

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Richard Pierron, : Case No.: 07-1460
: :
Relator/Appellant, : On Appeal from the Franklin
: County Court of Appeals,
vs. : Tenth Appellate District
: :
Industrial Commission of Ohio and : Court of Appeals Case No.
Sprint / United Telephone Co., : 06AP-391
: :
Respondents/Appellees. : Original Action in Mandamus
: :

APPELLEE SPRINT / UNITED TELEPHONE CO.'S
OBJECTION TO APPELLANT'S REQUEST FOR RECONSIDERATION

COUNSEL FOR APPELLANT:

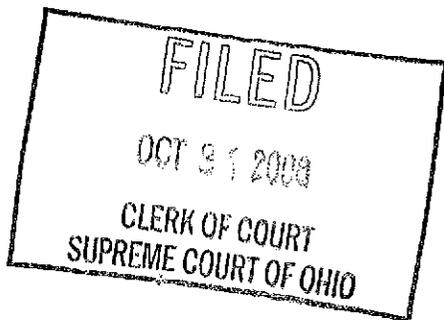
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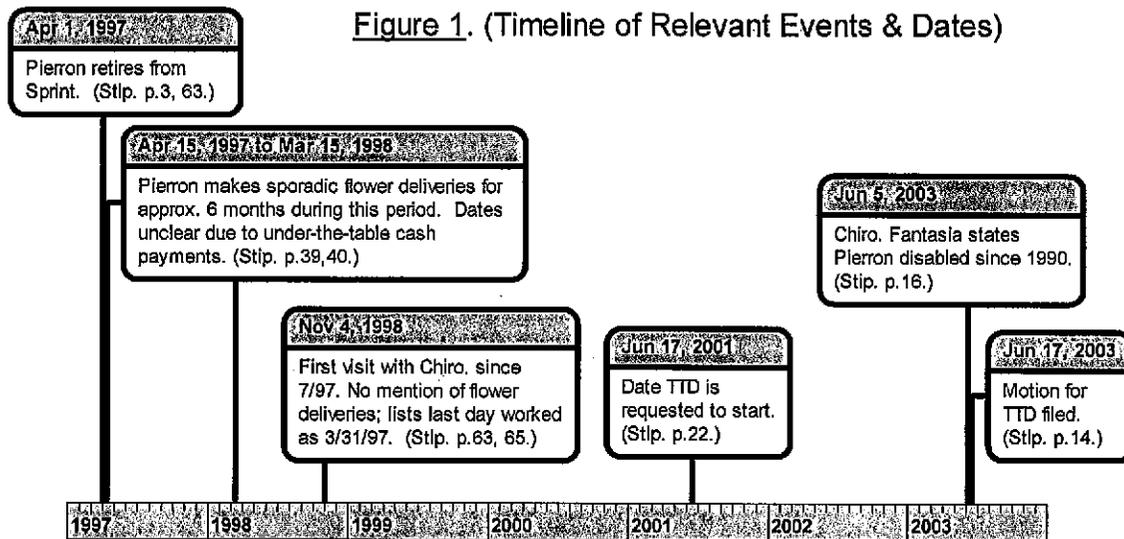
OBJECTION TO REQUEST FOR RECONSIDERATION

On October 15, 2008, this Court ruled that Appellant Pierron's request for temporary total disability compensation should remain denied, as he was not part of the active work force at the time he requested such compensation to begin. In paragraph seven of its Opinion, this court specifically stated: "In this case, the injured worker did not choose to leave his employer in 1997, but once that separation nevertheless occurred, Pierron had a choice: seek other employment or work no further. Pierron chose the latter. He cannot, therefore, credibly allege that his lack of income from 2001 and beyond is due to industrial injury."

In his Request for Reconsideration, Pierron claims that this Court failed to address one of his two arguments: whether his re-entry to the workforce for a short stint as a flower deliveryman "constitutes a re-entry into the work force such that his eligibility to Temporary Total Disability Compensation is re-opened." (Request for Recon., p.4.) Pierron's request for reconsideration should be denied, because his argument was addressed in this Court's decision.

Pierron's alleged re-entry into the workforce through his flower delivery activity ended when he quit the House of Flowers in March, 1998. His request for temporary total disability compensation did not begin until 2001. As noted in Appellee's Brief, no medical evidence even hints at the possibility that Pierron left House of Flowers due to the allowed conditions in this workers' compensation claim. In fact, his treating physician not only failed to mention the flower delivery job at the time, but he affirmatively denied knowledge of such work when he stated in his November 4, 1998 records that Pierron "last worked on 3/31/97" (the date Pierron retired from Sprint).

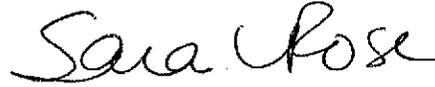
If Pierron suffered an exacerbation of the allowed conditions while working for House of Flowers or elsewhere, his argument might have merit. *State ex rel. Baker v. Indus. Comm.* (2000), 89 Ohio St.3d 376, 2000-Ohio-168. However, the facts in this case establish that there were several years between his resignation from House of Flowers and the date he requested temporary total disability compensation to start.



Pierron requests this Court to determine whether his work delivering flowers constituted re-entry into the workforce. However, such determination is unnecessary, as Pierron did not become disabled while working for this subsequent employer; rather, his alleged disability arose several years after his voluntary resignation from House of Flowers for reasons unrelated to the allowed conditions in this claim. In Paragraph 9 of its decision, this Court ruled that “there can be no lost earnings, however, or even a potential for lost earnings, if the claimant is no longer part of the active work force.” Pierron clearly was not part of the active work force in 2001 when his alleged disability began as he had not worked for at least three years prior. Accordingly, this Court’s

decision did address all issues in this case, and Pierron's request for reconsideration should be denied.

Respectfully submitted,



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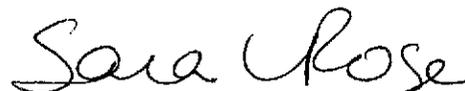
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Objection to Request for Reconsideration was served by regular U.S. mail, postage pre-paid, this 31st day of October, 2008, upon:

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