or more than 60 days from issuance) for the summons:¹⁹ Some counties, like Winnebago, require the appealing party to write in the designated return date. Others, such as DeKalb, require the clerk to provide the date. Mailing documents may result in a clerk not designating a return date or failing to assign the matter to a case management system.

Finally, if you choose to rely on the mailbox rule, call the clerk's office to make sure they received the review documents and issued the summons as required by the Act (e.g., by certified mail).

Conclusion

Even after *Gruszeczka*, it's still good practice to file the appropriate documents as early as possible and to confirm the receipt and filing by the circuit court. This is especially true for the employer, who must file a supporting appeal surety bond.

Nevertheless, the court's ruling is welcome. Complying with section 19(f) remains a pitfall for the unwary and a concern for the experienced appellate practitioner. Ideally, *Gruszeczka* will draw legislative attention to the need to further simplify the judicial review process so that claims are decided on their merits rather than dismissed on procedural technicalities. ■

16. When preparing your written request to commence proceedings in the circuit court, you should indicate the date on which you received the Commission's decision, so that timeliness appears on the face of the document.

17. 820 ILCS 305/19(f)(2). This section of the Act specifically exempts municipal entities: "Every county, city, town, township, incorporated village, school district, body politic or municipal corporation against whom the Commission shall have rendered an award for the payment of money shall not be required to file a bond to secure the payment of the award and the costs of the proceedings in the court to authorize the court to issue such summons." *Id.*

18. *Republic Steel Corp. v. Industrial Comm'n*, 30 Ill. 2d 311, 313-314 (1964). Although dealing with the certiorari provisions rather than section 19(f), the process is meant to be the same and therefore, this case should apply with equal force to current practice under section 19(f).

19. 820 ILCS 305/19(f).

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