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**EXPLANATION OF WHY THIS  
IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST**

This case presents a fundamental question under Ohio law regarding when employers will be liable for the willful, intentional actions of one employee against another employee. Left standing, the opinion issued by the Ninth District Court of Appeals in this case requires an employer, through the state's workers' compensation system, to be liable for any injuries resulting to an employee during working hours, even if those injuries are the result of a long-standing personal dispute between two employees. Such a finding is inconsistent with the purpose of the workers' compensation statutes and requires employers to insure the safety of their employees, even from the attacks of an employee's personal enemies and even if the injured employee instigated or provoked the attack.

This is not a question that is confined to a single case or even a single fact pattern. This Court's guidance is necessary to bring clarity and resolution of the issue and to provide employers, employees, and litigants with the benefit of uniform application of R.C. 4123.01(C) to incidents involving personal disputes which somehow erupt in the workplace and result in injury to an employee.

The workers' compensation statutes were not intended to make an employer an absolute insurer of an employee's safety, but only to protect the employee against risks and hazards incident to the performance of employment. *Phelps v. Positive Action Tool Co.* (1986), 26 Ohio St. 3d 142. Where an employee assaults another employee to gratify his feelings of anger or hatred, the injury does not arise out of the employment and should not be compensable under the workers' compensation system. See Vol. 1, *Larson Law of Workmen's Compensation*, Chapter 8, § 8.01[5][d].

Explicit within the definition of "injury" as that term is used in the workers' compensation program is that an injury must be caused by "accidental" means. R.C. 4123.01(C). As such, deliberate injuries inflicted by one employee against another are implicitly excluded. In interpreting workers' compensation statutes, the law must be construed as a whole to give effect to every word and clause in the statutes. See, e.g., *State ex rel. Rothoff v. Industrial Comm.* (1945), 144 Ohio St. 327. Extending the injuries that are compensable under workers' compensation to deliberate, as opposed to "accidental," injuries necessarily violates this tenant of interpretation.

In order to ensure consistency among the various administrative agencies and courts involved in the workers' compensation system when faced with issues involving fights between co-workers, this Court should grant jurisdiction to hear this case and review the decision of the Court of Appeals.

## STATEMENT OF THE CASE AND FACTS

This case involves the intentional and violent assault of Yi Hua Gao upon Appellee, Jin Xi Luo ("Luo"), at the New Ming Restaurant, which was owned by the Appellant, Yi Cai Gao ("Gao"). Although both Luo and Yi Hua Gao were present at the restaurant at the time of the assault, the argument and resulting injuries to Luo did not arise out of Luo's employment and, therefore, Luo's injuries should not have been found to be compensable under the workers' compensation system.

Luo came to the United States in 1992, and lived in Gao's residence from 1992 until the time of the subject incident on September 5, 2000. Luo and Gao were, at the very least, from the same village in China and may have been distant relatives. Several employees of the New Ming Restaurant, including Gao's brother, Yi Hua Gao, also lived with Gao, and Gao provided common transportation for Luo and the other employees. These shared living arrangements, close quarters, common transportation, shared history, etc., created conflict between Luo and Yi Hua Gao.

On September 5, 2000, while at the New Ming Restaurant, Yi Hua Gao assaulted Luo by hitting him on the back of the head with a large kitchen utensil. Luo sustained serious injuries from the assault, and, as a result, Yi Hua Gao was convicted of felonious assault and was ordered to pay restitution to Luo for his injuries. Additionally, Luo filed a civil lawsuit against Yi Cai Gao and Yi Hua Gao, for their alleged negligent and intentional actions, which resulted in a settlement and a full and final release of all claims.

Just prior to the assault, Luo was cooking at a wok, and Yi Hua Gao was cooking two woks away. As Luo moved some hot water from a nearby pot to the wok, Luo splashed water on

Yi Hua Gao's clothes or hand. Luo and Yi Hua Gao began to argue. Yi Cai Gao's wife, who was also working in the restaurant at the time, told them to return to work.

Luo then turned his back on Yi Hua Gao in order to return to work, and Yi Hua Gao then intentionally hit Luo over the head with a large metal cooking utensil. Just after hitting Luo, Yi Hua Gao told Luo that he "wanted to hit [Luo] a long time ago."

Luo filed a claim for workers' compensation related to injuries that he received on September 5, 2000, on the premises of the New Ming Restaurant. That claim was allowed by the Industrial Commission, and his alleged employer, Appellant Gao, appealed to the Summit County Court of Common Pleas. Following a bench trial, the Court found that Luo's injuries did not arise out of employment at New Ming and, therefore, reversed the decision of the Industrial Commission. The Court found that Yi Hua Gao's "aggression was an extension of an imported quarrel between these two employees. It would appear that [Yi Hua Gao's] assault on [Luo] had more to do with [Yi Hua Gao's] animosity toward him than with employment." (Decision & Journal Entry at 3.) The Court also found that there was "personal enmity" between Yi Hua Gao and Luo prior to the date of the assault. (Decision & Journal Entry at 7.)

The trial court, therefore, found that Yi Hua Gao's assault and the resulting injuries to Luo were not tied to Luo's employment, but rather to the animosity and an "imported quarrel" between him and Yi Hua Gao. Luo then appealed to the Ninth District Court of Appeals, which reversed the decision of the trial court and found that Luo's injuries were compensable.

#### **ARGUMENT IN SUPPORT OF PROPOSITION OF LAW**

**Proposition of Law: Injuries resulting from a personal quarrel between employees, or from a personal quarrel exacerbated at work, are**

**not compensable under the worker's compensation system, as such injuries do not arise out of employment. R.C. 4123.01(C).**

“An injury sustained by an employee is compensable under the Workers' Compensation Act only if it was ‘received in the course of, and arising out of, the injured employee's employment.’” *Bralley v. Daugherty* (1980), 61 Ohio St. 2d 302, 303, citing R.C. 4123.01(C) and other authorities. R.C. 4123.01(C) defines injury as including “any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment.”

As the trial court found in this case, implicit in this definition is the requirement that the injury be “accidental” in nature. An intentional assault, for which the assailant was convicted of a first degree felony, is not, by definition, an “accident.”

In addition to the injury being “accidentally” caused, the injury must also: 1) be received in the course of the claimant's employment; and 2) arise out of the injured employee's employment. “In the course of and arising out of” are conjunctive requirements that must both be met before an injury is compensable.” *Fisher v. Mayfield* (1990), 49 Ohio St. 3d 275, 277. See, also, *Stivison v. Goodyear Tire & Rubber Co.* (1997), 80 Ohio St. 3d 498, 499.

It is not disputed that Luo was “in the course of” his employment at the time of the injury, as that determination is based upon the time, place and circumstances of the injury. *Fisher* at 277.

Whether an injury “arises out of” employment depends, on the other hand, upon whether there is a causal connection between the employment and the injury. When determining whether a causal connection exists between an employee's injury and his employment, such that the injury arises from the employment, a totality of the circumstances test is used. *Fisher* at 277. In

cases involving assaults and fights during work hours, a court should consider two factors in determining whether an injury is compensable under workers' compensation: 1) whether the origin of the incident was work-related, and 2) whether the claimant was the instigator. See, e.g., *Indus. Comm. v. Pora* (1919), 100 Ohio St. 218; *Delassandro v. Indus. Comm.* (1924), 110 Ohio St. 506. Where the origin of the incident was not work-related or where the claimant was the instigator, courts have found that the injury was not compensable. *Williams v. Indus. Comm.* (1939), 63 Ohio App. 66; *Davis v. Indus. Comm.* (1957), 76 Ohio Law Abs. 474; *Harvey v. Mayfield* (Aug. 20, 1990), 5<sup>th</sup> Dist. No. CA-2743.

In this case, the origin of the incident was not work-related and, therefore, the Court of Appeals was incorrect in reversing the trial court's finding that the injury was not compensable. The general rule is that injuries sustained on account of fighting are not within the scope of employment and therefore are not compensable under workers' compensation. Baldwin's Ohio Handbook Series, Ohio Workers' Comp. L. § 7:16 (2005). See, also, *Jones v. American Employers Ins. Co.* (1995), 106 Ohio App. 3d 636, 640.

This case is akin to a line of cases holding that a worker's injuries were not compensable under workers' compensation. In those cases, although the injury occurred on the employer's premises and the initial disagreement was work-related, the resulting fight or assault was found not to arise out of claimant's employment.

In *Davis v. Industrial Comm.* (Franklin App. 1957), 76 Ohio Law Abs. 474, for example, two employees were filling out paperwork at the end of their shift and became engaged in an argument related to each employee's respective ability to perform his job. One of the employees died as a result of the ensuing fight. The Court found that, although the fight occurred during or just following working hours and on the employer's premises, the fight was caused by personal

animosity between the employees and was not related to the performance of any employment-related duty.

Similarly, in *Brown v. Industrial Comm.* (1948), 86 Ohio App. 256, two employees got into an altercation relating to their job. One employee then chased the other out of the building. Some five minutes passed and one employee returned to the building and resumed his work. The second employee then ran up behind him and hit him over the head with a pipe. The court found that the injured employee was not entitled to workers' compensation because, although the argument was work-related, that argument essentially ended when the injured employee returned to work. Therefore, the assailant's act of hitting the employee over the head a few minutes later did not arise from the employment. See, also, *Williams v. Industrial Comm.* (1939), 63 Ohio App. 66 (fatal injuries which resulted from argument on employer's premises, which began over a can of wax being used during employment, and then escalated into a friendly fistfight, and further escalated into a knife fight were not compensable as they did not arise out of decedent's employment); *Dismuke v. Arkansas-Best Freight Systems, Inc.* (C.A.6 1965), 346 F.2d 145 (where one employee killed another on employer's premises due to antagonism related to their job relationship which had built up during the preceding year and was sparked when decedent alleged that his assailant was involved in illicit love affair, assault was of a personal nature, did not arise out of employment, and, therefore, injuries were not compensable under workers' compensation).

As in the cases discussed above, this is a case where, although an altercation occurred on the employer's premises, the altercation arose from personal animosity between the two employees and the resulting injuries should not be found compensable under the workers' compensation system.

The trial court in this case made specific findings that Luo's injuries were related to an "imported quarrel" between the two employees and not to Luo's employment. Yi Hua Gao had wanted to hit Luo for a long-time, and this personal animosity was not related to a single incident of splashing water. These individuals came from the same village in China and may even have been distantly related by marriage. They lived together and were transported to and from work together for a number of years prior to the incident in question. Yi Hua Gao expressed his long-time hostility toward Luo just after he struck Luo, indicating that his anger did not stem from the spilled water, but rather from his personal animosity toward him and an "imported quarrel" between the two men.

The Court of Appeals assumed, without deciding, that the trial court's factual findings were correct. The Court of Appeals then went on, however, to find that because the personal quarrel was somehow exacerbated at work, the injuries resulting from the quarrel were nevertheless covered by the workers' compensation system. See Opinion at 8, citing *Coleman v. APCOA, Inc.* (Sept. 28, 1999), 10<sup>th</sup> Dist. No. 99AP-60, discretionary appeal not allowed (2000), 88 Ohio St. 3d 1415. Several of the cases discussed above, however, can also be characterized as personal quarrels which were exacerbated at work. Despite the fact that the personal quarrel was "exacerbated," those Courts reached the opposite conclusion of *Coleman* and the Court of Appeals in this case.

Due to the policy issues more fully addressed in discussing why this case involves an issue of public or great general interest above, Gao respectfully submits that the conclusion that a simple exacerbation of a personal quarrel at work is not legally sufficient to show that the a resulting injury "arose out of" the employment. A contrary finding extends the workers' compensation statutes beyond their purpose and threatens to make employers insurers of the

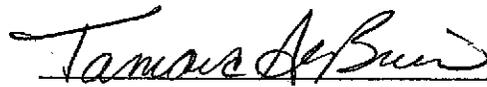
safety of their employees, even from the non-work-related, intentional acts of one employee against another.

**CONCLUSION**

For the reasons discussed above, this case involves matters of public and great general interest. The Appellant requests that this court grant jurisdiction and allow this case so that the important issues presented in this case will be reviewed on the merits.

Respectfully submitted,

**RODERICK LINTON LLP**



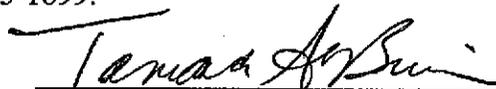
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**ATTORNEYS FOR APPELLANT**

**CERTIFICATE OF SERVICE**

A copy of the foregoing Memorandum in Support of Jurisdiction of Yi Cai Gao was sent by regular U.S. Mail on this 17<sup>th</sup> day of April, 2007, upon David S. Bates, attorney for Jin Xi Luo, Claimant, at Bevan Professional Building, 10360 Northfield Road, Northfield, Ohio 44067; and Nancy Q. Walker, assistant Attorney General, State Office Building, 615 West Superior Avenue, 11<sup>th</sup> Floor, Cleveland, Ohio 44113-1899.



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Tamara A. O'Brien (0059284)

**APPENDIX**

1. Decision and Journal Entry of Ninth District Court of Appeals – *Jin Xi Luo v. Yi Cai Gao, et al.* (March 7, 2007), Summit App. No. 23310.

STATE OF OHIO COURT OF APPEALS DANIEL M. HORRIGAN IN THE COURT OF APPEALS  
COUNTY OF SUMMIT ) ss: 2007 MAR -7 AM 7:40 NINTH JUDICIAL DISTRICT

JIN XI LUO SUMMIT COUNTY C. A. No. 23310  
CLERK OF COURTS

Appellant

v.

YI CAI GAO, et al.

Appellees

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No. CV 2003 11 6686

DECISION AND JOURNAL ENTRY

Dated: March 7, 2007

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

CARR, Judge.

{¶1} Appellant, Jin Xi Luo, appeals the decision of the Summit County Court of Common Pleas, which found that he does not qualify for workers' compensation benefits. This Court reverses.

I.

{¶2} The events underlying this cause of action took place at New Ming Restaurant, which is owned by appellee Yi Cai Gao ("Employer"). Appellant and Yi Hua Gao, brother of Employer ("Co-Employee"), were both working in the kitchen of the New Ming Restaurant on September 5, 2000. Appellant was getting

hot water from a wok that was located between him and Co-Employee when he accidentally or carelessly spilled hot water on Co-Employee's hand. Co-Employee became upset and the two began to argue.

{¶3} Employer's wife heard the argument and told the two to stop and get back to work. Appellant returned back to his cooking in an attempt to put an end to any further argument. However, while appellant had his back to Co-Employee, Co-Employee hit appellant on the back of the head with a large cooking utensil, causing appellant to lose consciousness. As a result of the assault, appellant sustained a brain injury which caused permanent paralysis to his left side.

{¶4} Appellant filed an application for workers' compensation for his injuries. The workers' compensation claim was allowed by the Industrial Commission for a concussion and intracerebral hemorrhage. Employer appealed the decision of the Industrial Commission to the Summit County Common Pleas Court. A bench trial was held at the conclusion of which the trial court found that the injuries appellant sustained were not compensable under the workers' compensation statutes. Appellant timely appealed the trial court's decision, setting forth two assignments of error for review. The two assignments of error raise common and interrelated issues; therefore, this Court will address the assignments together.

**FIRST ASSIGNMENT OF ERROR**

“THE TRIAL COURT INCORRECTLY DETERMINED THAT INJURIES SUSTAINED BY PLAINTIFF-APPELLANT WERE NOT COMPENSABLE SOLELY BECAUSE THEY WERE INFLICTED WILFULLY AND DELIBERATELY BY A CO-EMPLOYEE[.]”

**SECOND ASSIGNMENT OF ERROR**

“THE TRIAL COURT FAILED TO APPLY STATUTORY AND WELL SETTLED PRECEDENT TO DETERMINE WHETHER PLAINTIFF-APPELLANT WAS IN THE COURSE AND SCOPE OF HIS EMPLOYMENT AT THE TIME HE WAS INJURED AND INSTEAD INCORRECTLY FOCUSED ON WHETHER PLAINTIFF-APPELLANT’S ATTACKER WAS WITHIN THE COURSE AND SCOPE OF HIS EMPLOYMENT[.]”

{¶5} In his two assignments of error, appellant challenges the trial court’s finding that the injuries he sustained are not compensable under the workers’ compensation statutes.

{¶6} This Court notes at the outset that, unlike other administrative appeals, appeals of actions of the industrial commission or the bureau of workers’ compensation are not governed by R.C. Chapters 119 or 2505 but by R.C. Chapter 4123. See R.C. 119.01(A). Decisions of the industrial commission concerning the right of an employee to participate in the state’s workers’ compensation fund may be appealed to a court of common pleas under R.C. 4123.512. The appeal authorized by R.C. 4123.512, formerly R.C. 4123.519, is in the nature of a new trial in the common pleas court. *State ex rel. Federated Dept. Stores, Inc. v. Brown* (1956), 165 Ohio St. 521; *Crabtree v. Young* (1965), 1 Ohio St.2d 93.

Such appeals are governed by the Ohio Rules of Civil Procedure. See R.C. 4123.512(E). Thus, upon the filing of a notice of appeal, the action proceeds like any other civil action. *Golden v. Kearsse* (June 7, 1999), 12th Dist. No. CA98-08-164.

{¶7} When reviewing a judgment entered in a bench trial, “[t]he appropriate standard of review is whether the trial court’s judgment is ‘supported by some competent, credible evidence going to all the essential elements of the case.’” *Estate of Barbieri v. Evans* (1998), 127 Ohio App.3d 207, 211, quoting, *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

“This standard is highly deferential and even ‘some’ evidence is sufficient to sustain the judgment and to prevent a reversal. Therefore, this Court does not decide whether it would have come to the same conclusion as the trial court. Rather, this Court is required to uphold the judgment so long as the record, as a whole, contains some evidence from which the trier of fact could have reached its ultimate factual conclusions.” (Citations omitted.) *Liberty Excavating, Inc. v. Welty Bldg. Co., Ltd.*, 9th Dist. No. 21807, 2004-Ohio-4873, at ¶ 8.

{¶8} R.C. 4123.01(C) defines injury for the purpose of workers’ compensation as follows:

“‘Injury’ includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee’s employment.”

In the present matter, the trial court found that appellant was not entitled to participate in the workers’ compensation fund because his injuries were inflicted willingly and deliberately by a co-employee. In reaching its conclusion, the trial

court found that in order for an injury to be compensable under the workers' compensation statutes, the injury must have been caused by accidental means rather than deliberately. The trial court's reasoning, however, is not supported by the case law. *Industrial Comm. v. Pora* (1919), 100 Ohio St. 218, is the seminal case in Ohio regarding compensation for workplace assaults. In *Pora*, an employee fatally assaulted Pora when Pora was sent by his supervisor to take possession of an electric riddle that was in the possession of the employee. Pora's injuries were clearly not the result of an accident, but rather were intentionally inflicted by the employee. In deciding whether Pora's widow was entitled to receive benefits on behalf of her deceased husband through the workers' compensation program, the Supreme Court of Ohio found the issue to be whether Pora removed himself from his course and scope of employment. In its analysis, the Court did not differentiate between Pora's case where his injuries were intentionally inflicted by a co-employee and other cases where an employee's injuries were the result of an accident. Just as in *Pora*, the appellant's injuries were intentionally inflicted by Co-Worker. However, that fact in itself does mean that appellant is not eligible to participate in the workers' compensation program. The correct inquiry in determining whether appellant is entitled to participate in the workers' compensation program is whether appellant's injuries were sustained during the course of and arising out of his employment. R.C. 4123.01(C).

Inherent in that question is the question of whether appellant removed himself from the course and scope of his employment.

{¶9} In order for an employee's injury to be compensable by the state workers' compensation fund it must be "received in the course of, and arising out of, the injured employee's employment." R.C. 4123.01(C). This test is conjunctive; both prongs of the formula must be satisfied before compensation will be allowed. *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277. As a general rule, the Ohio workers' compensation statutes must be "liberally construed in favor of the employee." R.C. 4123.95; *Fisher* at 278. It is "axiomatic" that this rule of construction applies to the phrase "in the course of, and arising out of." *Id.*

A. "In the course of"

{¶10} The Supreme Court of Ohio defined "in the course of employment":

"The phrase 'in the course of employment' limits compensable injuries to those sustained by an employee while performing a required duty in the employer's service. \*\*\* "To be entitled to workmen's compensation, a workman need not necessarily be injured in the actual performance of work for his employer." \*\*\* An injury is compensable if it is sustained by an employee while that employee engages in activity that is consistent with the contract for hire and logically related to the employer's business." *Ruckman v. Cubby Drilling, Inc.* (1998), 81 Ohio St.3d 117, 120. (Citations omitted.)

The determination of whether an injury occurs in the course of employment requires courts to look at the "time, place, and circumstances" of the injury. *Id.*, citing *Fisher*, 49 Ohio St.3d at 277. In the present matter, it is undisputed that appellant was in the course of his employment when he was assaulted by Co-

Worker. The question before this Court is whether appellant's injuries arose out of his employment with appellee.

B. "Arising out of"

{¶11} Whether an injury arises out of employment is a question of fact. See *Pilar v. Ohio Bur. of Workers' Comp.* (1992), 82 Ohio App.3d 819; *Dolby v. Gen. Motors Corp.* (1989), 62 Ohio App.3d 68. The "arising out of" prong denotes a causal connection between the employment and the injury. *Fisher*, 49 Ohio St.3d at 277-278. To determine whether a sufficient causal relationship exists, Ohio courts employ a "totality of the facts and circumstances" analysis. *Id.* at 277.

{¶12} In the case at hand, appellant and Co-Worker were working in the kitchen of appellee's restaurant when the assault occurred. Although there was a question at trial as to whether appellant was employed by appellee, the trial court found appellant to be an employee and appellee has not questioned that finding on appeal. After finding that appellant met the requirements to be classified as an employee, the trial court held that appellant's injuries were not compensable under the workers' compensation statutes because they did not arise out of his employment. In reaching this determination, the trial court agreed with appellee's argument that the injuries sustained by appellant were the result of an "imported quarrel" between appellant and Co-Worker and not related to his work at appellee's restaurant. The trial court found that Co-Worker assaulted appellant

“solely to gratify his feelings of anger or hatred.” The trial court also found that “before the date of the injury, there was personal enmity between Co-Employee and Employee.” This Court finds that the trial court’s findings were not supported by the record. The only testimony regarding the assault was appellant’s testimony that right before he felt the blow to the back of his head, he heard Co-Worker say “I wanted to hit you long time ago.” However, this statement by Co-Worker is not explained by the testimony of either appellant or Co-Worker.

{¶13} In addressing a similar fact pattern, the Tenth Appellate District Court held:

“This court is unaware of an Ohio case addressing the issue of whether injuries from an assault fueled by both personal and work-related quarrels can be compensable injuries. Keeping in mind the liberal construction rule and the underlying intent that there be a causal connection between an employee’s injury and employment, the fact that a personal quarrel, in addition to a work-related quarrel, contributed to a situation that culminates in an assault and injury should not automatically prevent the injury from being compensable. Rather, an injury that results from an animosity fueled by both personal and work-related quarrels should be compensable when the work-related quarrel exacerbated the situation and, thus, establishes a causal connection between the injury and the employment. This position is consistent with 1 Larson, Law of Workmen’s Compensation (1990) Section 8.02(1)(a).” *Coleman v. APCOA, Inc.* (Sept. 28, 1999), 10th Dist. No. 99AP-60.

Assuming without deciding that appellant’s injuries resulted in part from a personal quarrel between him and Co-Worker rather than solely from a work-related quarrel between the two, this Court adopts the reasoning of the Tenth

Appellate District Court's holding in *Coleman*, and finds that appellee's argument lacks merit.

{¶14} Appellant's assignments of error are sustained in that this Court finds that appellant received his injuries from Co-Worker during the course of and within the scope of his employment with appellee and that appellant did nothing to remove himself from his scope of employment.

### III.

{¶15} Appellant's two assignments of error are sustained. The decision of the Summit County Court of Common Pleas is reversed and the matter is remanded to the trial court for proceedings consistent with this opinion.

Judgment reversed,  
and cause remanded.

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The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellees.

  
DONNA J. CARR  
FOR THE COURT

WHITMORE, P. J.  
MOORE, J.  
CONCUR

APPEARANCES:

DAVID S. BATES and THOMAS W. BEVA, Attorneys at Law, for appellant.

WILLIAM CHRIS and TAMARA A. O'BRIEN, Attorneys at Law, for appellee,  
Yi Chai Gao.

NANCY B. WALKER, Assistant Attorney General, for appellee, BWC.

STATE OF OHIO )  
COUNTY OF SUMMIT )  
COURT OF APPEALS  
DANIEL M. HOFFMAN  
)ss:  
2007 MAR 28 AM 9:51

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

JIN XI LUO  
Appellant  
v.  
YI CAI GAO, et al.  
Appellee

SUMMIT COUNTY  
CLERK OF COURTS

C.A. No. 23310

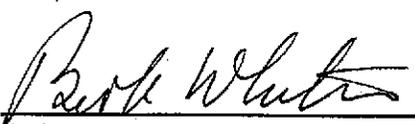
JOURNAL ENTRY

The Court's decision in this case, dated March 7, 2007, inadvertently omitted the word "not" in line 16 on page 5, paragraph 8. Paragraph eight is sua sponte amended, in pertinent part as follows:

"However, that fact in itself does not mean that appellant is not eligible to participate in the workers' compensation program."



Judge



Judge