

IN THE SUPREME COURT OF OHIO

STATE, ex rel. MARGARITA GLENN )  
 )  
 Appellant-Relator, )  
 )  
 )  
 vs. )  
 )  
 INDUSTRIAL COMMISSION OF OHIO, )  
 )  
 et al., )  
 )  
 Appellees-Respondents. )

Case No. 07-2420

On Appeal from the Franklin  
County Court of Appeals,  
Tenth Appellate District  
Case No. 07AP-89

MERIT BRIEF OF APPELLEE-RESPONDENT COLUMBUS  
CITY SCHOOL DISTRICT BOARD OF EDUCATION

Philip J. Fulton (0008722)  
William A. Thorman, III (0040991)  
Philip J. Fulton Law Office  
89 East Nationwide Blvd., Suite 300  
Columbus, Ohio 43215  
(614) 224-3838 (office)  
(614) 224-3933 (facsimile)  
[Jacob@fultonlaw.com](mailto:Jacob@fultonlaw.com)

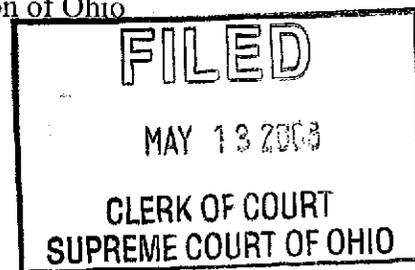
Attorneys for Relator-Appellee

Loren L. Braverman (0015144)  
270 East State Street  
Columbus, Ohio 43215  
(614) 365-5673 (office)  
(614) 365-5741 (facsimile)  
[lbraverm@columbus.k12.oh.us](mailto:lbraverm@columbus.k12.oh.us)

Attorney for Appellee-Respondent  
Columbus City School District Board of  
Education

Sandra E. Pinkerton (0062217)  
Assistant Attorney General  
Office of Attorney General Mark Dann  
150 East Gay Street, 22<sup>nd</sup> Floor  
Columbus, Ohio 43215-4312  
(614) 466-6696 (office)  
(614) 466-9535 (facsimile)  
[spinkerton@ag.state.oh.us](mailto:spinkerton@ag.state.oh.us)

Attorneys for Appellee-Respondent  
Industrial Commission of Ohio



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## I. STATEMENT OF FACTS

Appellant Margarita Glenn is a teacher employed by the Columbus City School District. Ms. Glenn suffered an injury at work in 2004 (R. 2) and applied with the Bureau of Workers Compensation for temporary total disability compensation. R. 25, 27. The Bureau initially granted her request; however the Industrial Commission on appeal denied her claim for temporary total disability compensation for the 2005 summer break while allowing it for the school year. R. 20-23. The Commission concluded that Appellant was “a school teacher who customarily did not work during the summer months.” This finding was supported by evidence submitted by the District that it “found no indication that Ms. Glenn worked during the normal summer breaks.” R. 24. Appellant submitted no evidence to the contrary. Appellant again applied for temporary total disability compensation for the 2006 summer break. Her request was denied by the Commission, which found that Appellee produced no “proof of any intent to work during this summer break.” R. 2-5.

## II. ARGUMENT

### Proposition of Law

Mandamus will not lie to direct the Industrial Commission to award temporary total compensation to a teacher for the period of her summer recess where there is no evidence that the teacher had any intention of working during that time period

Appellant asks this court to reverse the decision of the appellate court and grant a writ of mandamus compelling the Industrial Commission to grant her temporary total disability for the periods covering the summers of 2005 and 2006. It is well-established that a writ of mandamus will not issue unless the Court finds that the relator has a clear legal right to the relief sought and the Commission has a corresponding clear legal duty to provide the relief. *State, ex rel. Pressley v. Industrial Commission* (1967), 11 Ohio St.2d 141. In this instance, the Appellant

can demonstrate neither, for she has no legal right to payment of temporary total disability compensation for the period covering the summers of 2005 and 2006.

Temporary total disability is defined “as a disability which prevents a worker from returning to his former position of employment.” *State ex rel. McCoy v. Dedicated Transport, Inc.* (2002), 97 Ohio St.3d 25, 28. The “underlying purpose of temporary total compensation [is] to compensate an injured employee for the loss of earnings which he incurs while the injury heals.” *State, ex rel. Ashcraft v. Industrial Commission* (1987), 34 Ohio St.3d 42, 44. Where the employee is prevented from returning to work by factors other than the injury, payment of temporary total is not warranted for the employee did not lose earnings because of his industrial injury. *Id.*; *State ex rel. Jones & Laughlin Steel Corp. v. Industrial Commission*, (1985), 29 Ohio App.3d 145, 147.

This Court, in *State, ex rel. Crim v. Ohio Bureau of Workers Compensation* (1991), 92 Ohio St.3d 481, applied these to principles to resolve the question of whether a teacher who contracts to teach during a school year was considered to have abandoned her employment for purposes of temporary total disability compensation. The Court started its analysis with the two-part test for temporary total disability articulated in *Ashcraft, supra*: “The first part of this test focuses on the disabling aspects of the injury, whereas the latter part determines if there are any factors, other than the injury, which would prevent the claimant from returning to [her or] his former position.” *Id.*, at 483 quoting *Ashcraft, supra* at 34. The employer in *Crim* asserted that the teacher failed the second branch of the test because she had voluntarily abandoned her employment since her contract established a term of employment that expired at the end of the school year. The Court rejected this contention, holding that “a teacher is entitled to temporary total disability compensation as a result of the allowed conditions of a claim if the teacher proves

an intent to obtain employment during the summer and an intent to resume the teaching position after the summer recess.” *Id.*, at 485. The Court found that the teacher had worked during previous summers and would have worked during the summer in question to work but for her injury. Since she had demonstrated the necessary intention to obtain employment and resume her teaching position after the summer recess, she was entitled to temporary total disability for the period of the summer recess.

Appellant contended below that *Crim* compelled the conclusion that she was entitled to temporary total disability compensation for the 2005 and 2006 summer recesses. She argued, as she does here, that “[d]uring the summ[er] school breaks, Margarita Glenn wasn’t on the job because of her work-related injury. This is uncontroverted” *Merit Brief of Relator-Appellant, Margarita Glenn*, at 6. This statement is inaccurate. Despite having two opportunities to present to the Industrial Commission evidence of her intent to work during the summer, she did not do so. Thus, unlike in *Crim* where the claimant produced evidence that she had traditionally worked summers and intended to work again but for her injury, there was no evidence that Ms. Glenn “wasn’t on the job because of her work-related injury” and ample evidence that she did not work summers when she was not injured. Because she failed to carry her minimal burden of proof, *Crim* teaches that Appellant was not entitled to an award of temporary total disability for the 2005 and 2006 summer recess periods. Consequently, the Industrial Commission did not have a clear legal duty to grant her claims in that regard for temporary total disability compensation.

Appellant suggests that this Court must undertake a wholesale revision of the existing case law concerning voluntarily abandonment of employment for purposes of temporary total disability. There is no reason to accept this invitation. This is a narrow case governed by the

clear precedent established in *Crim*. Appellant proffers no empirical or anecdotal evidence that the Court's opinion in *Crim* has sewn widespread confusion and led to results contrary to those intended by the General Assembly.<sup>1</sup> The decision is straightforward and consistent with a core principle of workers compensation – that temporary total disability compensation is to compensate an employee for earnings lost while the employee heals from a workplace injury. It is not intended to provide a windfall to an employee by substituting for earnings from work that the employee never intended or expected to perform.

### III. CONCLUSION

For all of the foregoing reasons, the Court should affirm the appellate court's denial of Appellee's application for a writ of mandamus.

Respectfully submitted,



Loren L. Braverman (0015144)  
270 East State Street  
Columbus, Ohio 43215  
(614) 365-5673  
(614) 365-2499 (facsimile)

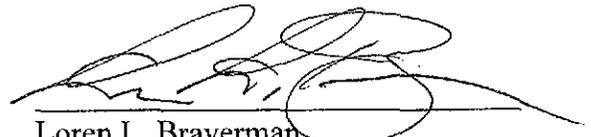
Attorney for Appellant Columbus City School  
District Board of Education

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<sup>1</sup>In fact, *Crim* has been cited in only four cases: *State ex rel. Heffernan v. Melrose Capital LLC*, 2007 Ohio 6532; *State ex rel. Goodyear Tire & Rubber Co. v. Salmons*, 2006 Ohio 1526; *Rajeh v. Steel City Corp.*, 157 Ohio App. 3d 722 (2004); *State ex rel. Campbell v. Conrad*, 2002 Ohio 2773. There is no indication that those appellate courts had any difficulty understanding or applying its holding.

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and accurate copy of the foregoing Brief of Appellee was served by regular U.S. Mail, postage prepaid this 13<sup>th</sup> day of May 2008 upon Philip J. Fulton and William A. Thorman, III, Attorneys for Appellee-Relator, Philip J. Fulton Law Office, 89 East Nationwide Blvd., Suite 300, Columbus, Ohio 43215 and Sandra E. Pinkerton, Assistant Attorney General, Office of Attorney General Mark Dann, 150 East Gay Street, 22<sup>nd</sup> Floor, Columbus, Ohio 43215-4312.

  
Loren L. Braverman