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INTRODUCTION

Plaintiff-Appellant Mark Bennett filed an action under R.C. 4123.512 (a “512 proceeding”) in the Lucas County Court of Common Pleas challenging a denial of workers’ compensation benefits. In his case-in-chief, Bennett failed to introduce sufficient evidence to establish both that he suffered a specific harm that would support an award of benefits and that any such harm was caused by a work-related accident. The trial court granted the Administrator’s motion for a directed verdict, and the Sixth District affirmed. Bennett claims that his failure to prove his case is excused by *Ward v. Kroger Co.*, 106 Ohio St. 3d 35, 2005-Ohio-3560. He posits that under *Ward*, the Ohio Industrial Commission’s failure to specifically address issues related to injury and causation in its order denying benefits—because his accident was not work-related—relieved him of the burden of proof on those matters at trial. Bennett’s position is incorrect, and for the reasons that follow, this Court should affirm.

First, Bennett misunderstands *Ward*. *Ward* bars a claimant from seeking benefits from the workers’ compensation fund in a 512 proceeding for medical conditions that are not first presented to the Bureau of Workers Compensation (“BWC”). It does not, as Bennett suggests, deprive the court of jurisdiction over questions relevant to the determination of a claimant’s entitlement to benefits simply because the Industrial Commission order did not specifically address those questions. *Ward* merely prevents an end-run around the administrative procedures established by the legislature for workers’ compensation claims.

Second, Bennett’s proposed rule is inconsistent with the statutory framework governing 512 proceedings. Bennett envisions a process in which claims bounce back and forth between the Industrial Commission and the common pleas court. The General Assembly, however, envisioned a two-step process for assessing a workers’ compensation claim, the first step being administrative and the second step involving de novo judicial review without reference to the

prior administrative proceeding. Bennett's view is unsupported by the statutory scheme, would result in needless duplication and expense, and would disserve the interests of future claimants.

Before this Court, Bennett also presses a new argument. He describes a workers' compensation system that—even if reasonable in its design—*does not exist* in Ohio. According to Bennett, the BWC undertakes two separate inquiries when processing a claim, one pertaining to questions of work-relatedness and the other to questions of medical diagnosis. Because the Industrial Commission conducted only the former inquiry, Bennett argues, the scope of his 512 proceeding was necessarily confined to that question. The workers' compensation system does not operate as he describes, however. Put simply, Bennett describes a system that could exist, not the one that does.

In essence, Bennett asks this Court to remedy problems of his own creation. He declined to introduce evidence that he was required to present to support his benefits claim. He did so with a clear understanding of the potential consequences of his decision. And even when confronted with the Administrator's motion for a directed verdict, Bennett made no effort to alter his course. He seeks from this Court a new rule that may be beneficial for him but will increase costs for future workers' compensation stakeholders and delay the resolution of claims. The Court should reject Bennett's proposed rule and affirm the decision below.

STATEMENT OF THE CASE AND FACTS

A. Workers' compensation claims are processed in the first instance by the BWC; claimants may appeal a denial of benefits administratively and if unsuccessful, challenge the denial of benefits in a 512 proceeding.

The claims process in a workers' compensation case is governed by O.A.C. 4123-3-09 and begins with the filing of a claim with the BWC. The code provides for an initial review during which a claims specialist makes a preliminary determination whether to approve the claim. *Id.* 4123-3-09(B)(1). If approved, the claims specialist may allow benefits and must specify the

condition or conditions for which the claim is allowed and the body parts affected. *Id.* 4123-3-09(B)(1)(a). If initial review indicates that a claim requires further investigation, it is referred to the BWC office best able to expeditiously resolve the outstanding issues. *Id.* 4123-3-09(B)(2). Claims contested by either the employer or the BWC are referred to a district hearing officer for further review, as are appeals of the BWC's initial denial or approval of a claim. *Id.* 4123-3-09(B)(2), (D)(2). Further administrative appeals of the district hearing officer's decision are available, first to a staff hearing officer and ultimately to the Industrial Commission. *See* O.A.C. 4123-3-18; R.C. 4123.511. Once any administrative appeals have been exhausted, a claimant who has been denied benefits may file an action under R.C. 4123.512.

At each level of review, the claimant bears the burden of establishing by a preponderance of the evidence the elements of his claim. O.A.C. 4123-3-09(C). In his brief, Bennett suggests that the administrative process consists of two separate inquiries: the first so-called "validity" inquiry answers the question of whether the alleged injury is work-related, and the second inquiry involves a medical review of the alleged injury for which benefits are sought. Appellant's Br. 4-5. Bennett asserts that O.A.C. 4123-3-09 contemplates this exact two-step inquiry. *Id.* But Bennett misunderstands how claims are processed under the code. The process is multi-stage, but nothing in the code suggests that review at any stage is confined solely to issues of work-relatedness or medical diagnosis. At any stage (whether in the initial review or after further administrative review), a claim is allowed only if it meets all of the statutory requirements.

B. The Industrial Commission denied Bennett's claim for workers' compensation, and Bennett commenced a 512 proceeding challenging that denial.

In January 2006, Bennett began a position as a copier salesman with Goodremont's, Inc. *Bennett v. Goodremont's, Inc.*, No. L-10-1185, 2011-Ohio-1264, ¶ 5 (6th Dist.) ("App. Op.").

On February 28, 2006, Bennett was involved in an automobile accident while traveling from his home to Goodremont's main office. *Id.* ¶ 6. Bennett subsequently filed a claim with the BWC, alleging head, neck, and back injuries. *Id.* ¶ 7; *see also* Supp. to Appellant's Br. 1. Goodremont's contested the claim, arguing that Bennett's accident was not work-related because it occurred during his commute. *Id.* at 2-3. The BWC agreed and denied the claim. *Id.* at 4-5.

Bennett appealed to a district hearing officer and then a staff hearing officer, each of whom affirmed the denial. *Id.* at 6-9. Applying what has become known as the coming-and-going rule, they found that Bennett's accident occurred while he was traveling to or from work and therefore was not work-related. *Id.* The Industrial Commission declined Bennett's request to review the staff hearing officer's decision. *Id.* at 10-11. Because the administrative orders based the denial of benefits on the conclusion that Bennett's accident was not work-related, they did not specifically address questions of injury and causation. *See id.* at 4-11.

Bennett commenced a 512 proceeding in the Lucas County Court of Common Pleas. The trial court initially granted summary judgment to the Administrator, finding that Bennett's participation in the fund was barred because his accident occurred while he was traveling to or from work. App. Op. ¶ 8. On appeal, the Sixth District reversed and remanded the case for trial, finding that the trial court erred in concluding as a matter of law that Bennett's injury was not work-related. *See Bennett v. Goodremont's, Inc.*, No. L-08-1193, 2009-Ohio-2920, ¶¶ 18-28 (6th Dist.).

C. Following a bench trial, the trial court directed a verdict for the Administrator, and the Sixth District affirmed.

On remand, the trial court conducted a bench trial. After Bennett's case-in-chief, the Administrator moved for a directed verdict based on Bennett's failure to identify a compensable medical condition and introduce expert testimony to establish that his accident was the cause of

any such condition. *See* Transcript of Proceedings (Apr. 16, 2010) (“Trial Tr.”) 55-60. The trial evidence on Bennett’s alleged injuries was very limited, and he offered no expert testimony to establish that the auto accident caused them. The only testimony about Bennett’s alleged injuries consisted of isolated statements by Bennett and his wife. Bennett testified, “Q. Did you receive injuries from that accident? A. Yes.” Trial Tr. at 28:23-29:1. And his wife likewise testified, “Q. You observed [Mr. Bennett] following the accident. Did he suffer injuries from that accident? A. Yes.” Trial Tr. at 53:8-10.

Bennett’s other pleadings and discovery responses also provided little detail about his alleged injuries. In his initial petition, Bennett stated only that he “suffered injuries” and was “disabled.” Pet. ¶ 4. He offered no additional details and did not identify a specific medical condition caused by his accident. *Id.* In response to the Administrator’s interrogatory seeking information about the extent of his injuries, Bennett stated only: “I received neck and back injuries resulting in surgery. I am presently totally disabled.” *See* Plaintiff’s Answer to Defendant Administrator’s First Set of Interrogatories, Response No. 7.

Although the trial court agreed that Bennett qualified as a traveling salesman, and therefore he was not precluded from receiving benefits by the coming-and-going rule, it granted the Administrator’s motion because Bennett “did not present medical evidence to establish a compensable injury nor a causal relationship between such an injury and his accident.” Findings of Fact, Conclusions of Law, and Judgment Entry 4-7 (June 4, 2010). The Sixth District unanimously affirmed, concluding that even if Bennett could be deemed to have alleged a specific injury, his failure to introduce expert testimony on causation required a verdict for the Administrator. App. Op. ¶¶ 18-22.

ARGUMENT

Defendant-Appellee Administrator's Proposition of Law No. 1:

Under R.C. 4123.512, a claimant must establish by a preponderance of the evidence both the existence of compensable harm and a causal connection between that harm and a workplace accident, even where the Industrial Commission did not specifically address those questions in its order denying benefits.

A party is entitled to a directed verdict if “the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party.” Civ. R. 50(A)(4). For two reasons, the trial court properly directed a verdict for the Administrator. First, Bennett failed to introduce evidence—beyond generic assertions of injury—of a specific medical condition to support an award of benefits. Second, even if he could have shown an injury with sufficient specificity, he failed to introduce expert testimony establishing a causal link between his accident and his alleged neck and back injuries.

Bennett suggests that his obligation to prove these elements is excused by this Court's decision in *Ward*. He says that the trial court should have remanded his case to the Industrial Commission for further proceedings upon concluding that his injury was work-related. Bennett is incorrect, and his reliance on *Ward* is misplaced. And even if the Court were inclined to adopt Bennett's view, doing so would be inconsistent with the statutory framework set out by the legislature and would result in needless duplication and expense for future claimants. Bennett had ample opportunities to prove his case in the common pleas court. But he declined to do so, and as a result failed to carry his burden of proof at trial. The decision below should therefore be affirmed.

A. The claimant in a 512 proceeding must establish his right to participate in the fund by demonstrating the existence of a specific harm or medical condition and a causal link between that harm and a workplace accident.

The claimant's burden in a 512 proceeding is well-settled. He must demonstrate by a preponderance of the evidence: (1) an accidental "injury [arising] out of and in the course of his employment," and (2) "a direct or proximate causal relationship . . . between [that] injury and [the] harm or disability" for which compensation is sought. *White Motor Corp. v. Moore*, 48 Ohio St. 2d 156, syl. ¶ 1 (1976); see also *State ex rel. Chrysler Corp. v. Indus. Comm'n of Ohio*, 81 Ohio St. 3d 158, 161 (1998); *Fox v. Indus. Comm'n of Ohio*, 162 Ohio St. 569, 574-75 (1955). As to the second prong, it does not suffice for a claimant to allege "generic" injury in support of a claim, because "[t]here is no such thing as a workers' compensation claim for 'an injury.'" *Ward*, 2005-Ohio-3560 ¶ 10. Rather, a claimant must identify a "*specific injury or medical condition*" justifying an award of benefits. *Id.* (emphases added). On that score, Bennett failed.

1. Bennett offered nothing more than a generic claim of injury, falling short of his obligation to identify a specific injury or medical condition.

As detailed above, Bennett asserted only that he suffered "injuries" as a result of his accident. The trial testimony on the issue of injury consists only of isolated statements by Bennett and his wife saying that Bennett's auto accident resulted in "injuries." Trial Tr. at 28:23-29:1, 53:8-10. Even if the Court were inclined to look beyond the trial record, Bennett's pleadings and discovery responses provide nothing more than conclusory assertions of injuries to his neck and back that required surgery, and an unspecified assertion of total disability. The failure to identify with any precision the medical condition(s) justifying an award of benefits is fatal to his claim, and the Court should affirm the court of appeals decision on that basis alone.

2. Even assuming Bennett identified his harm with sufficient specificity, expert medical testimony was necessary to establish the causal relationship between his accident and that harm.

Even assuming Bennett stated a specific injury or medical condition, a verdict for the Administrator was correct for a second and independent reason. Bennett's alleged injuries— involving the soft tissues of the neck and back—fall into the category of “internal and elusive” injuries for which expert testimony is required to establish their cause. Bennett's failure to adduce any expert testimony on this subject is also fatal to his claim.

With respect to causation of harm, this Court divides cases into two categories: those involving complex medical conditions and those involving matters of common knowledge or understanding. *See, e.g., White Motor Corp*, 48 Ohio St. 2d at 159, syl. ¶ 2. In the former, a claimant can establish causation only by introducing expert medical testimony; in the latter, lay testimony may suffice. *Id.* Courts have developed a helpful framework for determining whether a case requires expert testimony: “The relevant distinction regarding the character of the injury is whether it is readily observable or understandable or the injury is internal and elusive in nature, unaccompanied by any observable external evidence.” *Bahr v. Progressive Cas. Ins. Co.*, No. 92620, 2009-Ohio-6641, ¶ 48 (8th Dist.) (internal alteration and quotation marks omitted); *see also Chilson v. Conrad*, No. 2005-P-0044, 2006-Ohio-3423, ¶ 20 (11th Dist.); *Wright v. City of Columbus*, No. 05AP-432, 2006-Ohio-759, ¶¶ 8-19 (10th Dist.).

Under this framework, courts generally require expert testimony to establish a causal link between workplace accidents and harm where there is no visible physical manifestation of that harm. Otherwise, lay testimony is sufficient. For example, lay testimony can establish a causal link between an accident and a resulting bruise or swelling and discoloration. *See, e.g., White Motor Corp.*, 48 Ohio St. 2d at 160 (involving lay testimony concerning a bruise above the knee); *Chilson*, 2006-Ohio-3423 ¶¶ 24-25 (involving lay testimony concerning swelling and

discoloration). Yet expert testimony is necessary to establish that link where the harm involves internal injuries that do not produce visible physical symptoms. See, e.g., *Stacey v. Carnegie-Illinois Steel Corp.*, 156 Ohio St. 205, 213-14 (1951) (requiring expert testimony to establish the cause of bilateral cataracts).

Significantly, the appeals courts have generally concluded that expert testimony is required to establish causation where the alleged harm involves injury to the soft tissue of the neck and back. See *Wright*, 2006-Ohio-759 ¶ 19 (“[A]ppellant’s alleged injuries consist[ing] of pain to the neck and back . . . are internal and elusive . . . such that the question of the causal connection between the alleged employment incident and the alleged injuries are peculiarly within the scope of expert scientific inquiry.”); *Davis v. Morton Thiokol, Inc.*, No. 90-L-15-083, 1991 Ohio App. LEXIS 5270, at *11-*12 (11th Dist.) (holding that expert testimony was required to establish a causal link between low back pain and work-related fall); *Fennell v. Forest Hills Nursing Home*, No. 52851, 1987 Ohio App. LEXIS 9332, at *8 (8th Dist.) (concluding that expert testimony was necessary to establish the cause of lumbar strain). Specifically, with respect to the sort of soft tissue injuries alleged by Bennett, one court has observed:

The cause of a back strain is not typically relatable to one efficient “Newtonian” causal agent. As appellee notes, “[o]besity, bad posture, sleeping on an inadequate mattress, and poor physical conditioning are all sources of developing lower back pain without some traumatic event.” Furthermore, it is frequently difficult, if not impossible, to verify back pain because inflammation is rarely visible to the naked eye. Accordingly, it is not remarkable a court would require a medical expert to guide the factfinder on issues of causation where a claimant is seeking workers’ compensation for a back strain.

Chilson, 2006-Ohio-3423 ¶ 25.

The same standard applies in the tort context where a plaintiff alleges that an auto accident resulted in soft tissue injuries such as those claimed by Bennett. *Rogers v. Armstrong*, No. C-010287, 2002 Ohio App. LEXIS 1155, at *5-*8 (1st Dist.) (collecting cases and holding that

expert testimony is necessary to establish a causal link between an auto accident and alleged injuries to the neck and back).

It is undisputed that the trial record contains no testimony from a treating physician (or even any medical records) that might support Bennett's claim that the auto accident caused his alleged neck and back injuries. Thus, Bennett did not meet his burden of establishing a causal relationship between his accident and the alleged harm. This failure independently requires affirmance.

3. Bennett had ample opportunity to present the necessary evidence of injury and causation.

Bennett does not (and could not) claim that he was denied the opportunity to put on evidence of a specific medical condition or expert testimony regarding its cause. Notably, when confronted with the motion for a directed verdict, Bennett did not seek permission to reopen his case-in-chief. Nor did he request a continuance so that he could have time to assemble that evidence. *See* Trial Tr. at 60:17-61. He instead justified his failure to prove his case based on his view that the *only* issue before the trial court was whether his auto accident was work-related. *Id.* Even in post-trial briefing, Bennett gave relatively short shrift to the Administrator's arguments concerning his failure to produce sufficient evidence and instead focused on his argument that questions of specific injury and causation were simply not before the court. *See* Plaintiff's Post-Trial Br. 6-8 (May 3, 2010).

Bennett implies that he was somehow surprised by the Administrator's position at trial. Appellant's Br. 2. He claims that the only issue ever contested was the application of the coming-and-going rule and therefore whether his auto accident was work-related. *Id.* And he asserts that the Administrator conceded as much. *Id.* (citing Trial Tr. 62:14-16). But Bennett's claims find no support in the record.

In pre-trial briefing (filed two months prior to trial) and during opening statements, the Administrator identified specific injury and causation as essential elements of Bennett's claim. See Defendant Administrator's Trial Br. 4-5 (Feb. 5, 2010); see also Trial Tr. at 5:11-6:13. The Administrator acknowledged that throughout the 512 proceeding, the parties focused on the question of whether the coming-and-going rule applied, and therefore, whether his accident was work-related. See Trial Tr. at 62:7-19. That this issue figured prominently in the proceedings, however, did nothing to relieve Bennett of his burden to prove *every* element of his claim. Bennett chose not to present evidence on these matters, and confronted with the potential ramifications of that choice, stayed his course. The inescapable consequence of those decisions is that he has failed to carry his burden of proof.

B. *Ward* bars the presentation of claims for benefits based on *new medical conditions* in a 512 proceeding; it does not alter the claimant's burden of proof for claims properly before the court.

Bennett asks this Court to excuse his failure to carry his burden based on a misreading of the Court's decision in *Ward*. Under his theory, because the Industrial Commission denied benefits based on a finding that his accident was not work-related (not a denial based on a failure to show injury or causation), *Ward* barred the trial court from considering any issue other than the question of work-relatedness. Bennett misunderstands *Ward*. The pronouncement in *Ward* prevents claimants from circumventing the administrative process by barring the presentation of claims for benefits based on *new medical conditions* not previously presented to the Industrial Commission. It says nothing about how the Industrial Commission processes claims. And more significantly, it changes nothing about the trial court's mandatory duty under R.C. 4123.512 to conduct a de novo review of a claimant's right to participate in the workers' compensation fund.

The dispute in *Ward* was narrow. As part of his 512 proceeding, the claimant amended his initial petition for review to include medical conditions not previously submitted to the Industrial

Commission. *Ward*, 2005-Ohio-3560 ¶ 2. On appeal, this Court held that claimants may not use a 512 proceeding to avoid the administrative process and that medical conditions for which compensation is sought must be presented to the Industrial Commission before becoming the subject of a 512 proceeding: “The Claimant in an R.C. 4123.512 appeal may seek to participate in the Workers’ Compensation Fund only for those conditions that were addressed in the administrative order from which the appeal is taken.” *Id.* at syl. *Ward* does nothing more than ensure that all claims for workers’ compensation benefits are presented in the first instance to the Industrial Commission. Bennett’s reliance on *Ward* for the rule he proposes is misplaced.

This Court’s *Starkey* decision is also instructive on the question of how *Ward* should be applied. In *Starkey*, the Court answered a question left open by *Ward*: “whether a claim for a certain condition by way of direct causation must necessarily include a claim for aggravation of that condition for purposes of either R.C. 4123.512 or res judicata.” *Starkey v. Builders FirstSource Ohio Valley, LLC*, 130 Ohio St. 3d 114, 2011-Ohio-3278, ¶ 1 (quoting *Ward*). *Starkey* held that questions concerning a particular theory of causation—*i.e.*, direct causation versus aggravation—need not be presented to and passed upon by the Industrial Commission in the first instance. Instead, the claimant is free to present a new theory of causation during a 512 proceeding. *Id.* The *Starkey* decision acknowledged that once a claim has been resolved by the Industrial Commission, R.C. 4123.512 compels the trial court to resolve in its entirety the question of the claimant’s right to participate in the fund. And by necessity, the trial court must be free to pass upon issues pertinent to that question that may not have been specifically addressed in the Industrial Commission’s prior order.

There is no dispute that Bennett sought benefits from the Industrial Commission for the neck and back injuries he allegedly sustained in his auto accident. Had he tried to seek

compensation in his 512 proceeding for injuries to his knee, *Ward* would certainly prevent his doing so. But Bennett does not claim (nor could he) that he presented new medical conditions for review in his 512 proceeding. Accordingly, *Ward* has no bearing on the present case and does not relieve Bennett of his burden to prove specific injury and causation.

C. Bennett's reading of *Ward* is inconsistent with the General Assembly's statutory framework and would disserve the interests of future claimants and other stakeholders in the workers' compensation system.

Bennett proposes a framework for resolving workers' compensation claims that will unnecessarily increase delay and expense for claimants and the BWC, and most importantly, undermine the General Assembly's goal of establishing "a simple, efficient system of assuring that people who are injured on the job are fairly compensated and receive the medical treatment they need." *See Arline v. Administrator, Bureau of Workers' Comp.*, No. 00AP-312, 2000 Ohio App. LEXIS 4393, at *7 (10th Dist.). For each workers' compensation claim, the General Assembly contemplated a single administrative proceeding to determine a claimant's right to obtain benefits, subject to independent judicial review, also in a single proceeding.

That legislative intent is clear: 512 proceedings are de novo, which means that common pleas courts must assess the merits of a claim and determine whether or not the claimant is entitled to benefits based on the evidentiary record before them. *See* R.C. 4123.512(D). As this Court has observed, "[t]he appeal authorized by R.C. 4123.51[2] is unique in that it is considered a trial de novo. It necessitates a new trial, without reference to the administrative claim file or consideration of the results of the administrative hearings." *Robinson v. B.O.C. Group*, 81 Ohio St. 3d 361, 368 (1998) (internal citations and quotation marks omitted). In other words, the General Assembly created a streamlined process. Bennett's proposal is at odds with that intent.

This legislative intent has been recognized repeatedly by courts of appeals, which have held unanimously that R.C. 4123.512 precludes remand to the Industrial Commission once a

common pleas court properly exercises jurisdiction over a 512 proceeding. Once the trial court properly exercises jurisdiction in a 512 proceeding, R.C. 4123.512(D) (like its predecessor R.C. 4123.519) compels it to conduct de novo review of all factual and legal issues concerning a claimant's right to receive benefits. *See, e.g., Green v. B.F. Goodrich Co.*, 85 Ohio App. 3d 223, 226 (9th Dist. 1993); *see also* App. Op. ¶ 11; *Broyles v. Conrad*, No. 20670, 2005-Ohio-2233, ¶ 15 (2d Dist.); *Wagner v. Fulton Indus., Inc.*, 116 Ohio App. 3d 51, 54-55 (6th Dist. 1997); *Marcum v. Barry*, 76 Ohio App. 3d 536, 539-41 (10th Dist. 1991); *Beeler v. R.C.A. Rubber Co.*, 63 Ohio App. 3d 174, 178 (9th Dist. 1989). Likewise, this Court has never recognized the type of broad remand authority that Bennett proposes. Rather, the Court has only remanded to the Industrial Commission in a 512 proceeding for the narrow purpose of clarifying whether an Industrial Commission order was properly appealable. *See Cook v. Mayfield*, 45 Ohio St. 3d 200 (1989).

If, as Bennett suggests, *Ward* bars trial courts from considering any issues not specifically addressed in the Industrial Commission's order, then the Court will have to judicially establish a new remand authority—not contemplated by the General Assembly—for trial courts in 512 proceedings. But even under that scenario, the Industrial Commission would be in an untenable position. The Commission would have to make a choice at the beginning of each administrative proceeding: Either consider and resolve every possible issue related to a claim even when the Commission believes a single issue is dispositive, or risk facing a series of proceedings that bounce back and forth between the courts and the Industrial Commission. The General Assembly plainly did not intend to bog down the Industrial Commission in this way. Instead the legislature created a workers' compensation system that gives the Industrial Commission flexibility to resolve claims quickly while still ensuring plenary and de novo judicial review.

Moreover, while Bennett might believe that the approach he imagines would serve him well in his particular case, it would actually increase delay and expenses for future claimants in a similar position. Consider, for example, a claimant, like Bennett, who was denied benefits by the Industrial Commission based on a finding that his injury was not work-related. Even though the claimant might be prepared to provide competent medical evidence in support of his claim during the 512 proceeding, Bennett's approach would bar the trial court from considering that evidence. Instead, the claimant would have to return to the Industrial Commission to prove his injury and then potentially face another 512 proceeding. Under the present—and correct—regime, this claimant would simply present medical evidence in the first 512 proceeding. He would not have to return to the Industrial Commission first.

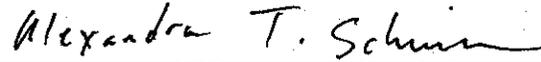
At bottom, Bennett asks this Court to adopt a contorted reading of its prior precedent in order to avoid the consequences of his, in hindsight, misguided trial strategy. For whatever reason, he declined to present competent evidence of either his medical condition or its cause at trial, and that omission is fatal to his claim. Accordingly, whatever sympathy the Court may have for Bennett's individual circumstances, it must reject his legal arguments.

CONCLUSION

For the foregoing reasons, this Court should affirm the Sixth District's decision affirming judgment in favor of the Administrator.

Respectfully submitted,

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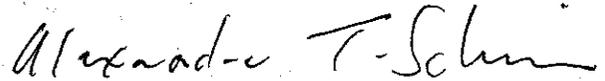
I certify that a copy of the foregoing Merit Brief of Defendant-Appellee Administrator, Ohio Bureau of Workers' Compensation was served by U.S. mail this 13th day of February, 2012, upon the following counsel:

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