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STATEMENT OF FACTS

On or about May 24, 2004, the Appellant was injured in the course and scope of her employment. She filed a Workers' Compensation claim which was initially allowed for fracture of the left femoral condyle; fracture left proximal tibial plateau; and arthrofibrosis left knee.

Appellant received temporary total compensation benefits from the date of her injury on May 24, 2004 through the date which she was found to reach maximum medical improvement on or about May 16, 2005. Due to the severity of the Appellant's left knee condition, she was never able to return to her formal position of employment after the May 24, 2004 industrial injury. The Appellant had applied for and was granted a disability retirement on or about February 1, 2005. After the Appellant's temporary total compensation was stopped based on a finding of maximum medical improvement on or about May 16, 2005, the Appellant attempted to have her temporary total compensation reinstated based on newly allowed conditions which included arthrofibrosis of the left knee. The Industrial Commission of Ohio denied the Appellant's request for reinstatement of temporary total compensation based upon the physician of record's office notes which found that the Appellant had reached maximum medical improvement for the recently newly allowed condition of arthrofibrosis of the left knee.

The Industrial Commission did not base its opinion in any way on the fact that the Appellant had voluntarily resigned her formal position of employment when denying temporary total compensation. Subsequently, the Appellant applied for permanent total disability, and a Staff Hearing Officer for the Industrial Commission issued an order on April 10, 2008 which denied permanent total disability based upon the specialist report

on file. The Staff Hearing Officer did not deny permanent total disability based upon a finding that the Appellant had voluntarily abandoned her employment when she took a disability retirement on February 1, 2005, even though the employer raised this argument at the hearing. Subsequently, Appellant was successful in having her claim further allowed for the additional conditions of **aggravation of pre-existing arthritis left knee, and post traumatic arthritis, left knee**. Based upon those newly allowed conditions, the Appellant applied for reinstatement for temporary total compensation from June 5, 2006 through the present and continuing. The Appellant's request for reinstatement of temporary total compensation was based upon the new and changed circumstances presented by the additionally allowed conditions. The request for temporary total compensation was denied based upon a finding that the Appellant abandoned her employment when she took a disability retirement on or about February 1, 2005.

Appellant subsequently filed the present action in the Tenth District Court of Appeals seeking the issuance of a Writ of Mandamus ordering Appellee-Industrial Commission, to award temporary total compensation from June 5, 2006 through the present. Pursuant to Ohio Rules of Civil Procedure, and the local rules of the Tenth Court of Appeals, the matter was originally referred to a Magistrate. On December 29, 2010, the Magistrate issued a decision denying Appellant's request for Writ of Mandamus. Appellant timely objected to the Magistrate's decision, and by order dated April 19, 2011, Appellant's objection was denied. Appellant has subsequently filed an appeal of right from the Tenth District decision to the Supreme Court of Ohio.

LAW AND ARGUMENT

It is well settled law in Ohio that in order to justify the issuance of a writ of mandamus, an Appellant must establish that he/she has a clear legal right to the relief

sought, State ex rel. Pressley v. Industrial Commission, (1967) 11 Ohio St. 2d 141 and that where there is “some evidence” to support an award, the Court will not disturb the Commission’s findings. State ex rel. Fiber-Lite Corp., v. Industrial Commission, (1988) 36 Ohio St.3d 202. However, where there is no evidence upon which the Commission could have based its decision, the Commission is guilty of abuse of discretion and mandamus is appropriate. State ex rel. Kramer v. Industrial Commission, (1979) 59 Ohio St.2d 39; State ex rel. White v U.S. Gypsum Co., (1990) 49 Ohio St.3d 134.

In the instant case, the Appellant clearly believes that the Tenth District Court’s decision was made in error. The Tenth District Court specifically found that Appellant voluntarily abandoned the entire work force when she took her disability retirement on February 1, 2005. This finding is in direct contradiction to this courts long standing position with regard to voluntary retirement. Specifically, when an injured worker is totally disabled at the time of his retirement, that retirement is deemed involuntary, and the injured worker is entitled to temporary total disability compensation for a period of disability that occurs after that retirement. In the instant case, the record shows that the Appellant was receiving temporary total compensation at the time of her disability retirement on February 1, 2005. The record further shows that the Appellant had not been able to work since her Industrial injury occurred on May 24, 2004. Therefore, the facts are clear that the disability retirement which was taken on February 1, 2005, was due to her inability to work as a direct and proximate result of her industrial accident.

In State ex rel. Pretty Products V. Industrial Commission (1996) 77 Ohio St.3d 5, the Supreme Court specifically found that temporary total compensation eligibility hinges on the timing and character of Appellant’s departure. Clearly in the instant case, Appellant’s application for disability retirement in February of 2005, came at a time

when she was not working, and in fact, was receiving ongoing temporary total compensation benefits on the allowed physical conditions in her claim. The facts further establish that even after the Appellant was deemed to have reached maximum medical improvement, her physician of record would still not release her to return to work.

An injured worker can only abandon a former position of employment if she has the physical capacity for employment at the time of the abandonment or removal. State ex rel. Brown V. Industrial Commission (1993) 68 Ohio St.3d 45 and 48. Clearly, the Appellant cannot be deemed to have abandoned her employment when she took her disability retirement in February of 2005, as at the time the Appellant was incapable of working, and in fact, receiving temporary total compensation. The court in Brown further held that if you were incapable of working at the time of retirement, the issue of whether or not the retirement is voluntary in nature is not at issue.

In Brown the court specifically found that an Appellant is incapable of abandoning a position that does not exist. Clearly in the instant case, Appellant was incapable of abandoning her job because at the time of her disability retirement in 2005, she was not and had not been working since the injury, and in fact, had been receiving ongoing temporary total disability benefits.

In State ex rel. Chrysler V. Industrial Commission (1991) 62 Ohio St.3d 193, the court held that an injured worker's entitlement to temporary total disability depends on whether or not the retirement occurred on or after she became disabled. The Court in Chrysler specifically held that a retirement before disability precludes further disability if the retirement was voluntary and constituted an abandonment of the entire job market. However, an injured worker who retires after she is already disabled is not deemed to have voluntarily abandoned the job market thus precluding future disability benefits.

State ex rel. Baker Material Handling Corp. V. Industrial Commission (1994) 69 Ohio St.3d 202. In the instant case, the Commission abused its discretion since its decision was not based on some evidence. The record clearly reflects that Appellant took a disability retirement on or about February 1, 2005, that at the time of the disability retirement the Appellant was receiving temporary total compensation. Had the Appellant had not been able to return to work in any capacity since the industrial injury occurred on February 24, 2004, that the Appellant received temporary total compensation until she was deemed to have reached maximum medical improvement on or about May 16, 2005; that the claim was subsequently further allowed for arthrofibrosis of the left knee; that based upon that newly allowed condition that Appellant filed a motion to have her temporary total reinstated based upon new and changed circumstances. Clearly the facts in this case, as well as the previous holdings on the issue of voluntary abandonment, clearly established that the Appellant did not voluntarily abandon her employment on or about February 1, 2005 when she took a disability retirement.

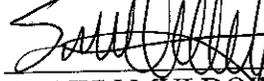
CONCLUSION

Appellant is eligible for temporary total disability compensation because at the time of her disability retirement, she was in fact, totally disabled. Furthermore, Appellant is eligible for temporary total compensation since the character of her departure was involuntary as defined by State ex rel. Rockwell International V. Industrial Commission (1988) 40 Ohio St.3d 44.

Wherefore, Appellant respectfully requests that the Court of Appeals decision be reversed, and that the Mandamus requesting that the Commission's order be vacated, and

that temporary total compensation be awarded from June 5, 2006 through the present.

Respectfully submitted,



SHAWN MULDOWNEY (0058525)

Attorney for Relator

Schiavoni, Schiavoni, Bush & Muldowney

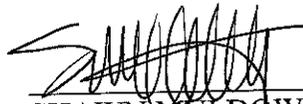
87 Westchester Drive

Youngstown, OH 44515

(330) 799-5940

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Merit Brief of Appellant was forwarded by Regular U.S. Mail this 23rd day of May, 2011, to the following within named persons: Kevin Reis, Assistant Attorney General, Workers' Compensation Section, 150 East Town St., 22nd Floor, Columbus, Ohio 43215; and Atty. Elizabeth Phillips, 21 West Boardman St., 6th Floor, Youngstown, OH 44503.



SHAWN MULDOWNEY

Attorney for Appellant

NOTICE OF APPEAL OF APPELLANT PATRICIA ROUAN

Appellant Patricia Rouan hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals Case No. 10AP-36 on April 19, 2011.

This case raises a substantial constitutional question and is one of public or great general interest.

This action originated in the Court of Appeals and, therefore, is an Appeal of Right.

Respectfully submitted,

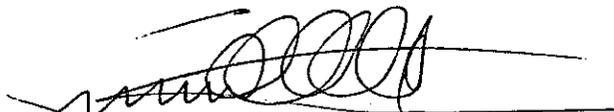


SHAWN R. MULDOWNEY

COUNSEL FOR APPELLANT,
PATRICIA ROUAN

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail this day of May 4, 2011 to counsel for Appellees: Industrial Commission of Ohio, 30 West Spring Street, Columbus, OH 43215; Kevin J. Reis, Assistant Attorney General, 150 East Gay Street, 22nd Floor, Columbus, OH 43215; and Elizabeth M. Phillips, Assistant Prosecuting Attorney, Mahoning County Prosecutor's Office, 21 West Boardman Street, 6th Floor, Youngstown, OH 44503.



SHAWN R. MULDOWNEY

COUNSEL FOR APPELLANT,
PATRICIA ROUAN

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
2011 APR 19 PM 1:06
CLERK OF COURTS

State of Ohio ex rel. Patricia Rouan, :

Relator, :

v. :

No. 10AP-36

Industrial Commission of Ohio :
and Mahoning County, :

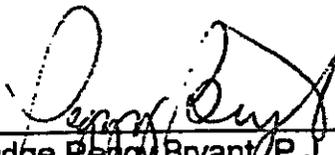
(REGULAR CALENDAR)

Respondents. :

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on April 19, 2011, the objection to the decision of the magistrate is overruled, the decision of the magistrate is approved and adopted by the court as its own, and it is the judgment and order of this court that the requested writ of mandamus is denied. Costs assessed to relator.

Within three (3) days from the filing hereof, the clerk of this court is hereby ordered to serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.



Judge Peggy Bryant, P.J.



Judge Lisa L. Sadler



Judge G. Gary Tyack

REC'D MAY 12 2011

FILED
COURT OF APPEALS
TENTH APPELLATE DISTRICT

2011 APR 19 PM 1:00
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Patricia Rouan,	:	
	:	
Relator,	:	
	:	
v.	:	No. 10AP-36
	:	
Industrial Commission of Ohio	:	(REGULAR CALENDAR)
and Mahoning County,	:	
	:	
Respondents.	:	

D E C I S I O N

Rendered on April 19, 2011

Schiavoni, Schiavoni, Bush & Muldowney, and Shawn Muldowney, for relator.

Michael DeWine, Attorney General, and Kevin J. Reis, for respondent Industrial Commission of Ohio.

Elizabeth M. Phillips, Assistant Prosecuting Attorney, for respondent Mahoning County.

IN MANDAMUS
ON OBJECTION TO MAGISTRATE'S DECISION

BRYANT, P.J.

{¶1} Relator, Patricia Rouan, commenced this original action requesting a writ of mandamus that orders respondent Industrial Commission of Ohio to vacate its order

denying her temporary total disability compensation on eligibility grounds, and to enter an order awarding her temporary total disability compensation beginning July 8, 2007.

I. Facts and Procedural History

{¶2} Pursuant to Civ.R. 53 and Section (M), Loc.R. 12 of the Tenth Appellate District, this matter was referred to a magistrate who issued a decision, including findings of fact and conclusions of law, appended to this decision. The magistrate identified two issues presented in relator's complaint: (1) whether the commission abused its discretion in concluding relator is ineligible for temporary total disability compensation, and (2) whether res judicata bars the commission's eligibility determination. In resolving the two issues, the magistrate determined (1) the commission did not abuse its discretion in concluding relator is not eligible for temporary total disability compensation, and (2) res judicata does not bar the commission's eligibility determination. As a result, the magistrate determined the requested writ should be denied.

II. Objection

{¶3} Relator filed a single objection to the magistrate's conclusions of law:

Magistrate erred by denying Relator's complaint for Writ of Mandamus and by finding that the Industrial Commission did not abuse its discretion in determining that the Relator was ineligible for temporary total compensation due to her taking a disability retirement while she was receiving temporary total compensation under this claim.

{¶4} As the magistrate's decision indicates, relator, a participant in the Ohio Public Employee's Retirement System ("PERS"), opted for a disability retirement based on her condition, major depression. After receiving a disability retirement from PERS in 2005, relator, following additionally allowed conditions, sought a period of temporary total

disability compensation through her workers' compensation claim. The staff hearing officer ultimately denied the request, concluding relator was ineligible because she voluntarily abandoned the workforce through her disability retirement.

{¶5} In her single objection, relator reargues those matters adequately addressed in the magistrate's decision. The magistrate properly concluded the Supreme Court of Ohio's decision in *State ex rel. Staton v. Indus. Comm.*, 91 Ohio St.3d 407, 2001-Ohio-88, controls disposition of relator's request for a writ of mandamus.

{¶6} In *Staton*, the employee sustained an industrial injury in April 1993. He took a medical leave of absence in May 1993 that eventually extended into permanent retirement, all based on conditions not allowed in the claim. After being denied permanent total disability compensation for the allowed conditions in his workers' compensation claim, he moved for temporary total disability compensation. In rejecting the request, the court stated that a "claimant who vacates the work force for non-injury reasons not related to the allowed condition and who later alleges an inability to return to the former position of employment cannot get [temporary total disability]." *Id.* at 410. As the court noted, "[o]ne cannot credibly allege the loss of wages for which [temporary total disability] is meant to compensate when the practical possibility of employment no longer exists." *Id.*

{¶7} Despite the similarities of *Staton*, relator relies on *State ex rel. Pretty Prods., Inc. v. Indus. Comm.*, 77 Ohio St.3d 5, 1996-Ohio-132, contending that because she was medically unable to return to her former position of employment on the effective date of her disability retirement, she is entitled to temporary total disability benefits. The magistrate, citing *State ex rel. Reitter Stucco, Inc. v. Indus. Comm.*, 117 Ohio St.3d 71, 2008-Ohio-499, points out the interplay between voluntarily abandoned employment

under *State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.*, 72 Ohio St.3d 401, 1995-Ohio-153 and *Pretty Prods.* The magistrate observed that "this action does present a question of the relationship between a *Staton*-type workforce abandonment and the *Pretty Prods.* doctrine that can preclude a voluntary job abandonment during a period of [temporary total disability]." Defining the relationship, the magistrate concluded *Staton* deals with eligibility, while *Pretty Prods.* presents "a doctrine applicable to job abandonment cases." (Mag. Dec., ¶51.) The magistrate ultimately determined that because relator abandoned the entire workforce with her disability retirement and for reasons unrelated to her industrial injury, she cannot receive the loss of wages at the heart of a temporary total disability compensation, as the possibility of employment no longer exists. Rather, her abandonment of the workforce severed any causal relationship between her industrial injury and her claimed disability, meaning the staff hearing officer appropriately denied the requested compensation.

{¶8} In an attempt to avoid such a result, relator suggests her disability retirement was not related solely to major depression, but included physical disabilities arising from her industrial injury. In support, relator points to the application for disability benefits under PERS that the employer completed. In response to an inquiry whether the applicant was permanently incapacitated from performing her duties, the employer indicated "yes" and stated relator "has been experiencing many physical and emotional challenges for several years." (Stipulated Evidence, 48.) Relator's argument fails for two reasons.

{¶9} Initially, relator failed to object to the magistrate's conclusions of fact, arguably forfeiting any alleged inaccuracy in the findings. More significantly, however, the

doctor whose report supported relator's application for PERS disability benefits stated the diagnosis to be major depressive disorder. Relator's doctor, not her employer, defines the conditions subject of relator's request for PERS disability benefits. Because relator's disability retirement is premised on a condition not allowed in the industrial injury, the *Staton* case controls. The magistrate appropriately determined the requested writ should be denied. Relator's objection is overruled.

III. Disposition

{¶10} Following independent review pursuant to Civ.R. 53, we find the magistrate has properly determined the pertinent facts and applied the salient law to them. Accordingly, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained in it. In accordance with the magistrate's decision, we deny the requested writ of mandamus.

*Objection overruled;
writ denied.*

SADLER and TYACK, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Patricia Rouan,	:	
	:	
Relator,	:	
	:	
v.	:	No. 10AP-36
	:	
Industrial Commission of Ohio	:	(REGULAR CALENDAR)
and Mahoning County,	:	
	:	
Respondents.	:	

MAGISTRATE'S DECISION

Rendered on December 29, 2010

Schiavoni, Schiavoni, Bush & Muldowney, and Shawn Muldowney, for relator.

Richard Cordray, Attorney General, and Kevin J. Reis, for respondent Industrial Commission of Ohio.

Elizabeth M. Phillips, Assistant Prosecuting Attorney, for respondent Mahoning County.

IN MANDAMUS

{¶11} In this original action, relator, Patricia Rouan, requests a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order

denying her temporary total disability ("TTD") compensation on eligibility grounds, and to enter an order awarding her TTD compensation beginning July 8, 2007.

Findings of Fact:

{¶12} 1. On May 24, 2004, relator sustained an industrial injury while employed as a social services inspector for respondent Mahoning County ("Mahoning County"). As an employee of Mahoning County, relator was a member of the Ohio Public Employees Retirement System ("OPERS").

{¶13} 2. Initially, the industrial claim (No. 04-829452) was allowed for "fracture femoral condyle-closed, left; proximal tibial plateau fracture, left."

{¶14} 3. Apparently, relator received TTD compensation which was terminated effective May 15, 2005 by an order of the Ohio Bureau of Workers' Compensation ("bureau"). The bureau order of June 1, 2005 determined that the allowed conditions were at maximum medical improvement ("MMI"). The bureau order was not administratively appealed.

{¶15} 4. OPERS publishes a form captioned "Report of Attending Physician for Disability Applicant." Under the caption of the form, it is stated:

A member is considered eligible for a disability benefit if the disabling condition prevents the performance of duties for their last employment and the disabling condition is expected to last at least 12 months.

{¶16} On December 23, 2004, relator completed sections one and two of the form. By her signature on the form, relator authorized Dr. Kaza Cosmo to report to OPERS on relator's medical conditions. At section three of the form, Dr. Cosmo listed his diagnosis as "Major Depressive Disorder."

{¶17} The form also asks the physician: "Is member expected to * * * return to work with their public employer?" In response, Dr. Cosmo marked the "no" box. Further, Dr. Cosmo certified that the medical condition is "permanently disabling."

{¶18} 5. On January 25, 2005, on an OPERS form, relator's employer certified its belief that "the applicant is permanently incapacitated for the performance of his/her duties."

{¶19} 6. On May 18, 2005, OPERS approved relator's disability application. On June 9, 2005, OPERS notified relator that the effective date of her disability retirement benefits is February 1, 2005.

{¶20} 7. Earlier, on February 4, 2005, relator moved for the allowance of a psychiatric condition in the claim.

{¶21} 8. Ultimately, following a July 18, 2005 hearing, a staff hearing officer ("SHO") disallowed the claim for "major depression, recurrent, severe." The SHO explained:

* * * [T]he C-86, filed 2/4/05, is denied based on the 3/3/05 report of Dr. Byrnes, and his opinions contained therein, and is based further on the claimant's extensive, severe past medical history of psychological problems, including a six and a half month hospitalization in 2002-2003, and multiple prescriptive medications taken through to the date of injury. Therefore, this claim is disallowed for the condition of "MAJOR DEPRESSION, RECURRENT, SEVERE" as being causally unrelated by either direct causation or aggravation.

(Emphasis sic.)

{¶22} 9. Thereafter, the claim was additionally allowed for "arthrofibrosis of the left knee."

{¶23} 10. On March 2, 2006, relator moved for TTD compensation beginning January 5, 2006, based solely upon the newly allowed condition "arthrofibrosis of the left knee."

{¶24} 11. Ultimately, following a June 28, 2006 hearing, an SHO denied relator's March 2, 2006 motion on grounds that the newly allowed condition was also at MMI.

{¶25} 12. On October 16, 2007, relator filed an application for permanent and total disability ("PTD") compensation.

{¶26} 13. Following an April 10, 2008 hearing, an SHO issued an order denying the PTD application. In denying the application, the SHO determined that the industrial injury did not prohibit all sustained remunerative employment. Following consideration of the nonmedical disability factors, the SHO concluded that relator was medically and vocationally qualified for some sustained remunerative employment.

{¶27} 14. In August 2008, the industrial claim was additionally allowed for "aggravation of pre-existing arthritis left knee; post traumatic arthritis left knee."

{¶28} 15. On a C-84 dated July 8, 2009, attending physician Vincent J. Malkovits, D.O., certified a period of TTD from June 5, 2006 to an estimated return-to-work date of September 1, 2009. The C-84 form asks the physician to "[l]ist ICD-9 Codes with narrative diagnosis(es) for allowed conditions being treated which prevent return to work."

In response, Dr. Malkovits wrote:

821.21	Fracture condyle, femoral
823.80	Fracture of lower leg
719.56	Arthrofibrosis

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{¶29} The C-84 form also asks the physician to "[l]ist ICD-9 Codes with narrative diagnosis(es) for other allowed conditions being treated." In response, Dr. Malkovits wrote:

715.36	Osteoarthritis of knee
716.16	Traumatic arthropathy knee

{¶30} On the C-84 form, Dr. Malkovits wrote "Patient has not reached maximum medical improvement." (Emphasis omitted.)

{¶31} 16. On July 8, 2009, relator moved for TTD compensation, citing only the C-84 from Dr. Malkovits.

{¶32} 17. Following a September 10, 2009 hearing, a district hearing officer ("DHO") issued an order denying the July 8, 2009 C-84 request for TTD compensation.

{¶33} 18. Relator administratively appealed the DHO's order of September 10, 2009.

{¶34} 19. Following an October 19, 2009 hearing, an SHO issued an order that vacates the DHO's order of September 10, 2009. Nevertheless, the SHO's order of October 19, 2009 denies the July 8, 2009 motion and C-84 request for TTD compensation. The SHO's order explains:

The Staff Hearing Officer finds that the Injured Worker's C-86 Motion requests payment of temporary total disability compensation for the period beginning 06/05/2006 and continuing. The Staff Hearing Officer finds that there is no jurisdiction to consider the Injured Worker's request for temporary total disability compensation for the closed period from 06/05/2006 through 07/07/2007 inclusive, as the request for such compensation pre-dates the filing of the Injured Worker's motion of 07/08/2009 by a period in excess of two years. Pursuant to the provisions of Ohio Revised Code Section 4123.52, the Staff Hearing Officer finds that he

does not have jurisdiction to proceed in this regard given the two year statute of limitations described in that code section.

The Staff Hearing Officer denies the Injured Worker's request for temporary total disability compensation for the period from 07/08/2007 through 10/19/2009 inclusive. The Staff Hearing Officer finds that the Injured Worker applied for, and received, a disability pension through the Public Employees Retirement System, effective 02/01/2005. This disability pension was predicated exclusively upon the condition of "MAJOR DEPRESSION", a condition which is not recognized in this claim. The Injured Worker has not returned to work in any capacity since obtaining her disability pension in February 2005. Counsel for the Employer now argues that this Injured Worker's departure from the work force was for a reason not associated with the allowed conditions in this claim. As such, the Employer argues that this Injured Worker is barred from temporary total disability compensation for the period subsequent to 02/01/2005. The Staff Hearing Officer finds the Employer's argument to be with merit.

The Staff Hearing Officer concludes that this Injured Worker's departure from employment was for a reason not associated with the allowed condition in this claim and as such the Injured Worker is no longer entitled to temporary total disability compensation in this claim. In issuing this decision, the Staff Hearing Officer relies upon the holding set forth in State ex rel. Staton v. Industrial Commission (2001), 91 Ohio St.3d 407. Therein, the Ohio Supreme Court stated as follows:

For years, voluntary departure from employment was the end of the story, and harsh results sometimes followed. Claimants who left the former position of employment for a better job forfeited temporary total disability compensation eligibility forever after. In response, State ex rel. Baker v. Industrial Commission (2000), 89 Ohio St.3d 376, declared that voluntary departure to another job no longer barred temporary total disability. It retained, however, the prohibition against temporary total disability to claimants who voluntarily abandon the entire labor market. Thus, the claimant who vacates the work force for non-injury reasons not related to the allowed condition and who later alleges

an inability to return to the former position of employment cannot get temporary total disability. This of course makes sense. One cannot credibly allege the loss of wages for which temporary total disability is meant to compensate when the practical possibility of employment no longer exists.

In this case, claimant retired from the work force in 1993. All relevant retirement documentation from his attending physician listed claimant's non-allowed heart condition and depression as the reason for departure. Appellants cite this as "some evidence" that claimant's work-force retirement was due to causes other than industrial injury, barring temporary total disability. (ID. at page 409-410: emphasis added.)

Here, the evidence from the PERS disability application records submitted to the claim file, established that the Injured Worker's abandonment of her employment with the Employer of record was in fact due to the condition of "MAJOR DEPRESSION", the condition upon which the Injured Worker's PERS disability was awarded. This claim is not allowed for a major depressive condition. The Injured Worker has not returned to any position of employment subsequent to acquiring her PERS disability on 02/01/2005. Thus, the Staff Hearing Officer concludes that the Injured Worker completely abandoned the work force for reasons not associated with the allowed conditions in this claim. As in Staton, the Staff Hearing Officer concludes that the Injured Worker is not eligible for temporary total disability compensation in this claim given her above abandonment from employment through her procurement of a disability pension for conditions not associated with this claim. Accordingly, temporary total disability compensation is denied for the period from 07/08/2007 through 10/19/2009 inclusive.

In issuing this order, the Staff Hearing Officer rejects the Injured Worker's argument at hearing that the Employer is barred by the doctrine of Res Judicata from asserting the abandonment defense for this new period of temporary total disability compensation requested by the Injured Worker.

The Staff Hearing Officer rejects that contention.

The Staff Hearing Officer relies upon the holding set forth in State ex rel. B.O.C. Group, General Motors Corporation, v. Industrial Commission of Ohio (1991), 58 Ohio St.3d 199. In B.O.C. Group, the Injured Worker suffered an injury on 08/03/1981. The Injured Worker was subsequently laid off from her position of employment with the Employer of Record on October 1981. Subsequent to her layoff, the Injured Worker requested and received payment of temporary total disability for the period from 03/05/1984 through 09/30/1984, and for the period from 07/11/1985 through 07/28/1985. The Injured Worker subsequently requested payment for a new period of temporary total disability commencing 07/30/1985 through 04/10/1987, and continuing. The Employer asserted the defense that the Injured Worker's layoff precluded her receipt of temporary total disability compensation in this claim. In response, the Injured Worker's counsel argued that as the Employer of Record did not raise that affirmative defense with respect to the previous periods of compensation requested and paid, Res Judicata precludes the Employer from asserting that defense with respect to the new period of compensation requested by the Injured Worker.

In addressing this issue, the Ohio Supreme Court stated as follows:

B.O.C. urges a similar result here, asserting that the issue of claimant's earlier compensation for temporary total disability was an issue distinct from her current request. It is a point well taken. As stated in 3 Larson, workers' compensation law [(1989) 15-426,272(99) to 15-426[,],272(100)], section 79.72(f): "It is almost too obvious for comment that res judicata does not apply if the issue is claimant's physical condition or degree of disability at two entirely different times...A moments reflection would reveal that otherwise there would be no such thing as reopening for change in condition. The same would be true of any situation in which the facts are altered by a change in the time frame... [sic]

Claimant also argues that the layoff issued [sic] has been mooted by her subsequent reinstatement by B.O.C. during this appeal. We again disagree. While her grievance and eventual reinstatement may

ultimately bear on the question of whether claimant had abandoned her employment, it does not negate the layoff as a factor preventing work, unrelated to the accident, during the claimed period of disability.

Here, in the present claim, the Injured Worker's request for temporary total disability compensation is for a period separate and distinct from the prior periods of compensation previously adjudicated by the Industrial Commission. Therefore, under the holding of B.O.C. Group, the Employer's counsel retains every right to assert the affirmative defense of voluntary abandonment of the work force as a defense against payment of temporary total disability compensation for the period beginning 07/08/2007. Accordingly, for these reasons, the Injured Worker's assertion that Res Judicata bars the Employer's presentation of the abandonment of employment issue is found to be without merit.

(Emphases sic.)

{¶35} 20. On November 12, 2009, another SHO mailed an order refusing relator's administrative appeal from the SHO's order of October 19, 2009.

{¶36} 21. Relator moved for reconsideration. On January 6, 2010, the three-member commission, in a two-to-one vote, mailed an order denying reconsideration.

{¶37} 22. On January 15, 2010, relator, Patricia Rouan, filed this mandamus action.

Conclusions of Law:

{¶38} Two issues are presented: (1) whether the commission abused its discretion in determining that relator is ineligible for TTD compensation, and (2) whether the commission's eligibility determination is barred by res judicata.

{¶39} The magistrate finds: (1) the commission did not abuse its discretion in determining that relator is ineligible for TTD compensation, and (2) the commission's eligibility determination is not barred by *res judicata*.

{¶40} Accordingly, it is the magistrate's decision that this court deny relator's request for a writ of mandamus, as more fully explained below.

{¶41} Turning to the first issue, relying upon *State ex rel. Staton v. Indus. Comm.* (2001), 91 Ohio St.3d 407, the commission, through its SHO, determined that relator is ineligible for TTD compensation because she abandoned the workforce for reasons unrelated to her industrial injury. In so determining, the commission relied upon relator's application for an OPERS disability retirement benefit and the OPERS approval of the application effective February 1, 2005. The commission also found that relator had not reentered the workforce subsequent to the OPERS approval of her application.

{¶42} In *Staton*, the claimant, Larry O. Staton, sustained an industrial injury in April 1993 that was eventually allowed for cervical and bilateral shoulder strain.

{¶43} Although Staton complained to the plant doctor of neck and shoulder soreness, no treatment was rendered and Staton returned to work.

{¶44} In early May 1993, Staton took a medical leave of absence that ultimately extended into a permanent retirement. Supporting documents from the attending physician all listed coronary artery disease and depression as the sole reasons for the retirement. Neither condition was allowed in the claim.

{¶45} Later, Staton moved for permanent total disability ("PTD") compensation, but the commission's neurologist opined that the allowed conditions were not at MMI.

Following an interlocutory commission order holding the PTD application in abeyance due to the temporary nature of the allowed conditions, Staton moved for TTD compensation.

{¶46} Ultimately, the commission denied Staton's request for TTD compensation.

Upholding the commission's decision, the *Staton* court explains:

For years, voluntary departure from employment was the end of the story, and harsh results sometimes followed. Claimants who left the former position of employment for a better job forfeited TTD eligibility forever after. In response, *State ex rel. Baker v. Indus. Comm.* (2000), 89 Ohio St.3d 376, 732 N.E.2d 355, declared that voluntary departure to another job no longer barred TTD. It retained, however, the prohibition against TTD to claimant's [sic] who voluntarily abandoned the *entire labor market*. Thus, the claimant who vacates the work force for non-injury reasons not related to the allowed condition and who later alleges an inability to return to the former position of employment cannot get TTD. This, of course, makes sense. One cannot credibly allege the loss of wages for which TTD is meant to compensate when the practical possibility of employment no longer exists.

In this case, claimant retired from the work force in 1993. [Footnote 1] All relevant retirement documentation from his attending physician listed claimant's nonallowed heart condition and depression as the reasons for departure. Appellants cite this as "some evidence" that claimant's work-force retirement was due to causes other than industrial injury, barring TTD.

[Footnote] 1. There has been no allegation from claimant that his retirement was less than total. Work-force departure is further evinced by claimant's PTD application—which was ultimately unsuccessful—which hinges on permanent departure from the labor market.

Id. at 410. (Emphases sic.)

{¶47} Here, citing *State ex rel. Pretty Prods., Inc. v. Indus. Comm.*, 77 Ohio St.3d 5, 1996-Ohio-132, a case not addressed by the commission in its order, relator claims

that she cannot be found ineligible for TTD compensation because, as of the effective date of her OPERS disability retirement, i.e., February 1, 2005, she remained medically unable to return to her former position of employment at Mahoning County due to her industrial injury. In fact, relator did receive TTD compensation until May 5, 2005, when it was terminated by a bureau order on MMI grounds. There appears to be no dispute here that, in fact, relator was medically unable to return to her former position of employment at Mahoning County at the effective date of her OPERS disability retirement benefit.

{¶48} While not cited by relator, the magistrate notes that the *Pretty Prods.* doctrine was further explained in *State ex rel. Reitter Stucco, Inc. v. Indus. Comm.*, 117 Ohio St.3d 71, 2008-Ohio-499.

{¶49} In *Reitter Stucco*, the claimant, Tony A. Mayle, was discharged from his employment for comments he made about the company's president following his industrial injury. Prior to his discharge, the employer had been paying Mayle wages in lieu of TTD compensation. The employer argued that Mayle had voluntarily abandoned his employment under the rationale of *State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.*, 72 Ohio St.3d 401, 1995-Ohio-153, but the commission held that because Mayle was TTD when he was fired, *Pretty Prods.*, rather than *Louisiana-Pacific*, was controlling.

{¶50} In *Reitter Stucco*, at ¶7-11, the court analyzed and explained the relationship between *Louisiana-Pacific* and *Pretty Prods.*:

Two cases are pertinent here—*Louisiana-Pacific*, 72 Ohio St.3d 401, 650 N.E.2d 469, and *Pretty Prods.*, 77 Ohio St.3d 5, 670 N.E. 2d 466. *Louisiana-Pacific* involves the classic voluntary/involuntary-departure debate, but in the context of a discharge, rather than the usual context of an employee's quitting. In *Louisiana-Pacific*, the claimant argued that his employer, and not he, initiated his separation from

employment when it fired him. The employee argued that his separation was not a voluntary decision and must be considered an involuntary departure that did not disrupt his eligibility for temporary total compensation.

We disagreed. Quoting *State ex rel. Watts v. Schottenstein Stores Corp.* (1993), 68 Ohio St.3d 118, 623 N.E.2d 1202, we stated that although the employer may have formalized the separation, it was the claimant who had initiated it when he chose to engage in the misconduct that caused the firing. This statement stems from the principle that "one may be presumed to tacitly accept the consequences of his voluntary acts." *Louisiana-Pacific*, 72 Ohio St.3d at 403, 650 N.E.2d 469, quoting *State ex rel. Ashcraft v. Indus. Comm.* (1987), 34 Ohio St.3d 42, 44, 517 N.E.2d 533.

The presumption of tacit acceptance, however, is fair only if the consequence is one of which the claimant was, or should have been, aware. See *State ex rel. Liposchak v. Indus. Comm.* (1995), 73 Ohio St.3d 194, 652 N.E.2d 753. Thus, we established the three-part test in *Louisiana-Pacific* that defined a termination as "voluntary" when it is "generated by the claimant's violation of a written work rule or policy that (1) clearly defined the prohibited conduct, (2) had been previously identified by the employer as a dischargeable offense, and (3) was known or should have been known to the employee." *Id.* at 403, 650 N.E.2d 469.

Pretty Prods. was decided shortly after *Louisiana-Pacific*. In *Pretty Prods.*, we held that the character of the employee's departure—i.e., voluntary versus involuntary—is not the only relevant element and that the timing of the termination may be equally germane. In *Pretty Prods.*, we suggested that a claimant whose departure is deemed voluntary does not surrender eligibility for temporary total disability compensation if, at the time of departure, the claimant is still temporarily and totally disabled. *Id.*, 77 Ohio St. 3d at 7, 670 N.E. 2d 466; *State ex rel. OmniSource Corp. v. Indus. Comm.*, 113 Ohio St.3d 303, 2007-Ohio-1951, 865 N.E.2d 41, ¶ 10. Thus, even if a termination satisfies all three *Louisiana-Pacific* criteria for being a voluntary termination, eligibility for temporary total disability compensation remains if the claimant was still disabled at the time the discharge occurred.

The present litigants treat the two cases as mutually exclusive, with the company urging that *Louisiana-Pacific* is dispositive and Mayle and the commission citing *Pretty Prods.* Yet *Louisiana-Pacific* and *Pretty Prods.* may each factor into the eligibility analysis. If the three requirements of *Louisiana-Pacific* regarding voluntary termination are not met, the employee's termination is deemed involuntary, and compensation is allowed. If the *Louisiana-Pacific* three-part test is satisfied, however, suggesting that the termination is voluntary, there must be consideration of whether the employee was still disabled at the date of termination. We thus take this opportunity to reiterate that *Louisiana-Pacific* and *Pretty Prods.* are not mutually exclusive and that they may both factor into the eligibility analysis.

{¶51} Of course, here, *Louisiana-Pacific* is not involved because this case does not involve a discharge. However, this action does present a question of the relationship between a *Staton*-type workforce abandonment and the *Pretty Prods.* doctrine that can preclude a voluntary job abandonment during a period of TTD.

{¶52} Key to resolution of the issue is the observation that *Pretty Prods.* presents a doctrine applicable to job abandonment cases while *Staton* deals with eligibility when the claimant has abandoned the entire workforce even when workforce abandonment is due to circumstances beyond the claimant's control.

{¶53} Here, it is not actually disputed by relator that she abandoned the entire workforce at the time that she applied for the OPERS disability retirement.

{¶54} Because relator abandoned the entire workforce in early 2005 for reasons unrelated to her industrial injury, she cannot credibly allege the loss of wages for which TTD is meant to compensate when the practical possibility of employment no longer exists. That is, workforce abandonment severs any causal relationship between her industrial injury and her claimed disability.

{¶55} Once causal relationship has been severed, it is not revived at some later time simply because relator remains medically unable to return to the former position of employment.

{¶56} In short, relator's reliance upon *Pretty Prods.* is misplaced. The commission correctly relied upon *Staton* in determining relator to be ineligible for the requested TTD compensation.

{¶57} As earlier noted, the second issue is whether the commission's eligibility determination is barred by *res judicata*. The magistrate finds that it is not.

{¶58} The issue here was correctly addressed by the commission in its SHO's order of October 19, 2009. The SHO correctly relied upon *State ex rel. B.O.C. Group, General Motors Corp. v. Indus. Comm.* (1991), 58 Ohio St.3d 199. In the *B.O.C. Group* case, the court states:

Res judicata operates "to preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction." *Consumers' Counsel v. Pub. Util. Comm.* (1985), 16 Ohio St. 3d 9, 10, 16 OBR 361, 362, 475 N.E. 2d 782, 783. It applies "not only to defenses which were considered and determined but also to those defenses which could properly have been considered and determined." *State, ex rel. Moore, v. Indus. Comm.* (1943), 141 Ohio St. 241, 25 O.O. 362, 47 N.E. 2d 767, paragraph two of the syllabus; *Rogers v. Whitehall* (1986), 25 Ohio St. 3d 67, 25 OBR 89, 494 N.E. 2d 1387.

The principle applies to administrative proceedings. *Set Products, Inc. v. Bainbridge Twp. Bd. of Zoning Appeals* (1987), 31 Ohio St. 3d 260, 31 OBR 463, 510 N.E. 2d 373. However, because of the commission's continuing jurisdiction under R.C. 4123.52, "the defense of *res judicata* has only a limited application to compensation cases." *Cramer v. Indus. Comm.* (1944), 144 Ohio St. 135, 138, 29 O.O. 176, 177, 57 N.E. 2d 233, 234.

Res judicata requires "an identity of parties and issues in the proceedings." *Beatrice Foods Co. v. Lindley* (1982), 70 Ohio St. 2d 29, 35, 24 O.O. 3d 68, 71, 434 N.E. 2d 727, 731. ***

*** As stated in 3 Larson, Workers' Compensation Law (1989) 15-426,272(99) to 15-426,272(100), Section 79.72(f):

"It is almost too obvious for comment that *res judicata* does not apply if the issue is claimant's physical condition or degree of disability at two entirely different times ***. A moment's reflection would reveal that otherwise there would be no such thing as reopening for change in condition. The same would be true of any situation in which the facts are altered by a change in the time frame ***."

Id. at 200-01.

{¶59} Here, relator argues:

*** In the instant case, the issue of abandonment was specifically raised and argued at a previous Staff Hearing Officer hearing on April 10, 2008. Although the Staff Hearing Officer denied the Relator's permanent total disability application, the Staff Hearing Officer did not find as the employer had requested that the Relator had voluntarily abandoned her employment and, therefore, was not entitled to permanent total disability. Accordingly, the Relator believes that the employer is barred from raising the same argument as subsequent to the Industrial Commission hearing.

(Relator's brief, at 6.)

{¶60} To begin, the record fails to support relator's assertion that Mahoning County presented its eligibility defense before the SHO who heard the PTD application. (The record here contains no transcript of the October 16, 2007 hearing.) However, it is clear that the SHO's order denying the PTD application does not address, or in any way adjudicate, an eligibility defense.

{¶61} Thus, we do not know from the record whether Mahoning County submitted its eligibility defense at the PTD hearing and the SHO decided not to address it, or that Mahoning County simply failed to submit its eligibility defense at the PTD hearing. Nor does Mahoning County concede in this action that it never previously raised the defense.

{¶62} In either event, *B.O.C. Group* tells us that Mahoning County was not barred by res judicata from raising its eligibility defense at the administrative hearings on relator's July 8, 2009 motion for TTD compensation.

{¶63} Thus, the commission's eligibility determination is not barred by res judicata.

{¶64} Accordingly, for all the above reasons, it is the magistrate's decision that this court deny relator's request for a writ of mandamus.

/s/ Kenneth W. Macke
KENNETH W. MACKE
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

IN THE COURT OF APPEALS
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO

STATE OF OHIO, EX REL.,
PATRICIA ROUAN,

Relator

V.

INDUSTRIAL COMMISSION OF OHIO,

and

MAHONING COUNTY,

Respondents

CASE NO: 10APD01-36

MAGISTRATE: KENNETH MACKE

RELATOR'S OBJECTIONS TO
THE MAGISTRATE'S DECISION
RENDERED DECEMBER 29, 2010

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TABLE OF AUTHORITIES

<u>TITLE</u>	<u>PAGE NUMBER</u>
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<i>State ex rel. Staton v. Industrial Commission</i>	6
<i>State ex rel. White v. U.S. Gypsum Co.</i>	5

**RELATOR'S OBJECTION TO MAGISTRATE'S
DECISION RENDERED DECEMBER 29, 2010**

NOW COMES the Relator, by and through her attorneys, and, pursuant to Civil Rule 53(E) (3) and Local Appellate Rule 12(M) (3), hereby submits the following objections to the Magistrate's decision rendered December 29, 2010, and incorporated herein by reference its attached Merit Brief.

OBJECTION NO. 1:

Magistrate erred by denying Relator's complaint for Writ of Mandamus and by finding that the Industrial Commission did not abuse its discretion in determining that the Relator was ineligible for temporary total compensation due to her taking a disability retirement while she was receiving temporary total compensation under this claim.

STATEMENT OF THE CASE:

On or about May 24, 2004 the Relator was injured in the course and scope of her employment. She filed a workers' compensation claim, which was initially allowed for fracture left femoral condyle-closed; fracture left tibia nos-closed; and arthrofibrosis left knee. The Relator has been totally disabled due to these injuries since the date of the injury in this claim.

Relator applied for and received temporary total compensation benefits from the date of her injury, May 24, 2004, through the date that she was found to have reached maximum medical improvement on or about May 16, 2005. Due to the severity of the left knee condition, Relator was never able to return to work after May 24, 2004.

While Relator was on temporary total compensation she applied for and was granted disability retirement on or about February 1, 2005. After the temporary total compensation was stopped based upon a finding of maximum medical improvement on or about May 16, 2005, the Relator filed a motion requesting that her claim be amended to include the additional conditions of aggravation of pre-existing arthritis left knee; and post-traumatic arthritis left knee. The Industrial Commission of Ohio granted that request.

Based upon those newly allowed conditions the Relator applied for reinstatement of temporary total compensation from June 5, 2006 through the present and continuing. The Relator's request for reinstatement of temporary total compensation was based upon new and changed circumstances presented by the newly allowed conditions and the Relator's potential need for future treatment, which would potentially include total knee replacement.

The request for temporary total compensation was denied based upon a finding that the Relator abandoned her employment when she took her disability retirement on February 1, 2005. Relator is now before this Honorable Court seeking a Writ of Mandamus.

OBJECTION TO MAGISTRATE'S DECISION

The Magistrate erred by denying Relator's complaint for Writ of Mandamus and by finding that the Industrial Commission did not abuse its discretion in determining that the Relator was ineligible for temporary total compensation due to her taking a disability retirement while she was receiving temporary total compensation under this claim.

Relator clearly believes that the Magistrate erred by finding that she voluntarily abandoned the work force for reasons unrelated to the industrial injury.

It is well settled law in Ohio that in order to justify the issuance of a Writ of Mandamus a Relator must establish that she has a clear legal right to the relief sought. State ex rel. Pressley v. Industrial Commission, (1967) 11 Ohio St. 2d 141. Where there is some evidence to support an award the Court will not disturb the Commission's findings. State ex rel. Fiber-Lite Corp., v. Industrial Commission, (1988) 36 Ohio St. 3d 202. However, where there is no evidence upon which the Commission could have based its decision the Commission is guilty of an abuse of discretion and Mandamus is appropriate. State ex rel. Kramer v. Industrial Commission, (1979) 59 Ohio St. 2d 39 and State ex rel. White v U.S. Gypsum Co., (1990) 49 Ohio St. 3d 134.

In the instant case the Industrial Commission found that the Relator voluntarily abandoned the workforce for reasons unrelated to this claim, and therefore, she was ineligible for temporary total compensation due to her disability retirement on February 1, 2005. Based upon the evidence in file it is clear that the Relator has been unable to work since her May 24, 2004 industrial injury.

To further illustrate this, the Relator would simply point to the fact that she was still receiving temporary total compensation when she applied for her disability

retirement on February 1, 2005. The Magistrate found that the February 1, 2005 disability retirement was a bar to future compensation because it was based upon conditions not allowed in the claim. Relator believes the Magistrate erred by finding that the Relator's disability retirement on February 1, 2005 was predicated solely on the non-allowed condition of depression.

This is illustrated by the application for disability benefits itself (see stipulated evidence page 48). Upon close review of the application for disability benefits associated with the Relator's disability retirement, question four specifically states that the Relator has been experiencing many **physical and emotional** challenges for several years. Clearly, the application itself, which was granted for disability retirement, establishes that the Relator's inability to work was not solely predicated upon the depression but also upon the physical conditions associated with the industrial injury. This is further illustrated by the C-84 forms that have been completed by the physician of record which disable the Relator from all employment from the date of injury forward (stipulated evidence pages 19, 24-25).

The Magistrate relied upon the case of State ex rel. Staton v. Industrial Commission, (2001) 91 Ohio St. 3d 407 as the basis for the Court's decision that the Relator voluntarily abandoned the workforce. Relator believes that this case is easily distinguished from the instant case. In Staton the Claimant took a medical leave of absence from his employment for unrelated medical conditions that ultimately extended into a permanent retirement. Later Staton moved for permanent total disability, which was ultimately denied as the Court found that the Claimant had abandoned the entire work force; therefore, he would not have been working anyway and could not collect permanent total disability. In the instant case the Relator was already found to be unable

to work due to the allowed physical conditions in the claim, and in fact was still receiving temporary total compensation under the claim when she applied for and was granted the right to receive disability retirement.

Relator believes that State ex rel. Pretty Products v. Industrial Commission, (1996) 77 Ohio St. 3d 5 is controlling with regard to the Relator's eligibility for temporary total compensation. In Pretty Products the Supreme Court specifically found that temporary total compensation eligibility hinges on the timing and character of the Relator's departure. Clearly, in the instant case the Relator's application for disability retirement in February, 2005 came at a point when she was unable to work due to the allowed physical conditions in the claim and was still receiving ongoing temporary total compensation benefits.

A Relator can only abandon employment if she has the physical capacity for employment at the time of abandonment or removal. State ex rel. Brown v. Industrial Commission, (1993) 68 Ohio St. 3d 45 and 48. Clearly, Relator did not abandon her employment when she took a disability retirement in February, 2005 as at the time the Relator was not working and in fact was not capable of work. Again, this is supported by the fact that the Relator was receiving temporary total compensation benefits at the time of her retirement, and C-84 forms from her physician of record. In Brown the Court further held that if you are incapable of working at the time of a retirement the issue of whether or not the retirement is voluntary in nature is not at issue.

In Brown the Court specifically found that a Claimant is incapable of abandoning employment that does not exist. Clearly, in the instant case the Relator was incapable of abandoning the job market because at the time of her disability retirement in 2005 she was not, and had not, been working since the injury. The Claimant still continues to be

totally disabled by her physician of record.

In State ex rel. Chrysler v. Industrial Commission, (1991) 62 Ohio St. 3d 193 the Court held that the Relator's entitlement to temporary total disability depends upon whether or not the retirement occurred on or after she became disabled. The Court in Chrysler specifically held that a retirement **before disability** precludes further disability if the retirement was voluntary and constituted an abandonment of the entire job market. However, a Relator who retires **after** she is already disabled is not deemed to have voluntarily abandoned the job market, thus precluding future disability benefits. State ex rel. Baker Material Handling Corp. v. Industrial Commission, (1994) 69 Ohio St. 3d 202. The holding in Chrysler is fact specific to the instant case.

Based upon all of the above stated cases the Courts have consistently held that if you are disabled at the time of your retirement the retirement cannot be deemed abandonment of the entire job market, so as to preclude future disability benefits. These cases are based upon the premise that one cannot abandon a position that does not exist. In the instant case the Relator has been unable to work since the date of the injury. In fact she was on temporary total compensation when she applied for and was granted the right to receive disability retirement.

Furthermore, the facts of the case serve to establish that on the face of the disability retirement application the Relator was unable to work due to both physical and emotional problems (see stipulated evidence page 48). Therefore, Relator believes that the disability pension taken in February, 2005 cannot be used as a bar for future temporary total benefits.

Accordingly, Relator would request that the Magistrate's order be overruled and that this case be remanded to the Industrial Commission of Ohio for further proceedings consistent with the law.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Objections to the Magistrate's Decision was forwarded by Regular U.S. Mail this day of January 18, 2011 to the following within named persons: Kevin J. Reis, Assistant Attorney General, 150 East Gay Street, 22nd Floor, Columbus, OH 43215; and Elizabeth M. Phillips, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, OH 44503.



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March 16, 2010

OFFICE LOCATIONS
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Franklin County Court of Appeals
Attn: Clerk of Courts
373 South High Street, 23rd Floor
Columbus, OH 43215

RE: *State of Ohio, ex rel., Patricia Rouan*
V. Industrial Commission of Ohio
CASE NO: 10AP-36

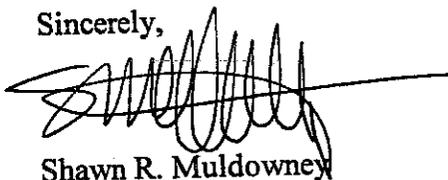
Dear Clerk of Courts:

Enclosed please find the Agreed Stipulations of Evidence regarding the above captioned case.

I would ask that you please file them and return a time stamped copy to my office in the enclosed envelope.

If you have any questions, please do not hesitate to call my office.

Sincerely,



Shawn R. Muldowney

SM/jc

enclosure

cc: Kevin J. Reis, AAG.
Elizabeth M. Phillips, Esq.

IN THE COURT OF APPEALS
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO

STATE OF OHIO, EX REL.,
PATRICIA ROUAN,

Relator

V.

INDUSTRIAL COMMISSION OF OHIO,

and

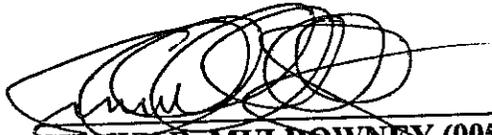
MAHONING COUNTY,

Respondents

CASE NO: 10AP-36

MAGISTRATE: KENNETH MACKE

AGREED STIPULATIONS OF EVIDENCE

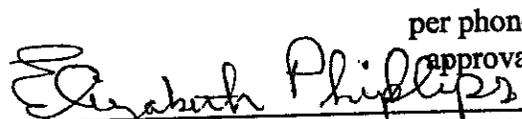

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Mahoning County**

AGREED STIPULATIONS

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Record of Proceedings mailed 1-6-10.

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Claimant's Request for Reconsideration date stamped 11-23-09.

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Record of Proceedings mailed 11-12-09.

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Record of Proceedings mailed 10-22-09.

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Report of Dr. Vincent Malkovits dated 10-15-09.

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Record of Proceedings mailed 9-15-09.

PAGE 19

C-84 of Dr. Vincent Malkovits dated 9-11-09.

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Resolution of Board of Mahoning County Commissioners date stamped 9-10-09.

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Record of Proceedings mailed 8-5-09.

PAGE 23

C-9 of Dr. Vincent Malkovits dated 7-13-09.

PAGE 24-25

C-86 motion with attached C-84 dated 7-8-09.

PAGE 26-29

BWC order dated 8-19-08 with attached Physician Review of Dr. James Rutherford.

PAGE 30-32

C-86 motion dated 7-28-08 with attached medical report and office notes of Dr. Raymond Boniface.

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Record of Proceedings mailed 4-16-08.

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Record of Proceedings mailed 7-18-06.

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Record of Proceedings mailed 7-5-06.

PAGE 39-40

Record of Proceedings mailed 5-27-06.

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Record of Proceedings mailed 7-20-05.

PAGE 43

Ohio Public Employees Retirement System letter dated 6-9-05

PAGE 44-45

Record of Proceedings mailed 6-4-05.

PAGE 46

Ohio Public Employees Retirement System letter dated 5-18-05.

PAGE 47

Ohio Public Employees Retirement System Certification By Payroll Officer dated 2-23-05.

PAGE 48-49

Application For A Disability Benefit Report By Employer dated 1-25-05.

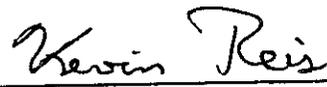
PAGE 50-51

Report of Attending Physician for Disability Applicant dated 12-23-04

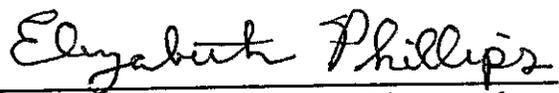
The parties stipulate that the documents attached hereto are true copies of documents from the Industrial Commission of Ohio file in Claim Number 04-829452 and that the parties may supplement the record by written agreement of all parties, by submission of certified copies of documents from said claim file, or by order of this Honorable Court.



SHAWN R. MULDOWNEY



KEVIN J. REIS per phone approval



ELIZABETH M. PHILLIPS per phone approval

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Agreed Stipulations of Evidence has been forwarded by regular U.S. mail this day of March 16, 2010 to the following within named persons: Kevin J. Reis, Assistant Attorney General, 150 East Gay Street, 22nd Floor, Columbus, OH 43215; and Elizabeth M. Phillips, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, OH 44503.

A handwritten signature in black ink, appearing to read 'Shawn R. Muldowney', written over a horizontal line.

SHAWN R. MULDOWNNEY
Attorney for Relator

RECORD OF PROCEEDINGS

Claim Number: 04-829452
LT-ACC-PE-COV
PCN: 2093241 Patricia A. Rouan

Claims Heard: 04-829452

LOUIS SCHIAVONI
87 WESTCHESTER DR
YOUNGSTOWN OH 44515-3902

Date of Injury: 5/24/2004 Risk Number: 35000001-0

Request For Reconsideration filed by Injured Worker on 11/16/2009.
Issue: 1) Continuing Jurisdiction Pursuant To R.C. 4123.52
2) TEMPORARY TOTAL DISABILITY

The Injured Worker's request for reconsideration, filed 11/16/2009, from the order issued 11/12/2009, is denied for the reason that the request fails to meet the criteria of Industrial Commission Resolution R08-1-01 dated 11/01/2008.

Typed By: SR/lwg
Date Typed: 12/21/2009

The above findings and order was approved and confirmed by the majority of the members.

Gary M. DiCeglio NO
Chairperson

Jodie M. Taylor YES
Commissioner

Kevin R. Abrams YES
Commissioner

ATTESTED TO BY:

Executive Director

Findings Mailed: 01/06/2010

Signed copy contained in claim file.

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of one of the parties, please notify the Industrial Commission.

RECORD OF PROCEEDINGS

Claim Number: 04-829452

04-829452
Patricia A. Rouan
208 Morrison St
Struthers OH 44471-1720

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515-3902

Risk No: 35000001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St Ste 600
Youngstown OH 44503-1426

ID No: 4000-05
BWC - DWRP Section
30 W Spring St
Columbus OH 43215-2264

ID No: 9994-05
BWC, Law - Columbus
Attn: Director Of Legal Operations
30 W Spring St # L-26
Columbus OH 43215-2216

BWC, LAW DIRECTOR

NOTE: INJURED WORKERS, EMPLOYERS, AND THEIR AUTHORIZED REPRESENTATIVES MAY REVIEW THEIR ACTIVE CLAIMS INFORMATION THROUGH THE INDUSTRIAL COMMISSION WEB SITE AT www.ohioic.com. ONCE ON THE HOME PAGE OF THE WEB SITE, PLEASE CLICK I.C.O.N. AND FOLLOW THE INSTRUCTIONS FOR OBTAINING A PASSWORD. ONCE YOU HAVE OBTAINED A PASSWORD, YOU SHOULD BE ABLE TO ACCESS YOUR ACTIVE CLAIM(S).

THE INDUSTRIAL COMMISSION OF OHIO

PATRICIA ROUAN

Claimant

CLAIM NO: 04-829452

MAHONING COUNTY

Employer

CLAIMANT'S REQUEST FOR RECONSIDERATION

NOV 23 10 10 AM '09

NOV 23 AM 10:45

INDUSTRIAL COMMISSION

Now comes the claimant and respectfully requests that the Industrial Commission of Ohio grant her request for reconsideration of the Staff Hearing Officer order of October 19, 2009. The claimant believes that clear grounds exist for a new hearing on the basis of a mistake of law.

L. The Staff Hearing Officer clearly erred by finding that the claimant's disability retirement on February 1, 2005 negated her entitlement to future temporary total compensation.

The claimant was injured on May 24, 2004. Those injuries included closed fracture left femoral condyle; fracture left proximal tibial plateau; arthrofibrosis left knee. Based upon those conditions the claimant has been unable to work since the May 24, 2004 industrial accident. The claimant's condition was found to have reached a point of maximum medical improvement on or about May 16, 2005. Subsequently, the claim was further allowed for the additional conditions of aggravation of pre-existing arthritis left knee; and post-traumatic arthritis left knee. Based upon those newly allowed conditions and the claimant's need for a total knee replacement she filed a new motion requesting temporary total compensation from June 5, 2006 through the present and continuing. The Staff Hearing Officer denied the claimant's request for temporary total compensation

based upon a finding that she voluntarily abandoned her employment on February 1, 2005 when she took a disability retirement based upon major depression.

The claimant believes that the Staff Hearing Officer totally misapplied the law when finding that the claimant was not entitled to temporary total compensation due to her disability retirement on February 1, 2005. Firstly, the Staff Hearing Officer found that the disability retirement was due in total to the major depression. Upon thorough review of the file it is quite clear that the claimant has been unable to work since her May 24, 2004 industrial injury. Therefore, any disability would certainly flow from both the major depression as well as the physical conditions allowed in the claim. Secondly, and perhaps most importantly, the Staff Hearing Officer misapplied the appropriate legal rationale to the February 1, 2005 disability retirement.

The Staff Hearing Officer cited the case of State ex rel. Staton V. Industrial Commission (2001), 91 Ohio St. 3d 407. Staton specifically held that a claimant who vacates the workforce for non-injury reasons not related to the allowed condition and who later alleges an inability to return to the former position of employment cannot get temporary total disability. From a factual standpoint Staton clearly does not apply to this case. The claimant did not voluntarily abandon her former position of employment and then return to the workforce. The claimant has not been capable of returning to her employment since the injury on May 24, 2004.

Claimant believes that State ex rel. Pretty Products V. Industrial Commission (1996) 77 Ohio St. 3d 5 is the controlling case with regard to her eligibility for temporary total compensation. In Pretty Products the Supreme Court specifically found that temporary total compensation eligibility hinges on the timing and character of the claimant's departure. Clearly, in the instant case the claimant's application of disability

retirement in February, 2005 came at a point in time when she was not working due to the allowed conditions in the claim.

A claimant can abandon a former position of employment only if she has the physical capacity for employment at the time of the abandonment or removal. State ex rel. Brown V. Industrial Commission (1993) 68 Ohio St. 3d 45 48. At the time of the disability retirement on February 5, 2005 the claimant was not working and was not capable of working. Therefore, the issue of voluntary abandonment is not a preclusion to temporary total compensation. The Court is holding that if you are incapable of working at the time of a retirement the issue of whether or not the retirement is voluntarily in nature is not at issue. In Brown the Court specifically found that a claimant is incapable of abandoning a position that does not exist. Clearly, the claimant was incapable of abandoning her position because at the time of the disability retirement in February, 2005 she was not and had not been working since the injury occurred due to the allowed conditions in the claim.

The claimant's entitlement to disability depends upon whether or not the retirement occurred before or after the claimant became disabled. State ex rel. Chrysler V. Industrial Commission (1991) 62 Ohio St. 3d 193. The Court in Chrysler specifically held that a retirement before disability precludes future disability if the retirement was voluntary and constituted an abandonment of the entire job market. However, a claimant who retires after she is already disabled is not deemed to have voluntarily abandoned the job market thus precluding future disability benefits. State ex rel. Baker Material Handling Corp. V. Industrial Commission (1994) 69 Ohio St. 3d 202.

Based upon all of the above stated cases the Courts have consistently held that if you are disabled at the time of your retirement that retirement cannot be deemed

voluntary so as to preclude future disability benefits as one cannot abandon a position that does not exist. In the instant case the claimant had been disabled since the injury on May 24, 2004. Therefore, her disability pension, which was applied for and granted in February, 2005, cannot be used as a bar to future temporary total compensation.

II. The claimant believes that the Staff Hearing Officer further erred by finding that the employer's attempt to raise the abandonment issue was not barred by the doctrine of Ras Judicata.

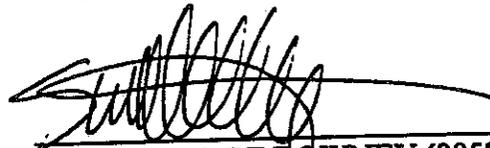
The Staff Hearing Officer specifically found that the fact that the voluntary abandonment issue was raised and argued at two separate Industrial Commission hearings did not constitute Ras Judicata and thus preclude the employer from again raising the issue at the October 19, 2009 Staff Hearing Officer hearing. The claimant believes that the Staff Hearing Officer erred by making this finding. The Staff Hearing Officer cited the case State ex rel. B.O.C. Group, General Motors Corporation, V. Industrial Commission of Ohio (1991), 58 Ohio St. 3d 199 as the basis for his conclusion.

The claimant believes that that case is factually distinguished from the instant case as the argument in B.O.C. Group was that since the employer did not raise the affirmative defense with respect to a previous period of disability that the doctrine of Ras Judicata would preclude the employer from asserting the same defense with regard to a new period of temporary total compensation. This case is easily distinguished from the facts in B.O.C. Group. The facts in B.O.C. Group specifically state that the employer did not raise the arguments at a previous hearing. Therefore, the Court held that they were not precluded from raising them at a subsequent hearing on a new period of temporary total disability. In the instant case the issue of abandonment was specifically raised and argued at a previous Staff Hearing Officer hearing on April 10, 2008.

Although the Staff Hearing Officer denied the claimant's permanent total disability application the Staff Hearing Officer did not find as the employer had requested that the claimant voluntarily abandoned her employment and, therefore, was not entitled to permanent total disability. Accordingly, the claimant believes that the employer is barred from raising the same argument at a subsequent Industrial Commission hearing.

Accordingly, based upon the above stated arguments the claimant would respectfully request a new hearing before the Full Commission based upon a clear mistake of law.

Respectfully Submitted,



SHAWN R. MULDOWNNEY (0058525)
Attorney for Plaintiff
Schiavoni, Schiavoni, Bush & Muldowney
87 Westchester Drive
Youngstown, OH 44515
(330) 799-5940
(330) 799-5998 - Fax

Attorney for Claimant

RECORD OF PROCEEDINGS

Claim Number: 04-829452
LT-ACC-PE-COV
PCN: 2091961 Patricia A. Rouan

Claims Heard: 04-829452

LOUIS SCHIAVONI
87 WESTCHESTER DR
YOUNGSTOWN OH 44515-3902

Date of Injury: 5/24/2004

Risk Number: 35000001-0

APPEAL filed by Injured Worker on 10/29/2009.
Issue: 1) Temporary Total Disability

Pursuant to the authority of the Industrial Commission under R.C. 4123.511(E), it is ordered that the Injured Worker's appeal, filed 10/29/2009, from the Staff Hearing Officer order, issued 10/22/2009, be refused and that copies of this order be mailed to all interested parties.

ANY PARTY MAY APPEAL AN ORDER OF THE COMMISSION, OTHER THAN A DECISION AS TO EXTENT OF DISABILITY, TO THE COURT OF COMMON PLEAS WITHIN SIXTY (60) DAYS AFTER RECEIPT OF THE ORDER, SUBJECT TO THE LIMITATIONS CONTAINED IN R.C. 4123.512.

Date Reviewed: 11/09/2009
Typed By: lwg
Date Typed: 11/09/2009
Findings Mailed: 11/12/2009

K. Sampson
Staff Hearing Officer

Electronically signed by
K. Sampson

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of one of the parties, please notify the Industrial Commission.

04-829452
Patricia A. Rouan
208 Morrison St
Struthers OH 44471-1720

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515-3902

Risk No: 35000001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St Ste 600
Youngstown OH 44503-1426

RECORD OF PROCEEDINGS

Claim Number: 04-829452

ID No: 4000-05
BWC - DWR Section
30 W Spring St
Columbus OH 43215-2264

ID No: 9994-05
BWC, Law - Columbus
Attn: Director Of Legal Operations
30 W Spring St # L-26
Columbus OH 43215-2216

BWC, LAW DIRECTOR

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RECORD OF PROCEEDINGS

Claim Number: 04-829452
 LT-ACC-PE-COV
 PCN: 2091961 Patricia A. Rouan

Claims Heard: 04-829452

LOUIS SCHIAVONI
 87 WESTCHESTER DR
 YOUNGSTOWN OH 44515-3902

Date of Injury: 5/24/2004

Risk Number: 35000001-0

This claim has been previously allowed for: CLOSED FRACTURE LEFT FEMORAL CONDYLE; FRACTURE LEFT PROXIMAL TIBIAL PLATEAU; ARTHROFIBROSIS LEFT KNEE; AGGRAVATION OF PRE-EXISTING ARTHRITIS LEFT KNEE; POST TRAUMATIC ARTHRITIS LEFT KNEE.

DISALLOWED: MAJOR DEPRESSION-RECURRENT, SEVERE.

This matter was heard on 10/19/2009 before Staff Hearing Officer David A. Bobovnyik pursuant to the provisions of R.C. Sections 4121.35(B) and 4123.511(D) on the following:

APPEAL of DHO order from the hearing dated 09/10/2009, filed by Employer on 09/21/2009.
 Issue: 1) Temporary Total Disability

APPEAL of DHO order from the hearing dated 09/10/2009, filed by Injured Worker on 09/23/2009.
 Issue: 1) Temporary Total Disability

Notices were mailed to the Injured Worker, the Employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than fourteen (14) days prior to this date, and the following were present for the hearing:

APPEARANCE FOR THE INJURED WORKER: Mr. Schiavoni, Ms. Rouan and friend
 APPEARANCE FOR THE EMPLOYER: Ms. Phillips
 APPEARANCE FOR THE ADMINISTRATOR: No Appearance

The order of the District Hearing Officer, of 09/15/2009, is vacated.

It is the order of the Staff Hearing Officer that the Injured Worker's C-86 Motion, of 07/08/2009, be denied.

The Staff Hearing Officer finds that the Injured Worker's C-86 Motion requests payment of temporary total disability compensation for the period beginning 06/05/2006 and continuing. The Staff Hearing Officer finds that there is no jurisdiction to consider the Injured Worker's request for temporary total disability compensation for the closed period from 06/05/2006 through 07/07/2007 inclusive, as the request for such compensation pre-dates the filing of the Injured Worker's motion of 07/08/2009 by a period in excess of two years. Pursuant to the provisions of Ohio Revised Code Section 4123.52, the Staff Hearing Officer finds that he does not have jurisdiction to proceed in this regard given the two year statute of limitations described in that code section.

The Staff Hearing Officer denies the Injured Worker's request for temporary total disability compensation for the period from 07/08/2007 through 10/19/2009 inclusive. The Staff Hearing Officer finds that the Injured Worker applied for, and received, a disability pension through the Public Employees Retirement System, effective 02/01/2005. This disability pension

RECORD OF PROCEEDINGS

Claim Number: 04-829452

was predicated exclusively upon the condition of "MAJOR DEPRESSION", a condition which is not recognized in this claim. The Injured Worker has not returned to work in any capacity since obtaining her disability pension in February 2005. Counsel for the Employer now argues that this Injured Worker's departure from the work force was for a reason not associated with the allowed conditions in this claim. As such, the Employer argues that this Injured Worker is barred from temporary total disability compensation for the period subsequent to 02/01/2005. The Staff Hearing Officer finds the Employer's argument to be with merit.

The Staff Hearing Officer concludes that this Injured Worker's departure from employment was for a reason not associated with the allowed condition in this claim and as such the Injured Worker is no longer entitled to temporary total disability compensation in this claim. In issuing this decision, the Staff Hearing Officer relies upon the holding set forth in State ex rel. Staton v. Industrial Commission (2001), 91 Ohio St.3d 407. Therein, the Ohio Supreme Court stated as follows:

For years, voluntary departure from employment was the end of the story, and harsh results sometimes followed. Claimants who left the former position of employment for a better job forfeited temporary total compensation eligibility forever after. In response, State ex rel. Baker v. Industrial Commission (2000), 89 Ohio St.3d 376, declared that voluntary departure to another job no longer barred temporary total disability. It retained, however, the prohibition against temporary total disability to claimants who voluntarily abandon the entire labor market. Thus, the claimant who vacates the work force for non-injury reasons not related to the allowed condition and who later alleges an inability to return to the former position of employment cannot get temporary total disability. This of course makes sense. One cannot credibly allege the loss of wages for which temporary total disability is meant to compensate when the practical possibility of employment no longer exists.

In this case, claimant retired from the work force in 1993. All relevant retirement documentation from his attending physician listed claimant's non-allowed heart condition and depression as the reason for departure. Appellants cite this as "some evidence" that claimant's work-force retirement was due to causes other than industrial injury, barring temporary total disability. (ID. at page 409-410: emphasis added).

Here, the evidence from the PERS disability application records submitted to the claim file, established that the Injured Worker's abandonment of her employment with this Employer of record was in fact due to the condition of "MAJOR DEPRESSION", the condition upon which the Injured Worker's PERS disability was awarded. This claim is not allowed for a major depressive condition. The Injured Worker has not returned to any position of employment subsequent to acquiring her PERS disability on 02/01/2005. Thus, the Staff Hearing Officer concludes that the Injured Worker completely abandoned the work force for reasons not associated with the allowed conditions in this claim. As in Staton, the Staff Hearing Officer concludes that the Injured Worker is not eligible for temporary total disability compensation in this claim given her above abandonment from employment through her procurement of a disability pension for conditions not associated with this claim. Accordingly, temporary total disability compensation is denied for the period from 07/08/2007 through 10/19/2009 inclusive.

In issuing this order, the Staff Hearing Officer rejects the Injured Worker's argument at hearing that the Employer is barred by the doctrine of Res Judicata from asserting the abandonment defense for this new period of temporary total disability compensation requested by the Injured Worker.

RECORD OF PROCEEDINGS

Claim Number: 04-829452

The Staff Hearing Officer rejects that contention.

The Staff Hearing Officer relies upon the holding set forth in State ex rel. B.O.C. Group, General Motors Corporation, v. Industrial Commission of Ohio (1991), 58 Ohio St.3d 199. In B.O.C. Group, the Injured Worker suffered an injury on 08/03/1981. The Injured Worker was subsequently laid off from her position of employment with the Employer of Record on October 1981. Subsequent to her layoff, the Injured Worker requested and received payment of temporary total disability for the period from 03/05/1984 through 09/30/1984, and for the period from 07/11/1985 through 07/28/1985. The Injured Worker subsequently requested payment for a new period of temporary total disability commencing 07/30/1985 through 04/10/1987, and continuing. The Employer asserted the defense that the Injured Worker's layoff precluded her receipt of temporary total disability compensation in this claim. In response, the Injured Worker's counsel argued that as the Employer of Record did not raise that affirmative defense with respect to the previous periods of compensation requested and paid, Res Judicata precludes the Employer from asserting that defense with respect to the new period of compensation requested by the Injured Worker.

In addressing this issue, the Ohio Supreme Court stated as follows:

B.O.C. urges a similar result here, asserting that the issue of claimant's earlier compensation for temporary total disability was an issue distinct from her current request. It is a point well taken. As stated in 3 Larson, workers' compensation law (1989) 15-426, 272 (99) to 15-426m 272 (100), section 79.72(f): "It is almost too obvious for comment that res judicata does not apply if the issue is claimant's physical condition or degree of disability at two entirely different times...A moments reflection would reveal that otherwise there would be no such thing as reopening for change in condition. The same would be true of any situation in which the facts are altered by a change in the time frame..."

Claimant also argues that the layoff issued has been mooted by her subsequent reinstatement by B.O.C. during this appeal. We again disagree. While her grievance and eventual reinstatement may ultimately bear on the question of whether claimant had abandoned her employment, it does not negate the layoff as a factor preventing work, unrelated to the accident, during the claimed period of disability.

Here, in the present claim, the Injured Worker's request for temporary total disability compensation is for a period separate and distinct from the prior periods of compensation previously adjudicated by the Industrial Commission. Therefore, under the holding of B.O.C. Group, the Employer's counsel retains every right to assert the affirmative defense of voluntary abandonment of the work force as a defense against payment of temporary total disability compensation for the period beginning 07/08/2007. Accordingly, for these reasons, the Injured Worker's assertion that Res Judicata bars the Employer's presentation of the abandonment of employment issue is found to be without merit.

All evidence in file was reviewed and considered.

An IC-12 Appeal from this order may be filed within fourteen (14) days of the receipt of the order. The IC-12 may be filed online at www.ohioic.com or the IC-12 may be sent to the Industrial Commission of Ohio, Youngstown District Office, 242 Federal Plaza W Ste 303, Youngstown OH 44503.

Typed By: srp
Date Typed: 10/19/2009

David A. Bobovnyik
Staff Hearing Officer

Findings Mailed: 10/22/2009

RECORD OF PROCEEDINGS

Claim Number: 04-829452

Electronically signed by
David A. Bobovnyik

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208 Morrison St
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ID No: 12489-90
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Risk No: 35000001-0
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ID No: 1672-80
Mahoning County Prosecutor
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ID No: 9994-05
BWC, Law - Columbus
Attn: Director Of Legal Operations
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BWC, LAW DIRECTOR

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Vincent J. Malkovits, D.O.

FAMILY PRACTICE

624 YOUNGSTOWN POLAND ROAD
STRUTHERS, OH 44471
TELEPHONE (330) 755-1498
FAX (330) 755-1497

October 15, 2009

Schiavoni, Schiavoni, Bush & Muldowney Co., L.P.A.
Shawn R Muldowney
Attorneys at Law
87 Westchester Drive
Youngstown, Ohio 44515

Re: Patricia Rouan
CL: #04-829452

Dear Attorney Muldowney:

It is my medical opinion that Patricia Rouan has not reached maximum medical improvement of aggravation of left knee arthritis and post traumatic arthritis of the left knee.

I have referred Mrs Rouan to Dr Michael Walker at the Cleveland Clinic Orthopedic Surgery Department for evaluation and treatment.

If you have any further questions, please feel free to contact me at my office.

Sincerely,


Vincent Malkovits, D.O.

RECORD OF PROCEEDINGS

Claim Number: 04-829452
LT-ACC-PE-COV
PCN: 2091961 Patricia A. Rouan

Claims Heard: 04-829452

LOUIS SCHIAVONI
87 WESTCHESTER DR
YOUNGSTOWN OH 44515-3902

Date of Injury: 5/24/2004

Risk Number: 35000001-0

This claim has been previously allowed for: CLOSED FRACTURE LEFT FEMORAL CONDYLE; FRACTURE LEFT PROXIMAL TIBIAL PLATEAU; ARTHROFIBROSIS LEFT KNEE; AGGRAVATION OF PRE-EXISTING ARTHRITIS LEFT KNEE; POST TRAUMATIC ARTHRITIS LEFT KNEE.

DISALLOWED: MAJOR DEPRESSION-RECURRENT, SEVERE.

This matter was heard on 09/10/2009 before District Hearing Officer B. Alex Khavari pursuant to the provisions of R.C. Sections 4121.34 and 4123.511 on the following:

C-86 Motion filed by Injured Worker on 07/08/2009
Issue: 1) Temporary Total Disability

Notices were mailed to the Injured Worker, the Employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than fourteen (14) days prior to this date and the following were present for the hearing:

APPEARANCE FOR THE INJURED WORKER: Ms. Rouan and daughter, Mr. Muldowney
APPEARANCE FOR THE EMPLOYER: Ms. Phillips
APPEARANCE FOR THE ADMINISTRATOR: No Appearance

The Injured Worker's C-86 Motion, filed 07/08/2009, is denied.

As a preliminary matter, a review of the file reveals that, prior to the filing of the motion at issue in this hearing, the last request for payment of Temporary Total Disability Compensation Benefits was filed on 03/02/2006. That application for compensation was denied, pursuant to a 05/25/2006 District Hearing Officer decision which was administratively affirmed at all levels.

Based upon the findings set forth above, the current request for payment of Temporary Total Disability Compensation Benefits for the period from 06/05/2006 through 07/07/2007 was not filed within two years of the dates of alleged disability. Accordingly, the Industrial Commission lacks jurisdiction to address the merits of the request for payment of Temporary Total Disability Compensation Benefits for the period from 06/05/2006 through 07/07/2007 in accordance with the provisions of Ohio Revised Code 4123.52.

At hearing, Counsel for the Employer raised the issue of the Injured Worker's eligibility for receipt of Temporary Total Disability Compensation Benefits, based upon the testimony presented at the 08/03/2009 hearing by the Injured Worker and the pension documents filed at this hearing which serve to establish that she has been receiving a disability pension since 07/07/2005, based upon the diagnosis of "MAJOR DEPRESSION," a condition specifically DISALLOWED in this claim. Thus, Counsel maintained that the Injured Worker was removed from the workforce for reasons unrelated to this claim, rendering any lost wages unrelated to this claim and ineligible for

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RECORD OF PROCEEDINGS

Claim Number: 04-829452

reimbursement by payments of Temporary Total Disability Compensation Benefits.

A review of the documents submitted at the hearing reveals that the Injured Worker was receiving disability retirement benefits at the time of the 05/25/2006 District Hearing Officer decision referenced above. However, a review of that decision and the 06/28/2006 Staff Hearing Officer decision which affirmed the District Hearing Officer decision provides no indication that the issue of the Injured Worker's retirement was raised as a bar to payment of Temporary Total Disability Compensation Benefits. Thus, the Employer is barred from raising this defense under the doctrine of res judicata.

As far as the medical justification for the present request for compensation, a review of the file reveals that the only medical evidence supporting the request is in the form of the 07/08/2009 C-84 report completed by Dr. Malkovitz. In section 8 of this report, the Physician of Record lists three disabling diagnoses: "FRACTURE CONDYLE, FEMORAL," "FRACTURE OF LOWER LEG," and "ARTHROFIBROSIS." In section 9 of this report, he lists the period of disability as extending from "06/05/2006" to "STILL DISABLED," with an estimated return to work date of "09/01/09." Finally, as with the 02/17/2006 C-84 report which was adjudicated in the 05/25/2006 District Hearing Officer decision, Dr. Malkovitz's 07/08/2009 C-84 is devoid of objective findings or subjective complaints.

The file contains a 06/01/2005 decision of the Administrator terminating payments of Temporary Total Disability Compensation Benefits effective 05/15/2005, based upon the 05/26/2005 C-84 report completed by Dr. Boniface, the Physician of Record at that time. In this decision the Administrator concluded that the conditions recognized in this claim at that time had achieved a level of maximum medical improvement. No Appeal was perfected from this decision. A review of the file reveals that the conditions listed in the 07/08/2009 C-84 were recognized in this claim at the time of the 06/01/2005 decision of the Administrator. Thus, the finding of maximum medical improvement included these conditions.

Based upon the facts enumerated above, the Injured Worker's request for reinstatement of Temporary Total Disability Compensation Benefits, subsequent to the prior finding of maximum medical improvement, is controlled by the test set forth by the Ohio Supreme Court in Josephson. Thus, in order to establish her eligibility to receive payments of Temporary Total Disability Compensation Benefits again, the Injured worker must establish a temporary worsening of the conditions recognized in this claim.

As an aside, evidence of temporary and total disability independently attributed to conditions recognized in this claim subsequent to the Administrator's decision regarding maximum medical improvement would serve to establish "new and changed circumstances" which would allow the Industrial Commission to address the eligibility for payment of Temporary Total Disability Compensation Benefits, pursuant to the provisions of Ohio Revised Code 4123.52, without recourse to the test in Josephson. However, given the fact that the only medical evidence supporting the Injured Worker's request is in the form of the 07/08/2009 C-84 report, which only attributes temporary and total disability to conditions previously adjudicated to have achieved a level of maximum medical improvement, the Josephson test must be employed.

In the context of determining whether the file contains medical evidence of an exacerbation of the conditions noted in the 07/08/2009 C-84 report, it is necessary to review the last set of decisions from the Industrial Commission on the issue of payment of Temporary Total Disability Compensation Benefits. Although the 05/25/2006 District Hearing Officer decision did not address the specific period over which the request for Temporary Total Disability Compensation Benefits was being denied, the 06/28/2006 Staff Hearing Officer decision clarified that compensation for

RECORD OF PROCEEDINGS

Claim Number: 04-829452

the period from "01/05/2006 through 06/28/2006" was being denied. Thus, the 07/08/2009 C-84 report which is certifying temporary total disability commencing on "06/05/2006" does not appear to be setting forth an exacerbation of the conditions noted therein. Rather, the Physician of Record is merely restating his opinion that the conditions noted in the 07/08/2009 C-84 have been rendering the Injured Worker temporarily and totally disabled since "06/05/2006" despite the conclusion set forth in the 05/25/2006 District Hearing Officer and 06/28/2006 Staff Hearing Officer decisions that these conditions had achieved a level of maximum medical improvement more than a year prior to "06/05/2006."

The conclusion noted above is further supported by a comparison of the 02/17/2006 C-84 report adjudicated in the 05/25/2006 District Hearing Officer decision and the 07/08/2009 C-84 report currently at issue. Both C-84 reports are completely devoid of objective findings or subjective complaints. Instead, in section 11 of both C-84 reports, Dr. Malkovitz merely states his opinion that his patient has not achieved a level of maximum medical improvement. As noted above, Dr. Malkovitz's medical opinion conflicts with the decisions of the Industrial Commission, without providing a basis for his disagreement. Based upon the reasoning set forth above, the Injured Worker cannot be deemed to have established her eligibility to receive payments of Temporary Total Disability Compensation Benefits under the Josephson test. Accordingly, the request for payment of Temporary Total Disability Compensation Benefits for the period from 07/08/2007 through 09/01/2009 is denied.

This decision is based upon the 06/01/2005 decision of the Administrator in this claim; the 05/26/2005 District Hearing Officer decision and 06/28/2006 Staff Hearing Officer decision in this claim; and, a review of the 02/17/2006 and 07/08/2009 C-84 reports from Dr. Malkovitz. All evidence on file with regard to this matter was reviewed and considered.

An IC-12 Appeal from this order may be filed within fourteen (14) days of the receipt of the order. The IC-12 may be filed online at www.ohioic.com or the IC-12 may be sent to the Industrial Commission of Ohio, Youngstown District Office, 242 Federal Plaza W Ste 303, Youngstown OH 44503.

Typed By: srp
Date Typed: 09/11/2009
Date Received: 07/14/2009
Notice of Contested Claim: 07/13/2009
Findings Mailed: 09/15/2009

B. Alex Khavari
District Hearing Officer

Electronically signed by
B. Alex Khavari

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of one of the parties, please notify the Industrial Commission.

04-829452
Patricia A. Rouan
208 Morrison St
Struthers OH 44471-1720

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515-3902

Risk No: 35000001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St Ste 600
Youngstown OH 44503-1426

RECORD OF PROCEEDINGS

Claim Number: 04-829452

ID No: 4000-05
BWC - DWRP Section
30 W Spring St
Columbus OH 43215-2264

ID No: 9994-05
BWC, Law - Columbus
Attn: Director Of Legal Operations
30 W Spring St # L-26
Columbus OH 43215-2216

BWC, LAW DIRECTOR

NOTE: INJURED WORKERS, EMPLOYERS, AND THEIR AUTHORIZED REPRESENTATIVES MAY REVIEW THEIR ACTIVE CLAIMS INFORMATION THROUGH THE INDUSTRIAL COMMISSION WEB SITE AT www.ohioic.com. ONCE ON THE HOME PAGE OF THE WEB SITE, PLEASE CLICK I.C.O.N. AND FOLLOW THE INSTRUCTIONS FOR OBTAINING A PASSWORD. ONCE YOU HAVE OBTAINED A PASSWORD, YOU SHOULD BE ABLE TO ACCESS YOUR ACTIVE CLAIM(S).

SEP. 11. 2009 2:29PM

DRS. BUCCINO & MALKOVITS

INSTRUCTIONS TO PHYSICIAN

- Please complete items 7 - 13, Injured worker name and claim number on this form.
- You may attach additional medical documentation such as diagnostic test results and current treatment plan to support this request.
- Failure to provide complete information may delay or suspend compensation payments to the injured worker.

Injured worker name ROUAN, PATRICIA A
Claim number 04-829452

TO BE COMPLETED BY PHYSICIAN OF RECORD

7 What was the Injured worker's position of employment at the time of injury?

Is the injured worker able to return to this position of employment? Yes No

Is the injured worker able to return to other employment including light duty, alternative work, modified work or transitional work? Yes No

Please explain, listing any restrictions that may apply. Attach additional sheet if necessary.

8 List ICD-9 Codes with narrative diagnosis(es) for allowed conditions being treated which prevent return to work 719.36 osteo arthrosis of knee	Date of last exam or treatment 07/13/2009	Next appointment date 10/06/2009
	Disability dates due to the work related injury/disease	
	From 06/05/2006	To still disabled
List ICD-9 Codes with narrative diagnosis(es) for other allowed conditions being treated _____ _____ _____	9 Return to work date 12/01/2009	<input type="checkbox"/> Actual <input checked="" type="checkbox"/> Estimated

10 The following clinical findings are the basis for my recommendations:

Objective _____ Subjective _____

11 Has the work related injury(s) or disease reached a treatment plateau at which no fundamental or physiological change can be expected despite continuing medical or rehabilitative intervention? (Maximum Medical Improvement) Yes No If yes give date _____

If no, indicate any barriers preventing normal recovery, or maximum medical improvement. Attach an additional sheet if necessary.

patient has not reached maximum medical improvement

12 Is the injured worker a candidate for vocational rehabilitation services focusing on return to work? Yes No Please explain:

PHYSICIAN OF RECORD SIGNATURE MANDATORY

I certify that the above information is correct to the best of my knowledge. I am aware that any person who knowingly makes a false statement, misrepresentation, concealment of fact or any other act of fraud to obtain payment as provided by BWC or who knowingly accepts payment to which that person is not entitled is subject to felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

13 Physician of record name V. Malkovits, D.O.	BWC provider number-mandatory 24 1712257 01		
Address PATSY BUCCINO DO INC 624 YOUNGSTOWN POLAND RD	City STRUTHERS	State OH	9-digit ZIP Code 44471-1194
Physician of record signature VINCENT MALKOVITS, DO			Telephone number (330) 755-1495
			Date 9/11/09

04-829452

BOARD OF MAHONING
COUNTY COMMISSIONERS
21 W. Boardman Street
Youngstown, Ohio 44503

RESOLUTION
RES 05-07-009

BE IT RESOLVED, that upon the recommendation of James F. Petraglia, Esq., Human Resources Director, the Board of Mahoning County Commissioners does hereby accept the retirement of Patricia Rouan from Job & Family Services.

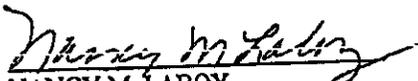
It was moved by Mr. McNally, and seconded by Mr. Ludt, that the foregoing Resolution be approved this 7th day of July, 2005.

Roll call voting resulted:	Mr. Ludt:	aye
	Mr. McNally:	aye
	Mr. Traficanti:	aye

WHEREUPON, the President of the Board declared the foregoing Resolution be duly adopted this 7th day of July, 2005.


ANTHONY T. TRAFICANTI,
PRESIDENT OF THE BOARD

ATTEST:


NANCY M. LABOY,
CLERK OF THE BOARD

JR. VOL. 93, PAGE 465

cc: Human Resources

RECEIVED
Industrial Commission of Ohio
SEP 10 2009
YOUNGSTOWN DISTRICT
OFFICE

As Clerk of the Board of Mahoning County Commissioners, State of Ohio, I hereby certify that this is a true and correct copy of the original now on file in the Mahoning County Commissioners Office. *MLB* CERTIFIED COPY.

RECORD OF PROCEEDINGS

Claim Number: 04-829452
LT-ACC-PE-COV
PCN: 2082521 Patricia A. Rouan

Claims Heard: 04-829452

LOUIS SCHIAVONI
87 WESTCHESTER DR
YOUNGSTOWN OH 44515-3902



Date of Injury: 5/24/2004

Risk Number: 35000001-0

This claim has been previously allowed for: CLOSED FRACTURE LEFT FEMORAL CONDYLE; FRACTURE LEFT PROXIMAL TIBIAL PLATEAU; ARTHROFIBROSIS LEFT KNEE; AGGRAVATION OF PRE-EXISTING ARTHRITIS LEFT KNEE; POST TRAUMATIC ARTHRITIS LEFT KNEE. DISALLOWED FOR: MAJOR DEPRESSION-RECURRENT, SEVERE.

This matter was heard on 08/03/2009 before District Hearing Officer B. Alex Khavari pursuant to the provisions of R.C. Sections 4121.34 and 4123.511 on the following:

APPEAL filed by Employer on 09/04/2008 from the order of the Administrator issued 08/19/2008.

Issue: 1) Additional Allowance - POST TRAUMATIC ARTHRITIS LEFT KNEE
2) Aggravation Of Pre-Existing Condition - ARTHRITIS LEFT KNEE

Notices were mailed to the Injured Worker, the Employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than fourteen (14) days prior to this date, and the following were present at the hearing:

APPEARANCE FOR THE INJURED WORKER: Mr. Muldowney
APPEARANCE FOR THE EMPLOYER: Ms. Phillips
APPEARANCE FOR THE ADMINISTRATOR: No Appearance

The order of the Administrator, issued 08/19/2008, is vacated.

The Injured Worker's motion, filed 07/31/2008, is granted to the following extent:

The conditions "POST-TRAUMATIC ARTHRITIS, LEFT KNEE" and "AGGRAVATION OF PRE-EXISTING ARTHRITIS, LEFT KNEE" are hereby recognized in this claim. The preponderance of the medical evidence on file serves to establish that the former condition developed as a side-effect of the conditions previously recognized in this claim and that the 05/24/2004 industrial injury resulted in an aggravation of the Injured Worker's pre-existing degenerative left knee condition.

This decision is based upon the 08/18/2008 report from Dr. Rutherford. All evidence on file with regard to this matter was reviewed and considered.

An IC-12 Appeal from this order may be filed within fourteen (14) days of the receipt of the order. The IC-12 may be filed online at www.ohioic.com or the IC-12 may be sent to the Industrial Commission of Ohio, Youngstown District Office, 242 Federal Plaza W Ste 303, Youngstown OH 44503.

RECORD OF PROCEEDINGS

Claim Number: 04-829452

Typed By: dd
Date Typed: 08/03/2009
Date Received: 09/06/2008
Findings Mailed: 08/05/2009

B. Alex Khavari
District Hearing Officer

Electronically signed by
B. Alex Khavari

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of one of the parties, please notify the Industrial Commission.

04-829452
Patricia A. Rouan
208 Morrison St
Struthers OH 44471-1720

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515-3902

Risk No: 35000001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St Ste 600
Youngstown OH 44503-1426

ID No: 4000-05
BWC - DWRP Section
30 W Spring St
Columbus OH 43215-2264

ID No: 9994-05
BWC, Law - Columbus
Attn: Director Of Legal Operations
30 W Spring St # L-26
Columbus OH 43215-2216

BWC, LAW DIRECTOR

NOTE: INJURED WORKERS, EMPLOYERS, AND THEIR AUTHORIZED REPRESENTATIVES MAY REVIEW THEIR ACTIVE CLAIMS INFORMATION THROUGH THE INDUSTRIAL COMMISSION WEB SITE AT www.ohioic.com. ONCE ON THE HOME PAGE OF THE WEB SITE, PLEASE CLICK I.C.O.N. AND FOLLOW THE INSTRUCTIONS FOR OBTAINING A PASSWORD. ONCE YOU HAVE OBTAINED A PASSWORD, YOU SHOULD BE ABLE TO ACCESS YOUR ACTIVE CLAIM(S).

JUL 13 2009 4:09PM DR. BUCCINO & MALKOVITS

NO. 382 P. 2



Physician's Request for Medical Service or Recommendation for Additional Conditions for Industrial Injury or Occupational Disease

FAX NOTE:

To	From
Toll-free phone number	Phone number (330) 753-1495
Toll-free fax number	Fax number (330) 753-1497

Instructions for completing C-9 on the reverse side

YOUNG B7/23/2009

Injured worker name ROUAN, PATRICIA A	Claim Number 04-829452	Did I claim number withdrawn 302545047	Date of injury 5/26/2004
---	----------------------------------	--	------------------------------------

Treating diagnosis ICD-9 code (s)	Date Service Begins	Date Service Ends	Date of last exam or treatment
821.21 823.80 719.56 715.36			
Requested Services			
1. consultation with Dr Michael Walker Cleveland Clinic Foundation Orthopaedic Dept			
2. Cleveland, Ohio			
3.			
4.			

If you are recommending additional conditions to the claim, supporting documentation is required. Provide diagnosis and ICD-9 code (s), and location and site for conditions you are requesting.

In your opinion, based on the history from the injured worker, your clinical evaluation and expertise, is the diagnosis or condition causally related, either directly or proximately, to the alleged industrial accident or exposure? Yes, please explain No, please explain

Check if physician of record. I certify that the above information is correct to the best of my knowledge. I am aware that any person who knowingly makes a false statement, misrepresentation, concealment of fact or any other act of fraud to obtain payment as provided by BWC or who knowingly accepts payment to which that person is not entitled, is subject to felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine, imprisonment, or both.

Physician/Provider Name and Address (Please print, type, or stamp)
VINCENT J. MALKOVITS
PATSY BUCCINO DO DMC
624 YOUNGSTOWN POLAND RD
STROTHERS, OH 44471

Physician/Provider/Assistant signature (mandatory)
[Signature]

Date (m/d/y) (mandatory)
7/13/09

APPROVED WITH DISCLAIMER - This medical payment authorization is based upon a claim or additional condition that is currently being considered by BWC as of the date of the MCO's signature. If the claim or additional condition is ultimately determined, the services/supplies to which this medical payment authorization applies may not be covered by BWC and may be the responsibility of the injured worker.

Approved Date service begins **10/2/09** Date service ends **11/2/09**

Amended approval

Denied Explanation: **Consent w/ a BWC Certified Provider**

Deposits to the decision may be filed in writing with supporting documentation to the MCO.

Pending: The documentation requested must be submitted to the MCO case manager within 10 business days to allow for a treatment decision. Failure to respond may result in denial.

Dismissed (Claim inactive - no supporting evidence): The issue will be reconsidered upon resubmission of C-9 with current supporting medical evidence. This decision cannot be appealed.

Claim inactive (MCO cannot make a decision on this request, further investigation required): A decision will be issued in writing by BWC within 30 days.

Withdrawn Dismissed: **#0927500006A**

BWC claim status: Allowed Denied Pending List Allowed ICD-9-code (s) **821.21, 823.80, 719.56**

CareWorks of Ohio 10010
P.O. Box 182726
Columbus, OH 43218-2726
Fax (614)760-3802
1-888-627-7586 EXT **383**

MCO name and signature (please print, type, or stamp)
Ronda Plocher

MCO number Telephone number Date
1111111111 **10/2/09**

to the submitting physician within 10 days of receipt of the authorization for treatment.

Pursuant to Ohio Administrative Code 4123-6-16 (A), the employee, employer, their authorized representative, or the provider may appeal this decision in writing within fourteen (14) days of receipt of the decision. CC-EOR TPA BWC FOR IW AOR

Services are limited to CPT/HCPC codes as covered by BWC at the time of initial charges or Ohio BWC fee schedule with clinical coding updated based on CPT and Medicare guidelines of current coding for reimbursement purposes. If applicable, an addendum program will be implemented only if payment is allowed based on BWC clinical coding and reimbursement policy and any payment for an incident program to not applicable through the ADR process. Services must be completed by a BWC certified provider under BWC network facility.



MOTION

INSTRUCTIONS:

- This form is to be used by the injured worker or employer and/or their authorized representatives to request a decision by the Bureau of Workers' Compensation or the Industrial Commission that cannot be accomplished through any other form or application.
- This form is **NOT TO BE USED BY HEALTH CARE PROVIDERS OR MANAGED CARE ORGANIZATIONS**. Health Care Providers or Managed Care Organizations must use form C-9, *Physician's Request for Medical Service or Recommendation for Additional Conditions for Industrial Injury or Occupational Disease*.
- Proof must be submitted with this form.
- The applicant must mail a copy of the Motion to the opposite party and/or their authorized representative and shall indicate that a copy has been mailed by signing Certificate of Service below.

Injured worker name Patricia Rouan		Claim number 04-829452	
Street address 208 Morrison Street	City Struthers	State OH	9-digit ZIP Code 44471

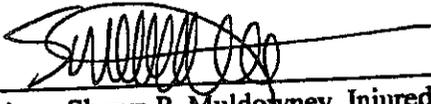
This MOTION is a request to consider the following:

Now comes the claimant and respectfully requests that temporary total compensation be paid from June 5, 2006 through the present and continuing.

In support of this MOTION, the following evidence is included: (identify affidavits, medical records or other documents)

C-84 of Dr. Malkovits.

CERTIFICATE OF SERVICE: I certify that I have served a copy of this Motion on all parties and representatives to the claim.

Signed 
Atty. Shawn R. Muldowney, Injured Worker's Representative

Date signed July 8, 2009

Injured worker

Employer

Authorized Representative

CEO/Administrator of Bureau of Workers' Compensation

Distribution: Original -- Claim File Copies -- as needed

INSTRUCTIONS TO PHYSICIAN

- Please complete items 7 - 13, injured worker name and claim number on this form.
- You may attach additional medical documentation such as diagnostic test results and current treatment plan to support this request.
- Failure to provide complete information may delay or suspend compensation payments to the injured worker.

Injured worker name ROUAN, PATRICIA A
Claim number 04-829452

TO BE COMPLETED BY PHYSICIAN OF RECORD

What was the injured worker's position of employment at the time of injury?

7 Is the injured worker able to return to this position of employment? Yes No

Is the injured worker able to return to other employment including light duty, alternative work, modified work or transitional work? Yes No

Please explain, listing any restrictions that may apply. Attach additional sheet if necessary.

8	List ICD-9 Codes with narrative diagnosis(es) for allowed conditions being treated which prevent return to work					
	<table border="1"> <tr><td>821.21</td><td>FRACTURE CONDYLE, FEMORAL</td></tr> <tr><td>823.80</td><td>FRACTURE OF LOWER LEG</td></tr> <tr><td>719.56</td><td>ARTHROFIBROSIS</td></tr> </table>	821.21	FRACTURE CONDYLE, FEMORAL	823.80	FRACTURE OF LOWER LEG	719.56
821.21	FRACTURE CONDYLE, FEMORAL					
823.80	FRACTURE OF LOWER LEG					
719.56	ARTHROFIBROSIS					
9	List ICD-9 Codes with narrative diagnosis(es) for other allowed conditions being treated					
	<table border="1"> <tr><td>715.36</td><td>OSTEOARTHROSIS OF KNEE</td></tr> <tr><td>716.16</td><td>TRAUMATIC ARTHROPATHY KNEE</td></tr> </table>	715.36	OSTEOARTHROSIS OF KNEE	716.16	TRAUMATIC ARTHROPATHY KNEE	
715.36	OSTEOARTHROSIS OF KNEE					
716.16	TRAUMATIC ARTHROPATHY KNEE					

Date of last exam or treatment 03/29/09	Next appointment date 07/13/2000
Disability dates due to the work related injury/disease	
From 06/05/2006	To STILL DISABLED
Return to work date 09/01/2009	<input type="checkbox"/> Actual <input checked="" type="checkbox"/> Estimated

10 The following clinical findings are the basis for my recommendations:

Objective _____ Subjective _____

11 Has the work related injury(s) or disease reached a treatment plateau at which no fundamental or physiological change can be expected despite continuing medical or rehabilitative intervention? (Maximum Medical Improvement) Yes No If yes give date _____

If no, indicate any barriers preventing normal recovery, or maximum medical improvement. Attach an additional sheet if necessary.

PATIENT HAS NOT REACHED MAXIMUM MEDICAL IMPROVEMENT

12 Is the injured worker a candidate for vocational rehabilitation services focusing on return to work? Yes No Please explain:

PHYSICIAN OF RECORD SIGNATURE MANDATORY

I certify that the above information is correct to the best of my knowledge. I am aware that any person who knowingly makes a false statement, misrepresentation, concealment of fact or any other act of fraud to obtain payment as provided by BWC or who knowingly accepts payment to which that person is not entitled is subject to felony criminal prosecution and may, under appropriate criminal provisions, be punished by a fine or imprisonment or both.

13	Physician of record name VINCENT J. MALKOVITS		BWC provider number-mandatory 34 1712257 01	
	Address PATSY BUCCINO DO INC 624 YOUNGSTOWN POLAND RD	City STRUTHERS	State OH	9-digit ZIP Code 44471-1194
Physician of record signature 				Telephone number (330) 755-1495
				Date 7/8/09

YOUNGSTOWN SERVICE OFFICE
242 FEDERAL PLZ W STE 200
YOUNGSTOWN OH 44503-1210

BWC

Better Workers' Compensation

Built with you in mind.

Ted Strickland
Governor

ohiobwc.com

Marsha P. Ryan
Administrator/CEO

1-800-OHIOBWC

BWC ORDER

08/19/2008

#BWNFVSQ
#LR84932831045203#

LOUIS SCHIAVONI
87 WESTCHESTER DR
YOUNGSTOWN OH 44515-3902

**COPY
ORDER**

Below is a copy of the letter sent to:

08/19/2008

Date Mailed

PATRICIA A ROUAN
208 MORRISON ST
STRUTHERS OH 44471-1720

Injured worker: PATRICIA A ROUAN
Claim number: 04-829452
Injury date: 05/24/2004
Claim type: Accident
Employer's name: MAHONING COUNTY
Policy number: 35000001-0
Manual number: 9430

The claim has been PREVIOUSLY ALLOWED for the following medical condition(s):

ICD	Description	Body location	Part of body
821.21	FX FEMORAL CONDYLE-CLOSE	LEFT	
823.80	FX TIBIA NEG-CLOSED	LEFT	
719.56	ARTHRITIS LEFT KNEE	LEFT	

The Ohio Bureau of Workers' Compensation (BWC) has made the following decision:

The Motion (C-86) filed on 07/31/2008 by the injured worker is granted.

The claim is being ADDITIONALLY ALLOWED for the following medical condition(s):

ICD	Description	Body location	Part of body
715.36	AGG PRE-EX ARTHRITIS LEFT KNEE	LEFT	
716.16	POST-TRAUMATIC ARTHRITIS LT KNEE	LEFT	

Medical benefits will be paid in accordance with the Ohio Bureau of Workers' Compensation (BWC) rules and guidelines. The injured worker is encouraged to forward the information above to all health-care providers related to this claim.

This decision is based on:

AUG 20 2008

BWC ORDER

Page 24



Ted Strickland
Governor
ohiohwc.com

Marsha P. Ryan
Administrator/CEO
1-800-OHIOBWC

BWC ORDER

the medical review performed on 8/18/08 by James H. Rutherford, M.D.

Ohio law requires that BWC allow the injured worker or employer 14 days from the receipt of this order to file an appeal. If the injured worker and employer agree with this decision, the 14-day appeal period may be waived. Both parties may submit a signed waiver of appeal to BWC. The Request for Waiver of Appeal (C-108) is available through your local service office. Or you can log on to www.ohiohwc.com, select Injured worker, then click on Forms.

If the injured worker or the employer disagrees with this decision, either may file an appeal within 14 days of receipt of this order. Appeals are filed with the Industrial Commission of Ohio (IC), either via the internet at www.ohioic.com or at the following IC office:

IC YOUNGSTOWN DISTRICT OFFICE
242 FEDERAL PLAZA W. SUITE 308
YOUNGSTOWN OH 44503-1206

If there are any further questions concerning this decision, contact the claims service specialist listed below.

THIS DECISION BECOMES FINAL IF A WRITTEN APPEAL IS NOT RECEIVED WITHIN 14 DAYS OF RECEIVING THIS NOTICE.

KIMBERLY D
YOUNGSTOWN SERVICE OFFICE
242 FEDERAL PLZ W STE 200
YOUNGSTOWN OH 44503-1210

Team Number: 06
Phone Number: (330) 797-5034
Fax Number: (866) 457-0596

Claim number: 04-829452

CC:
MAHONING COUNTY
LOUIS SCHIAVONI
MAHONING COUNTY PROSECUTORS OFC

Attachments:
Medco-21

BWC ORDER



BWC ORDER



PHYSICIAN REVIEW

Service Office Youngstown	Claim Number: 04-829452
Injured worker's name: Patricia Rouan	Date of Injury: 05-24-04
Allowed conditions: CLOSED FRACTURE LEFT FEMORAL CONDYLE, CLOSED FRACTURE LEFT TIBIA, ARTHROFIBROSIS LEFT KNEE.	

The attached claim is being referred to you on 08-11-08 by Chuck G.

PHYSICIAN'S NARRATIVE

Analysis:

The medical records indicate the date of injury was May 24, 2004. The medical records include a report, dated April 17, 2007, which described Ms. Rouan as being 52 years old. The history stated that, at the time of the injury, she tripped over a lap-top and fell, sustaining a closed fracture of the distal left femur and the proximal lateral tibial plateau. She was admitted to the hospital and had an open reduction internal fixation of the left distal femur. She had the hardware removed approximately five months after the surgery. She underwent manipulation under anesthesia of the left knee because of stiffness and pain. She continued to complain of pain and instability and significant dysfunction regarding her left knee. She had not been able to return to work because her job required a fair amount of walking and stair climbing. She had a history of seizure disorders. She described the pain in her left knee as 9 on a scale of 10. She was employed as a home day care inspector and worked for the County and the State of Ohio. X-rays were taken, which showed tricompartmental osteoarthritis of the left knee involving predominantly the patellofemoral component and the lateral component. There was artifact in the distal left femur consistent with the hardware removal sites. Dr. Walker gave the opinion on reading the MRI that there was loss of the anterior cruciate ligament. He described tricompartmental osteoarthritic changes throughout the knee of a fairly significant nature. The anterior horn of the lateral meniscus showed some degenerative changes and there were subtle changes consistent with a tear of the medial meniscus. There was full extension, with 130° of flexion of the left knee. There was a mildly positive anterior drawer sign. There was no significant effusion. The diagnosis was osteoarthritis of the left knee. Dr. Walker gave the opinion that this was brought on as a result of the traumatic injury almost three years ago. He thought that the only solution to benefit this woman would be a total left knee reconstruction. He did not believe that arthroscopic surgery would be of any value.

Conclusion:

The opinions are given with a reasonable degree of medical probability. I have reviewed all of the available medical records and accept the clinical findings of the examining physicians in regard to the allowed conditions in this claim as described in the medical records. The Official Disability Guidelines, 2008 Edition is also used as reference. The Miller criteria were applied to all responses.

Questions:

Based on your review of the medical documentation and consideration of the history of the industrial

August 18, 2008
Patricia Rouan
04-828452
Page 2 of 2

injury, please give your opinion, based on a reasonable degree of medical probability, the following:

(1) Does IW suffer from the condition of AGGRAVATION PRE-EXISTING ARTHRITIS LEFT KNEE AND POST TRAUMATIC ARTHRITIS LEFT KNEE? Yes. A CT scan, done on May 24, 2004, showed a fracture line through the intracondylar fossa extending to the medial condyle. There was a depressed fracture of the posterior aspect of the lateral plateau of the proximal tibia near the mid-point. There were scattered degenerative changes. There was narrowing of the patellofemoral joints faced with joint effusion. This would indicate that the patient did have some pre-existing degenerative change of the left knee, but the majority of her problems, at the present time, are due to post-traumatic arthritis of the left knee with the fractures extending into the knee joint.

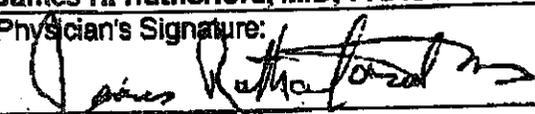
(2) Which if any of the condition(s) referenced in #1 above were:

(A) Directly caused by the industrial injury - None

(B) Aggravated by the industrial injury - It is my opinion that only the "aggravation of the pre-existing arthritis of the left knee" should be considered as an aggravation or pre-existing condition.

or

(C) Caused by a flow-through from the industrial injury? It is my opinion that the condition of post-traumatic arthritis of the left knee should be considered as a flow-through condition from the claim allowances, which include fractures, which extended into the knee joint. **Did a condition recognized in the claim cause the requested condition to be aggravated or occur?** Yes. The current claim allowances caused an aggravation of the pre-existing arthritis of the left knee and as a flow-through condition post-traumatic arthritis of the left knee. **Please discuss the mechanism of injury in your response.** See the history above. At the time of her injury, Ms. Rouan tripped over a lap-top and fell onto her left knee.

Physician's Name James H. Rutherford, M.D., FAAQS.	Date August 18, 2008	Time
Physician's Signature: 		

PHYSICIAN REVIEW

BWC 2021 (Rev. 12/92)
MEDCO-21



MOTION

INSTRUCTIONS:

- This form is to be used by the injured worker or employer and/or their authorized representatives to request a decision by the Bureau of Workers' Compensation or the Industrial Commission that cannot be accomplished through any other form or application.
- This form is **NOT TO BE USED BY HEALTH CARE PROVIDERS OR MANAGED CARE ORGANIZATIONS**. Health Care Providers or Managed Care Organizations must use form C-9, *Physician's Request for Medical Service or Recommendation for Additional Conditions for Industrial Injury or Occupational Disease*.
- Proof must be submitted with this form.
- The applicant must mail a copy of the Motion to the opposite party and/or their authorized representative and shall indicate that a copy has been mailed by signing Certificate of Service below.

Injured worker name Patricia Rouan		Claim number 04-829452	
Street address 208 Morrison Street	City Struthers	State OH	9-digit ZIP Code 44471

This MOTION is a request to consider the following:

Now comes the claimant and respectfully requests that her claim be amended to include aggravation of pre-existing arthritis left knee; and post-traumatic arthritis left knee.

In support of this MOTION, the following evidence is included: (identify affidavits, medical records or other documents)

Report and office notes of Dr. Raymond Boniface.

CERTIFICATE OF SERVICE: I certify that I have served a copy of this Motion on all parties and representatives to the claim.

Signed 
 Atty. Shawn R. Muldowney, Injured Worker's Representative

Date signed July 28, 2008

- Injured worker
 Employer
 Authorized Representative
 CEO/Administrator of Bureau of Workers' Compensation

Distribution: Original - Claim File Copies - as needed

BONIFACE ORTHOPAEDICS, INC.

835 MCKAY COURT
SUITE 100
BOARDMAN, OHIO 44512

RAYMOND J. BONIFACE, M.D.
THOMAS S. BONIFACE, M.D.
JAMES E. BONIFACE, M.D.

July 17, 2008

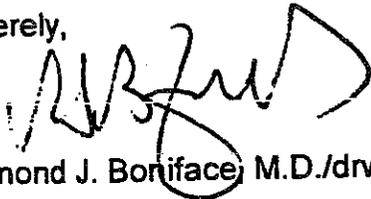
Attorney Shawn Muldowney
87 Westchester Dr.
Youngstown, OH 44515

Re: Patricia Rouan

Dear Mr. Muldowney:

In response to your letter of June 25, 2008, detailed evaluation is as reflected in my office note from May 16, 2005. In addendum, I would note that Patricia Rouan did have evidence of osteoarthritis in the left knee that pre-existed her knee injury of May 24, 2004, however industrial injury did aggravate the underlying arthritis with additional post-traumatic arthritis that is directly related to the injury of May 24, 2004.

Sincerely,



Raymond J. Boniface, M.D./drw

cc: Copy of written addendum office note

JUL 26 2008

Patricia Rouan
05/16/2005

04-829452

Since last seen, she went to the emergency room because of knee pain, had an injection of pain medication. She says she is doing her exercises at home. Continues to use a knee brace and a cane.

On examination of the knee, there is no effusion. She is apprehensive and guarding, as usual. She is able to straight leg raise with a weak effort. Only able to tolerate flexion to about 80 degrees while supine, limited, at least in part, by her guarding.

MRI of the left knee showed post-traumatic fracture changes and significant patellofemoral degenerative changes, but no meniscal tear or other surgical pathology.

B She has been treated by Dr. Toth in the past for arthritis. Took a medication that may have been Ultram. Suggest that in place of her ibuprofen, she may try Voltaren 75 mg b.i.d. with meals and GI precautions.

She had an independent medical evaluation that agreed with the allowed diagnosis of arthrofibrosis and agreed with the treatment to date. He also agreed with my opinion that having completed her most recent therapy without change, that she is now at maximum medical improvement.

A functional capacity evaluation was suggested by the IME and this will be pursued with Dr. Heldman to see whether she is employable in another position.

I discussed with Patricia, as I have in the past, that the only remaining procedure that could be applicable would be a total knee replacement. However, the level of her arthritis in the medial and lateral compartments is not of appropriate severity, and given her difficulty with rehabilitation issues, I would be concerned that she would not have a satisfactory result.

In summary, it is ~~not~~ my opinion that knee replacement is indicated at this time.

A new brace was fitted since her old one is worn. I recommended that she try the Voltaren and that for further medication, she should discuss with either her family doctor or Dr. Toth. Since I have no other treatment to recommend at this time, she will follow up as needed.

Raymond J. Boniface, MD

cc: Dr. Heldman

RECORD OF PROCEEDINGS

Claim Number: 04-829452
LT-ACC-PE-COV
PCN: 2072891 Patricia A. Rouan

Claims Heard: 04-829452

LOUIS SCHIAVONI
87 WESTCHESTER DR
YOUNGSTOWN OH 44515-3902

Date of Injury: 5/24/2004

Risk Number: 35000001-0

This matter was heard on 04/10/2008, before Staff Hearing Officer Debra J. McKinney, pursuant to the provisions of Ohio Revised Code Section 4121.35(B)(1) on:

IC-2 App For Compensation Of Permanent Total Disability filed by Injured Worker on 10/16/2007.
Issue: 1) Permanent Total Disability

Notices were mailed to the injured worker, the employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date, and the following were present at the hearing:

APPEARANCE FOR THE INJURED WORKER: Injured Worker and Muldowney
APPEARANCE FOR THE EMPLOYER: Phillips
APPEARANCE FOR THE ADMINISTRATOR: N/A

It is the finding of the Staff Hearing Officer that this claim has been allowed for: CLOSED FRACTURE LEFT FEMORAL CONDYLE; FRACTURE LEFT PROXIMAL TIBIAL PLATEAU; ARTHROFIBROSIS LEFT KNEE.
DISALLOWED FOR: MAJOR DEPRESSION-RECURRENT, SEVERE.

After full consideration of the issue, it is the order of the Staff Hearing Officer that the Injured Worker's IC-2 Application filed 10/16/2007, for Permanent and Total Disability Compensation, is denied. The Staff Hearing Officer finds that the injured worker is capable of performing sustained remunerative employment.

This decision is based on Dr. Flanagan's 2/5/2008 narrative report and physical strength rating report, Dr. Yarab's 11/19/2007 report as well as an analysis of the injured worker's non-medical disability factors.

Dr. Flanagan, who examined the injured worker on 1/30/2008 for the allowed conditions, indicated that the injured worker has reached maximum medical improvement for each of the allowed conditions. Dr. Flanagan further indicated in the physical strength rating report that the injured worker is capable of performing sedentary work. Sedentary work means exerting up to ten pounds of force occasionally (occasionally: activity or condition exists up to one-third of the time) and/or negligible amount of force frequently (frequently: activity or condition exists one-third to two-third of the time) to lift, carry, push, pull, or otherwise move objects. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met. Dr. Flanagan also opined that the injured worker has a 22% whole-person permanent partial impairment with respect to the allowed conditions.

RECORD OF PROCEEDINGS

Claim Number: 04-829452

Dr. Yarab, who examined the injured worker on 11/19/2007 for the allowed conditions, indicated in the 11/19/2007 narrative report that the injured worker is capable of performing sedentary to light work. The parameters of sedentary work have been set forth in the previous paragraph. Light work means exerting up to twenty pounds of force occasionally, and/or up to ten pounds of force frequently, and/or a negligible amount of force constantly (constantly: activity or condition exists two-thirds or more of the time) to move objects. Physical demands may be only a negligible amount, a job should be rated light work (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling or arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible. Dr. Yarab also opined that the injured worker has an 8% whole person permanent partial impairment with respect to the allowed conditions.

Therefore, based upon the opinions of Dr. Flanagan and Dr. Yarab, who examined the injured worker for all of the allowed conditions of the claim, the Staff Hearing Officer concludes that the injured worker is capable of performing some sustained remunerative employment. Thus, an analysis of the injured worker's non-medical disability factors is necessary.

The injured worker is 53 years of age and has a high school education with some college. Per the injured worker's IC-2 application signed by the injured worker on 8/21/2007, the Staff Hearing Officer finds that the injured worker has indicated that she is able to read, write, and do basic math. Also, pursuant to the injured worker's IC-2 application, the injured worker's work history consisted of the following job. From 1986 through 2004, the injured worker worked as a social worker in the Social Services field.

The Staff Hearing Officer finds that the injured worker is 53 years of age, which is considered to be a person of middle age. In analyzing this factor, the Staff Hearing Officer finds that this is a positive factor in the injured worker's potential for re-employment. The Staff Hearing Officer finds that the injured worker has approximately 12 years in the work force predicated upon an average retirement age of 65 years of age.

The Staff Hearing Officer finds that the injured worker's education is also a positive factor in her potential for re-employment. The Staff Hearing Officer finds that the injured worker obtained a high school education from Struthers High School in 1972. In addition, the injured worker's attended Penn-Ohio College and received some courses in business administration based upon her testimony at hearing. The injured worker indicated that she did not receive her degree based upon her testimony at hearing. The Staff Hearing Officer finds that this level of education provides the injured worker with the necessary skills to obtain basic, entry-level work.

The Staff Hearing Officer also finds that the injured worker's work experience is a positive factor in her potential for re-employment. The injured worker worked as a home day care inspector (social worker) for Social Services. Although, the injured worker is unable to return to this former position of employment, this work experience provided her with decision making skills and interpersonal skills that would be beneficial in other areas of employment. In addition, the Staff Hearing Officer finds that the injured worker has a strong work record based upon her length of employment with Social Services from 1986 through 2004. Based upon these positive work characteristics, the Staff Hearing Officer finds that the injured worker's work experience is a positive factor.

The Staff Hearing Officer finds that all of the injured worker's non-medical disability factors are positive in her potential for re-employment. Therefore, the Staff Hearing Officer finds that the injured worker can perform or can be retrained to perform other occupations based

RECORD OF PROCEEDINGS

Claim Number: 04-829452

upon these positive non-medical disability factors. The Staff Hearing Officer concludes that the injured worker's non-medical disability factors favor re-employment.

Therefore, based upon the report of Dr. Flanagan, which indicated the injured worker can perform sedentary work, Dr. Yarab's 11/19/2007 report, which indicated that the injured worker can perform sedentary to light work, and the overall positive analysis of the injured worker's non-medical disability factors, the Staff Hearing Officer finds that the injured worker is capable of performing sustained remunerative employment and is not permanently and totally disabled.

All evidence contained in the record has been reviewed and considered.

Typed By: ph
Date Typed: 04/11/2008
Date Received: 10/16/2007
Findings Mailed: 04/16/2008

Debra J. McKinney
Staff Hearing Officer

Electronically signed by
Debra J. McKinney

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of either the injured worker or employer, please notify the Industrial Commission.

04-829452
Patricia A. Rouan
208 Morrison St
Struthers OH 44471-1720

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515-3902

Risk No: 35000001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St Ste 600
Youngstown OH 44503-1426

ID No: 4000-05
BWC - DWRP Section
30 W Spring St
Columbus OH 43215-2264

BWC, LAW DIRECTOR

NOTE: INJURED WORKERS, EMPLOYERS, AND THEIR AUTHORIZED REPRESENTATIVES MAY REVIEW THEIR ACTIVE CLAIMS INFORMATION THROUGH THE INDUSTRIAL COMMISSION WEB SITE AT www.ohioic.com. ONCE ON THE HOME PAGE OF THE WEB SITE, PLEASE CLICK I.C.O.N. AND FOLLOW THE INSTRUCTIONS FOR OBTAINING A PASSWORD. ONCE YOU HAVE OBTAINED A PASSWORD, YOU SHOULD BE ABLE TO ACCESS YOUR ACTIVE CLAIM(S).

The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 04-829452
LT-ACC-PE-COV
PCN: 2061151 Patricia A. Rouan

Claims Heard: 04-829452

LOUIS SCHIAVONI
87 WESTCHESTER DR
YOUNGSTOWN OH 44515

Date of Injury: 5/24/2004

Risk Number: 3500001-0

APPEAL filed by Injured Worker on 07/10/2006.
Issue: 1) Request For Temporary Total

Pursuant to the authority of the Industrial Commission under Ohio Revised Code 4123.511(E), it is ordered that the Appeal filed 07/10/2006 by the Injured Worker from the order issued 07/05/2006 by the Staff Hearing Officer be refused and that copies of this order be mailed to all interested parties.

ANY PARTY MAY APPEAL AN ORDER OF THE COMMISSION, OTHER THAN A DECISION AS TO EXTENT OF DISABILITY, TO THE COURT OF COMMON PLEAS WITHIN 60 DAYS AFTER RECEIPT OF THE ORDER, SUBJECT TO THE LIMITATIONS CONTAINED IN OHIO REVISED CODE 4123.512.

Date Reviewed: 07/14/2006
Typed By: bb
Date Typed: 07/14/2006
Findings Mailed: 07/18/2006

J. Krumenacker
Staff Hearing Officer

Electronically signed by
J. Krumenacker

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of either the injured worker or employer, please notify the Industrial Commission.

04-829452
Patricia A. Rouan
136 Morrison St
Struthers OH 44471-1707

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515

Risk No: 35000001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St - Suite 600
Youngstown OH 44503-1426

JUL 21 2006

BWC, LAW DIRECTOR

SHREFUSE

bb/bbte

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The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 04-829452
 LT-ACC-PE-COV
 PCN: 2061151 Patricia A. Rouan

Claims Heard: 04-829452

FINDINGS

JUL 05 2006

MAILED

PATRICIA A. ROUAN
 136 MORRISON ST
 STRUTHERS OH 44471-1707

Date of Injury: 5/24/2004

Risk Number: 35000001-0

This claim has been previously allowed for: FRACTURE FEMORAL
 CONDYLE-CLOSED, LEFT; PROXIMAL TIBIAL PLATEAU FRACTURE, LEFT;
 ARTHROFIBROSIS OF THE LEFT KNEE. DISALLOWED: MAJOR DEPRESSION, RECURRENT
 SEVERE.

This matter was heard on 06/28/2006 before Staff Hearing Officer C. Hudzik
 pursuant to the provisions of Ohio Revised Code Section 4121.35(B) and
 4123.511(D) on the following:

APPEAL of DHO order from the hearing dated 05/25/2006, filed by Injured
 Worker on 06/06/2006.
 Issue: 1) Request For Temporary Total

Notices were mailed to the injured worker, the employer, their respective
 representatives and the Administrator of the Bureau of Workers'
 Compensation not less than 14 days prior to this date, and the following
 were present for the hearing:

APPEARANCE FOR THE INJURED WORKER: Injured Worker, Ms. Fox (Injured
 Worker's Cousin), Atty. Muldowney
 APPEARANCE FOR THE EMPLOYER: Atty. Phillips
 APPEARANCE FOR THE ADMINISTRATOR: No One

The order of the District Hearing Officer, from the hearing dated
 05/25/2006, is affirmed. Therefore, the C-84 Request for Temporary Total
 Disability Compensation, filed 03/02/2006, is denied.

The Staff Hearing Officer specifically denies authorization for the payment
 of Temporary Total Disability Compensation for the period from 01/05/2006
 through 06/28/2006, the date of today's hearing, as the Injured Worker has
 failed to demonstrate that the period of disability was actually
 temporarily and totally disabling and independently attributable to the
 allowed conditions in this claim.

By way of clarification, the Staff Hearing Officer finds that the
 originally allowed conditions in this claim were previously found to have
 reached a level of maximum medical improvement. However, subsequent to
 that finding, this claim was also additionally allowed for the condition of
 arthrofibrosis of the left knee. It is found that the current request for
 compensation is predicated solely upon this newly allowed condition of
 arthrofibrosis.

The Staff Hearing Officer concludes that the Injured Worker has failed to
 demonstrate by a preponderance of the evidence that said period of
 temporary total disability was actually temporarily and totally disabling
 as alleged. The Staff Hearing Officer concludes that the condition of
 arthrofibrosis of the left knee is actually at a level of maximum medical
 improvement and the Injured Worker has failed to demonstrate by a
 preponderance of the evidence that this condition has once again become
 temporarily and totally disabling. The Staff Hearing Officer, in reaching

The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 04-829452

this conclusion, relies upon the 05/16/2005 office visit note of Dr. Boniface, M.D., the physician of record at that time, who opined that the condition of arthrofibrosis of the left knee was at a level of maximum medical improvement.

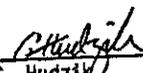
The Staff Hearing Officer concludes that the Administrator's authorization of the change of physician and the one time visit with a pain management specialist subsequent to said opinion of maximum medical improvement, does not constitute new and changed circumstances sufficient to warrant a conclusion that the condition of arthrofibrosis has once again become temporarily and totally disabling.

Accordingly, the Injured Worker's request for Temporary Total Disability Compensation is denied.

All evidence contained within the record was reviewed and considered in rendering this decision.

An Appeal from this order may be filed within 14 days of the receipt of the order. The Appeal may be filed online at www.ohioic.com or the Appeal (IC-12) may be sent to the Industrial Commission of Ohio, Youngstown District Office, 242 Federal Plaza W Ste 303 Youngstown OH 44503

Typed By: dgw
Date Typed: 06/28/2006


C. Hudzik
Staff Hearing Officer

Findings Mailed:

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of either the injured worker or employer, please notify the Industrial Commission.

04-829452
Patricia A. Rouan
136 Morrison St
Struthers OH 44471-1707

Risk No: 3500001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St - Suite 600
Youngstown OH 44503-1426

BWC, LAW DIRECTOR

FINDINGS

JUL 05 2006

MAILED

The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 04-829452
LT-ACC-PE-COV
PCN: 2061151 Patricia A. Rouan

Claims Heard: 04-829452

PATRICIA A. ROUAN
136 MORRISON ST
STRUTHERS OH 44471-1707

FINDINGS MADE
MAY 27 2006

Date of Injury: 5/24/2004

Risk Number: 35000001-0

This claim has been previously allowed for: FRACTURE FEMORAL
CONDYLE-CLOSED, LEFT; PROXIMAL TIBIAL PLATEAU FRACTURE, LEFT;
ARTHROFIBROSIS, LEFT KNEE. DISALLOWED FOR: MAJOR DEPRESSION
, RECURRENT SEVERE.

This matter was heard on 05/25/2006 before District Hearing Officer John D.
Gibbons pursuant to the provisions of Ohio Revised Code Section 4121.34 and
4123.511 on the following:

C-84 Request For Temporary Total Compensation filed by Injured Worker on
03/02/2006
Issue: 1) Request For Temporary Total

Notices were mailed to the injured worker, the employer, their respective
representatives and the Administrator of the Bureau of Workers'
Compensation not less than 14 days prior to this date and the following
were present for the hearing:

APPEARANCE FOR THE INJURED WORKER: Schiavoni, Injured Worker and Daughter
APPEARANCE FOR THE EMPLOYER: Phillips
APPEARANCE FOR THE ADMINISTRATOR: No one

It is the order of the District Hearing Officer that the C-84, filed
3/2/06, is denied.

The District Hearing Officer finds that the basis for the injured worker's
request for temporary total disability benefits is the newly allowed
condition in the claim of ARTHROFIBROSIS LEFT KNEE. The other allowed
conditions in the claim having been found to have reached maximum medical
improvement in 2005.

The District Hearing Officer finds that based on the 5/16/05 office note of
Dr. Boniface who was the physician of record at the time, that this
condition had reached maximum medical improvement as of that date.

Therefore, the District Hearing Officer finds that the injured worker has
failed to submit evidence of new and changed circumstances warranting the
resumption of temporary total disability benefits.

In so ruling the District Hearing Officer relies on the 5/16/05 office note
of Dr. Boniface.

All evidence either on file or adduced at hearing relating to this issue
was reviewed and considered.

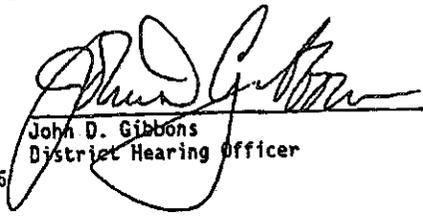
An Appeal from this order may be filed within 14 days of the receipt of the
order. The Appeal may be filed online at www.ohioic.com or the Appeal

The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 04-829452

(IC-12) may be sent to the Industrial Commission of Ohio,
Youngstown District Office, 242 Federal Plaza W Ste 303 Youngstown OH 44503

Typed By: h1b
Date Typed: 05/25/2006
Date Received: 04/21/2006
Notice of Contested Claim: 04/20/2006
Findings Mailed:


John D. Gibbons
District Hearing Officer

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of either the injured worker or employer, please notify the Industrial Commission.

04-829452
Patricia A. Rouan
136 Morrison St
Struthers OH 44471-1707

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515

Risk No: 35000001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St - Suite 600
Youngstown OH 44503-1426

BWC, LAW DIRECTOR

The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 04-829452
LT-ACC-PE-COV
PCN: 2051181 Patricia A. Rouan

Claims Heard: 04-829452

PATRICIA A. ROUAN
136 MORRISON ST
STRUTHERS OH 44471-1707

Date of Injury: 5/24/2004

Risk Number: 35000001-0

07/18/2005

This claim has been previously allowed for: FRACTURE FEMORAL
CONDYLE-CLOSED, LEFT; PROXIMAL TIBIAL PLATEAU FRACTURE, LEFT; MAJOR
DEPRESSION, RECURRENT, SEVERE.

This matter was heard on 07/18/2005 before Staff Hearing Officer Elizabeth
Burkhart pursuant to the provisions of Ohio Revised Code Section 4121.35(B)
and 4123.511(D) on the following:

APPEAL of DHO order from the hearing dated 06/02/2005, filed by Employer
on 06/20/2005.
Issue: 1) Additional Allowance - MAJOR DEPRESSION, RECURRENT, SEVERE

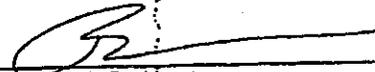
Notices were mailed to the injured worker, the employer, their respective
representatives and the Administrator of the Bureau of Workers'
Compensation not less than 14 days prior to this date, and the following
were present for the hearing:

APPEARANCE FOR THE INJURED WORKER: Mr. Muldowney
APPEARANCE FOR THE EMPLOYER: Ms. Phillips
APPEARANCE FOR THE ADMINISTRATOR: No one

The order of the District Hearing Officer, from the hearing dated
06/02/2005, is vacated. Therefore, the C-86, filed 2/4/05, is denied based
on the 3/3/05 report of Dr. Byrnes, and his opinions contained therein, and
is based further on the claimant's extensive, severe past medical history
of psychological problems, including a six and a half month hospitalization
in 2002-2003, and multiple prescriptive medications taken through to the
date of injury. Therefore, this claim is disallowed for the condition of
"MAJOR DEPRESSION, RECURRENT, SEVERE" as being causally unrelated by either
direct causation or aggravation.

An Appeal from this order may be filed within 14 days of the receipt of the
order. The Appeal may be filed online at www.ohioic.com or the Appeal
(IC-12) may be sent to the Industrial Commission of Ohio,
Youngstown District Office, 242 Federal Plaza W Ste 303 Youngstown OH 44503

Typed By: sas
Date Typed: 07/18/2005


Elizabeth Burkhart
Staff Hearing Officer

Findings Mailed:

FINDINGS

JUL 20, 2005

MAILED

The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 04-829452

YOURS 07/21/2005

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of either the injured worker or employer, please notify the Industrial Commission.

04-829452
Patricia A. Rouan
136 Morrison St
Struthers OH 44471-1707

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515

Risk No: 35000001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St - Suite 600
Youngstown OH 44503-1426

BWC, LAW DIRECTOR

FINDINGS

JUL 20, 2005

MAILED

(SH01 - SHO Appeal - Rev. 4/10/02)

Sep. 9. 2009 9:44AM
04-829452

MAHONING COUNTY HUMAN RESOURCES

04-829452



Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

June 9, 2005

301-54-5047

When replying please give the number above
This is used to identify your account in OPERS

Ms. Patricia A Rouan
136 Morrison St
Struthers OH 44471

Dear Ms. Rouan:

The effective date of your disability retirement benefits is February 1, 2005.

The effective date of your health care coverage is June 1, 2005.

If you have any questions, please feel free to contact one of our Customer Service Representatives at 1-800-222-7377.

Disability Retirement Unit

so

cc: Mahoning County

RECEIVED

JUN 13 2005

Mahoning City Auditor
Deputy

8882/60/60 8000
Young 89/89/2009

The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 04-829452
LT-ACC-PE-COV
PCN: 2051181 Patricia A. Rouan

Claims Heard: 04-829452

PATRICIA A. ROUAN
136 MORRISON ST
STRUTHERS OH 44471-1707

Date of Injury: 5/24/2004

Risk Number: 35000001-0

This claim has been previously allowed for: FRACTURE FEMORAL
CONDYLE-CLOSED, LEFT; PROXIMAL TIBIAL PLATEAU FRACTURE, LEFT.

This matter was heard on 06/02/2005 before District Hearing Officer John D. Gibbons pursuant to the provisions of Ohio Revised Code Section 4121.34 and 4123.511 on the following:

C-86 Motion filed by Injured Worker on 02/04/2005.
Issue: 1) Additional Allowance - MAJOR DEPRESSION, RECURRENT, SEVERE

Notices were mailed to the injured worker, the employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date, and the following were present for the hearing:

APPEARANCE FOR THE INJURED WORKER: Muldowney
APPEARANCE FOR THE EMPLOYER: Phillips
APPEARANCE FOR THE ADMINISTRATOR: no one

It is the order of the District Hearing Officer that the C-86 Motion filed by Injured Worker on 02/04/2005 is granted to the extent of this order.

Prior to any arguments on the merits, counsel for the Injured Worker requested and was granted leave to amend their Motions so that the condition being requested was AGGRAVATION MAJOR DEPRESSION, RECURRENT, SEVERE.

The District Hearing Officer additionally allows the claim for the following condition: MAJOR DEPRESSION, RECURRENT, SEVERE.

In so ruling the District Hearing Officer relies on the reports of Dr. DeRosa dated 1/5/2005 and 5/24/2005; the report of Dr. Chiarella dated 3/8/2005; and the report of Dr. Nalluri dated 4/15/2005.

All relevant evidence on file or adduced at hearing relating to this issue was reviewed and considered.

An Appeal from this order may be filed within 14 days of the receipt of the order. The Appeal may be filed online at www.ohioic.com or the Appeal (IC-12) may be sent to the Industrial Commission of Ohio, Youngstown District Office, 242 Federal Plaza W Ste 303 Youngstown OH 44503.

Typed By: sdm
Date Typed: 06/02/2005
Date Received: 04/28/2005
Notice of Contested Claim: 04/26/2005
Findings Mailed:

John D. Gibbons
John D. Gibbons
District Hearing Officer

FINDINGS MAILED
JUN 04 2005

06/07/2005

The Industrial Commission of Ohio
RECORD OF PROCEEDINGS

Claim Number: 04-829452

The parties and representatives listed below have been sent this record of proceedings. If you are not an authorized representative of either the injured worker or employer, please notify the Industrial Commission.

04-829452
Patricia A. Rouan
136 Morrison St
Struthers OH 44471-1707

ID No: 12489-90
Louis Schiavoni
87 Westchester Dr
Youngstown OH 44515

Risk No: 35000001-0
Mahoning County
21 W Boardman St Ste 200
Youngstown OH 44503-1416

ID No: 1672-80
Mahoning County Prosecutor
Attn: Elizabeth M. Phillips
21 W Boardman St - Suite 600
Youngstown OH 44503-1426

BWC, LAW DIRECTOR

YOUNGSTOWN OH 44503-1400

OPERS Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

May 18, 2005

Code 2167.08

Mr George Tablack Auditor
Mahoning County
120 Market Street
Youngstown OH 44503

When replying please give the number above.
This is used to identify your account in OPERS.

Dear Mr. Tablack:

RE: Patricia A. Rouan
SSN: 301-54-5047

Patricia A. Rouan's disability application has been approved by the Retirement Board on May 18, 2005 with the condition of a re-examination in one year.

We are awaiting certification of Ms. Rouan's termination date from your office.

The receipt of this information is necessary before we calculate and release her first disability benefit payment.

If you have any questions, please feel free to contact one of our Customer Service Representatives at 1-800-222-7377.

Disability Retirement Unit

mm

RECEIVED

MAY 23 2005

Mahoning City Auditor
Deputy

04-829452

2009 9:44AM

MAHONING COUNTY HUMAN RESOURCES

No. 3588 P. 9

MISC - 04-829452

Youngstown 09/09/2009

OPERS

Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

February 23, 2005

CERTIFICATION BY PAYROLL OFFICER Code 2167.08

Mr George Tablack Auditor
Mahoning County
120 Market Street
Youngstown OH 44503

When replying please give the number above.
This is used to identify your account in OPERS.

Name: Mrs Patricia Rouan
SS#: 301-54-5047
Term Date: DR

The member named above has filed an application for monthly benefits. The member indicates a service termination date as shown above.

We request that the final three pay periods be certified by the payroll officer. Retirement deductions certified must be exact; estimated figures are not acceptable and may result in a recalculation of the pension amount. Any changes regarding final deductions or termination date must be forwarded to our office at the earliest possible date.

Payment of accrued, but unused sick leave, personal leave, or vacation resulting in a lump-sum payment is considered terminal compensation and retirement deductions are not to be withheld.

State final day for which this employee was compensated: 1/18/05
Name of position from which retired: Social Service Worker I

The final three pay periods to be submitted to OPERS for the above named member are as follows:

PAY - BEGIN DATE	PAY - END DATE	PERS RETIREMENT DEDUCTION
<u>12/12/04</u>	<u>12/25/04</u>	<u>119.27</u>
<u>12/26/04</u>	<u>1/8/05</u>	<u>120.36</u>
<u>1/9/05</u>	<u>1/22/05</u>	<u>76.66</u>

If the retirement deduction is larger or smaller than usual, please provide an explanation.

Jacqueline Y. Jones
Signature of Payroll Officer Reporting to OPERS

Payroll Manager
Title

Mahoning County Auditor
Department

F-85 (7/95)

RECEIVED

FEB 28 2005

Mahoning City Au
County

04-829452 2009 9:39AM

MAHONING COUNTY HUMAN RESOURCES SYSTEM OF CNo. 3588 P. 5
211 EAST TOWN Street Columbus, Ohio 43215-4642

APPLICATION FOR A DISABILITY BENEFIT
REPORT BY EMPLOYER

04-829452

Name of Employee PATRICIA A. ROWAN 301545047
Social Security Number
Address 136 MORRISON ST
Street
Stouthers
City Ohio 44471
State Zip
Date of Birth 4-27-1954 Sex F

2009-09-09 09:29:59

This form must be completed by the applicant's department head and payroll officer. Disability benefits are available only if a member is mentally or physically incapacitated for the performance of duty by a disabling condition either permanent or presumed to be permanent. Provide complete and accurate information to the best of your knowledge so the Retirement System may properly evaluate the member's application. If more space is needed, attach additional pages.

Section I Certification by Department Head

In addition to the following information, you also must submit a written job description for the applicant.

1. Applicant's job title and duties: Social Services Worker I - Home Inspector.
Applicant visits Child Care Centers to determine compliance.

2. Who initiated the application for a disability benefit?
Employee or Employer

3. Answer this question only if the member is a law enforcement officer. Is the disabling condition the result of an on-duty injury or illness (injury or illness that occurred during or resulted from performance of duties under the direct supervision of a member's appointing authority)? Yes or No If Yes, explain _____

4. Do you believe the applicant is permanently incapacitated for the performance of his/her duties? Yes or No

If Yes, state the basis of your opinion. Applicant has been experiencing many physical and emotional challenges for several years

1/25/05
Date

Shelia W. Brantley
Signature
Human Resources Administrator
Title

SEE REVERSE SIDE FOR CERTIFICATION BY FISCAL OFFICER

Report of Employer for Disability Applicant 04-829452

A member is considered eligible for a disability benefit if the disabling condition prevents the performance of duties for their last OPERS-covered position and the disabling condition is expected to last at least 12 months.

The employer must complete this Form to initiate or supplement the employee's disability application. Please provide complete and accurate information to allow OPERS to properly evaluate the employee's disability application. If more space is needed, attach additional pages. Employers should contact the Employer Call Center at 1-888-400-0965 with questions.

Social Security Number

301 54 5047

First Name: PATRIKIA MI Last Name: AROUAN Suffix:

Street or Mailing Address: 136 MORRISON STREET Apt. Number:

CITY: STROTHERS State: OH ZIP Code: 44471

Employee's Job Title

1. SOCIAL SERVICES WORKER A HOME INSP

2. Who initiated the application for disability? Employee or Employer

3. This question is only for employees who are law enforcement officers. Is the disabling condition the result of an on-duty illness or injury that occurred during or resulted from the performance of duties under the direct supervision of the employee's appointing authority? Yes No

If "Yes," explain: N/A

Department Head Signature

Sheila N Brantley

Month Day Year: 01 25 2005

Department Head First Name

SHEILA MI Last Name: W BRANTLEY

Title

HUMAN RESOURCE ADMINISTRATOR

Sep. 9. 2009 9:38AM

MAHONING COUNTY HUMAN RESOURCES

No.3588 P. 2

-04-829452

of which the member complains are: Depression - lack of

motivation. Low energy. poor concentration.
Feeling of hopelessness helplessness since
he fell at the office

Treatment: Psychotherapy in Denver
Pharmaceutical Prozac 20-9 B.I.D
Cymbalta 60-9 Q.D. Lamictal 150-9 B.I.D

Prognosis: Guarded

Is member expected to return to work with their public employer? yes no

If "yes," provide expected date:

Month	Day	Year

Any restrictions? _____

Date on which medical condition(s) became permanently disabling:

Month	Day	Year
05	24	2004

General remarks: Client is severely depressed condition
became worse after he fell down at office

[Redacted section]

the criteria that a permanent disability is expected to last for at least 12 months and these conditions prevent the applicant from performing the duties of the job.

JAN 10 2010