

ALERTS

Labor And Employment Law Alert - Ohio Supreme Court Clarifies And Affirms Previous Workers' Compensation Decisions

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Some recent Supreme Court of Ohio cases shed new light for Ohio employers on workers' compensation issues.

Once a Claimant Receives Permanent Total Disability Benefits in a Claim, Permanent Partial Disability Benefits Are Barred

In a 6-1 vote in *State ex rel. Ohio Presbyterian Retirement Servs., Inc. v. Indus. Comm.*, 2017-Ohio-7577, the Ohio Supreme Court reaffirmed its previous decision that a permanent partial disability award cannot be granted to an injured worker who previously was awarded permanent total disability.

In August 2003, Sherry Redwine was injured at work and her claim was eventually allowed for several back conditions and depression. In July 2010, the Ohio Industrial Commission granted Redwine permanent total disability benefits due solely to the medical impairment caused by her depression. Redwine applied for permanent partial disability in August 2013, arguing that she was entitled to this award based on the physical conditions allowed in her claim. A district hearing officer denied this request, but a staff hearing officer granted permanent partial disability benefits, concluding that Redwine was not barred from concurrent compensation for permanent partial disability since it was based on her back impairments and not her depression.

In *State ex rel. Ohio Presbyterian Retirement Servs., Inc. v. Indus. Comm.*, 2016-Ohio-8024 (Ohio Presbyterian I), which was the previous case, the Ohio Supreme Court held that the Industrial Commission does not have authority to award an injured worker permanent partial disability when permanent total disability had already been granted in the same claim. Redwine asked the court to reconsider, arguing that the Industrial Commission had authority to award concurrent permanent total disability and permanent partial disability compensation for different conditions within the same claim. However, the Ohio Supreme Court upheld its own decision. Therefore, the controlling, current law in Ohio is that an injured worker is not entitled to a permanent partial disability award if they have already been awarded permanent total disability in the same claim.

Safety Requirement Awards Not Appropriate When Machine Defect Was Not Known By Employer

The Ohio Supreme Court remanded a case back to the Industrial Commission for further consideration of a Violation of a Specific Safety Requirement (VSSR) determination in *State ex. Rel. Camaco LLC v. Albu*, 2017-Ohio-7569.

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In 2005, Camaco purchased a machine and robot that bends metal tubing to form the frame for automobile seats. The machine and robot were fully automated and surrounded by a wire-mesh fence, allowing operation of the machine from outside the fence. Each door in the fence had a safety system that would shut off power to the machines when either door was open. The metal tubing exited the cell through two small, separate openings.

In early 2006, a machine at Camaco stopped working and Robert Albu was called to investigate. He decided to enter the cell through the small opening, not the doors, which meant that the automatic shut off was not triggered. When Albu tried to fix the issue, it tripped a sensor that caused the transfer arm to turn on and strike his head.

Albu filed a VSSR application and a district hearing officer found that Camaco should have provided suitable headgear to employees in the area. But a staff hearing officer denied the application, agreeing with Camaco's argument that had Albu entered through the cell doors, the machine would have shut off and he would not have been injured.

Albu appealed, arguing that he had to be in the cell with the power on to troubleshoot the problem and that Camaco knew there was a danger. At a rehearing, another hearing officer relied on an expert report that Albu commissioned for a separate lawsuit, unrelated to the workers' compensation claim or VSSR issue. The expert found that, due to a design defect, the arm of the robot would move at full speed, even when the robot was put in "teach" mode. Camaco was not made aware of this issue with the machine when they purchased it. Because of this defect, the staff hearing officer found that Camaco should have provided protective headgear and granted the VSSR compensation.

Camaco appealed this time, arguing that since the design defect issue was not actually raised by Albu, but rather by the Industrial Commission, there was no opportunity to defend against it. The Ohio Supreme Court agreed and noted that "Camaco should not be expected to have anticipated that the hearing officer would reply upon a theory not advanced by either party. An award for the failure of the safety measure 'cannot be sustained without evidence of a prior malfunction or employer awareness thereof.'"

This case has been sent back to the Industrial Commission to determine whether Camaco knew or should have known about the defect at the time of the injury and provided headgear. With this decision, the Ohio Supreme Court has continued to allow employers to defend VSSRs by proving there were no prior malfunctions of a machine that would have put the employer on notice that there was an issue.

Ohio Law Reducing Workers' Compensation Court Delay is Deemed Constitutional

The Ohio Supreme Court has ruled that a 2006 law intended to reduce delays that occur in workers' compensation appeals is constitutional.

Ohio workers' compensation court appeals take an unusual path when compared to other court cases. Traditional court rules allow a plaintiff to request a case be dismissed without prejudice so it can be refiled later, and this can be done without the court's consent. However, a 2006 Ohio law, R.C. 4123.512(D), required the employee to receive the employer's consent to dismiss a workers' compensation case that was appealed to

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court by the employer itself.

Shannon Ferguson was injured in 2009 while working for Ford Motor Company, and the Ohio Industrial Commission awarded the claims and benefits the employee sought. Ford appealed the Industrial Commission's ruling in 2012 to the Cuyahoga Court of Common Pleas. The law required Ferguson to file a complaint alleging he was entitled to participate in the workers' compensation fund, and he did. While Ford's appeal progressed, Ferguson continued to receive benefits through the Industrial Commission.

Although Ford appealed, Ohio law put Ferguson in the position of plaintiff. Ferguson asked for Ford's consent to dismiss the case without prejudice, but the company refused. In response, Ferguson filed a declaratory judgment arguing that the provision in 4123.512(D) was unconstitutional, as it violated the separation-of-powers doctrine.

The trial court agreed with Ferguson that the law violated the Ohio Constitution as well as the U.S. Constitution's equal protection and due process protections. The Eighth District Ohio Court of Appeals affirmed this decision, and Ford appealed to the Ohio Supreme Court.

The Ohio Supreme Court ruled that 4123.512(D) is constitutional. The court explained that the legislature added the employer consent provision to reduce a potential delay in the appeal process. Because the court rule allowing voluntary dismissal without consent would alter the basic purpose of this law, the court rule was found to be superseded by state law. Regarding equal protection, the court noted that the government can classify people differently as long as the classification is "rationally related to a legitimate government purpose." The legitimate government purpose was to limit improper payments made during the pendency of appeals and avoid unnecessary delay in the appeal process. This finding decreases the period of time that an employer-appealed case can sit in state court while benefits are being paid, giving employers an opportunity to lessen their expenses.

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