

ORIGINAL

In the
Supreme Court of Ohio

JAMES A. LANG, TEDDY H. SHARP, AND	:	Case No. 2011-1740
MARK A. LAIBE,	:	
	:	
Plaintiffs-Appellees,	:	On Appeal from the
	:	Seneca County
	:	Court of Appeals,
v.	:	Third Appellate District
	:	
DIRECTOR, OHIO DEPARTMENT OF	:	Court of Appeals
JOB AND FAMILY SERVICES,	:	Case Nos. 13-10-33, 13-10-34, 13-10-35
	:	
Defendant-Appellant.	:	

**MEMORANDUM OPPOSING RECONSIDERATION OF DEFENDANT-APPELLANT
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

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MEMORANDUM OPPOSING RECONSIDERATION

The claimants ask this Court to reconsider its decision, issued just three weeks ago, holding that they are ineligible for Trade Act benefits. They request this extraordinary relief even though nothing has changed since the parties initially presented their arguments. No point of law or fact has changed, and the claimants do not convincingly argue that the Court misunderstood their arguments. Instead, the reconsideration motion offers only what this Court's rules forbid—"reargument of the case." Sup. Ct. Prac. R. 11.2(B). Presenting nothing new, the motion should be denied.

In their primary argument in favor of reconsideration, the claimants focus on *Christopher v. SmithKline Beecham Corp.*, ___ U.S. ___, 132 S. Ct. 2156 (2012). In that case, the United States Supreme Court held that the Department of Labor's novel interpretation of three regulations did not deserve deference, where the new interpretation contravened decades of agency and industry practice. *Id.* at 2167-70. With respect to the current proceeding, the claimants' reference to *Christopher* is not new, as the claimants previously brought it to this Court's attention in a "Supplemental Filing of Notice of Authority," filed on June 29, 2012. *See* http://www.sconet.state.oh.us/pdf_viewer/pdf_viewer.aspx?pdf=709964.pdf. The Court thus had notice of *Christopher* for nearly five months before issuing its decision; the case offers no basis for reconsideration now.

For three additional reasons, *Christopher* has nothing to do with this case. First, that case does not involve the same statute, the same program, the same language, or the same legislative history as this case. *Christopher* does not control interpretation of the statute here, nor do the claimants argue otherwise. Second, *Christopher* involves a federal agency's interpretation of a regulation, which presents wholly different deference questions than an agency's interpretation of a statute. *See Auer v. Robbins*, 519 U.S. 452 (1997). *Christopher* therefore says nothing

relevant about this case, which involves an agency's interpretation of a statute, not a regulation. Finally, *Christopher* arose in the federal courts, which have developed elaborate rules for when federal judges must accord agency interpretations controlling deference. This Court has never held that the system of deference in Ohio state courts invariably mimics that in the federal courts. *Christopher*, in short, provides no basis for reconsideration because it involves a different program, a different source of law, and a different system of deference.

The rest of the motion rehashes the arguments presented in the claimants' merits brief:

- The claimants' motion argues that deferring to the agency in this case would reduce judicial review to mere "obedience to administrative agencies." Recon. Mot. at 2. So did their merits brief, which accused ODJFS of "urging blind deference to the TEGL." Claimants' Br. at 23.
- The claimants' motion argues that TEGL 2-03 is "not a promulgated Labor Department regulation" but instead amounts to "informal, interim guidance." Recon. Mot. at 3. This argument, too, appeared in their merits brief: "TEGL 2-03 is not found in a regulation" and is "an 'interim' instruction." Claimants' Br. at 24.
- In their motion, the claimants argue that TEGL 2-03 does not "promote[] the purposes of ATAA." Recon. Mot. at 4. In their merits brief, the claimants likewise argued that "there is nothing in the purpose of TAA or the intent expressed by Congress that supports limiting ATAA payments in the manner proposed here by ODJFS." Claimants' Br. at 11.
- In their motion, the claimants argue that the Unemployment Compensation Review Commission denied benefits based on "the contract between Ohio and the U.S. Labor Department." Recon. Mot. at 4. Once again, this echoes what they argued in their brief: "Here, the Unemployment Compensation Review Commission relied upon Ohio's operating agreement with the Labor Department as its main rationale for applying TEGL 2-03's age 50 at reemployment provision to appellees' applications for ATAA." Claimants' Br. at 30.

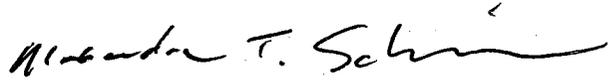
The claimants do not assert that new facts or new law require acceptance of these arguments. Nor do they claim that the Court somehow overlooked or misapprehended the arguments. At bottom, the claimants seek only reargument of the case, which this Court's rules expressly forbid. *See* Sup. Ct. Prac. R. 11.2(B).

CONCLUSION

For these reasons, the Court should deny reconsideration.

Respectfully submitted,

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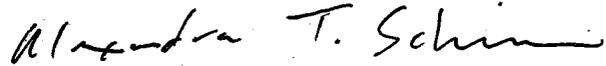
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum Opposing Reconsideration of Defendant-Appellant Director, Ohio Department of Job and Family Services, was served by U.S. mail this 12th day of December, 2012, upon the following counsel:

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