

ORIGINAL

In the Supreme Court of Ohio

STATE OF OHIO, ex rel.	:	Case No. 2012-1163
BILLY G. BLACK,	:	
Appellee,	:	On Appeal from the
	:	Franklin County
vs.	:	Court of Appeals,
	:	Tenth Appellate District
PARK OHIO INDUSTRIES, INC.,	:	Court of Appeals Case
Appellant,	:	No. 10AP-1168
	:	
and	:	
	:	
INDUSTRIAL COMMISSION OF OHIO	:	
Appellee.	:	

BRIEF OF APPELLEE, INDUSTRIAL COMMISSION OF OHIO

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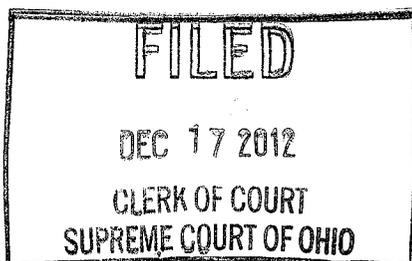


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INTRODUCTION

This mandamus action concerns an order of appellee, Industrial Commission of Ohio (“commission”), denying the request of appellee, Billy G. Black (“Black”), for permanent and total disability (“PTD”) compensation. The commission’s decision was based on “some evidence” that Black voluntarily abandoned the workforce when he retired from appellant, Park Ohio Industries, Inc. (“Park Ohio”). The Franklin County Court of Appeals issued a limited writ of mandamus that ordered the commission to vacate its PTD denial order and to enter a new administrative order determining Black’s eligibility for PTD compensation in a manner consistent with the magistrate’s decision.

The court below concludes that two possible errors may exist in the commission’s findings of fact. One, the commission’s finding that no contemporaneous medical evidence supports Black’s allegation that his retirement was injury-induced may be read to mean the hearing officer did not consider the medical records cited in the order. Two, the commission’s uncontroverted finding that none of Black’s treating physicians advised the retirement may suggest an improper shifting of the burden of proof on the issue of voluntary abandonment.

Park Ohio appealed the decision of the lower court. The commission aspires for clarity in its orders and did not appeal the appellate court’s decision, but agrees with Park Ohio that the lower court’s criticisms of the commission’s order are theoretical rather than real, and the appellate court’s order should be overturned.

STATEMENT OF THE CASE AND FACTS

The commission incorporates and adopts Park Ohio’s Statement of Facts as if fully rewritten herein, including the commission’s findings of fact that support its conclusion that Black voluntarily retired from his job at Park Ohio and abandoned the entire workforce. The

commission's decision is based on "some evidence" that Black's retirement was not related to the allowed conditions in his claim. In particular, the commission's order draws attention to Dr. Panigutti's office note of December 11, 2000, which documents the healing of Black's physical injuries and his ability to return to modified duties as of December 13, 2000. Dr. Panigutti's January 22, 2001, medical note indicates that Black's complaints of groin pain are unrelated to the allowed back conditions. Also, during this visit, Dr. Panigutti reduces Black's work restrictions. Supplement to Appellant's Brief at 77.

In the Court of Appeals, the magistrate issued a decision that concludes in error (1) the commission misconstrued Dr. Panigutti's office notes as providing "no medical evidence that [Black's retirement] was induced by the industrial injury," and (2) even though "there is no evidence in the record that Dr. Panigutti, or any other doctor, ever advised relator to retire," "the commission cannot * * * seemingly set forth a requirement for relator to meet that is not in accordance with law." Magistrate's Decision at ¶¶ 56 and 58, Appellant's Appendix ("A.App") at 47. The commission and Park Ohio objected to the magistrate's decision. A.App. 49-65. The lower court overruled the objections, adopted the magistrate's decision, and issued a limited writ. A.App. 73. The court below concludes the commission's findings of fact "suggests that the [commission] did not consider medical evidence" relevant to involuntary retirement, and "it appears that the [commission] erroneously believed that relator was, in fact, required to submit [evidence of medical advice to retire], thus wrongly shifting the burden of proof from Park Ohio to relator." Decision at ¶¶ 18-19, A.App. 72. Park Ohio appealed the appellate decision as a matter of right to this court. A.App. 87-89.

LAW AND ARGUMENT

Appellee's First Proposition of Law:

An Industrial Commission order referencing the medical records temporally close to the claimant's retirement date verifies the hearing officer reviewed and considered contemporaneous medical evidence when determining the voluntary nature of claimant's retirement.

The commission adopts and incorporates Park Ohio's arguments in its first proposition of law. It is well settled that the "commission is the *exclusive evaluator of weight and credibility*" of the evidence presented at the administrative hearing. (Emphasis added.) *State ex rel. Athey v. Indus. Comm.*, 89 Ohio St.3d 473, 475 (2000). The lower court erred in finding "the commission misconstrued (or possibly ignored) medical evidence of record contemporaneous with relator's retirement." Decision at ¶¶ 21, A.App. 73. In its July 21, 2010, order, the commission found:

When he returned to work he had a **restriction of no lifting over twenty pounds.**

* * *

The Injured Worker saw his treating orthopedist in January 2001. At that time the lifting restriction was increased to fifty pounds due to groin pain which the doctor stated was unrelated to the Injured Worker's back condition.

A.App. 34. (Emphasis Added.)

Black's treating orthopedist was Dr. Panigutti. On December 11, 2000, Dr. Panigutti opined that "Billy Black is able to return to light or modified job duties with no lift > 20 lbs., nos [sic] stand > 2 hrs for 4 weeks then full duty. A.App. ¶ 77. In his January 22, 2001, medical note, Dr. Panigutti "explained to [Black] that his groin pain is unrelated to his back pain * * * and limited Black to "no lifting greater [than] 50 pounds and no work greater than 8 hours for four weeks." Id. The commission's order does not identify Dr. Panigutti by name, but the medical evidence referenced in the commission's order is found in Dr. Panigutti's December 11,

2000, and January 22, 2001, medical notes. This contemporaneous medical evidence was considered by the commission as is required by Ohio Adm.Code 4141-3-34(D)(1)(d). The administrative findings from Dr. Panigutti's medical notes near Black's retirement date cannot reasonably be "interpreted to mean that the SHO did not consider or review evidence of relator's medical condition at or near the time of his retirement." Decision at ¶ 18-19, A.App. 72. The commission's findings are supported by some evidence, and the lower court simply replaced the commission's judgment with its own. "The commission's actions are presumed to be valid and performed in good faith and judgment, unless shown to be otherwise; so long as there is some evidence to support its findings, its orders will not be overturned." *State ex rel. Stephenson v. Indus. Comm.*, 31 Ohio St.3d 167, 170 (1987).

The plain language of the commission's order indicates the hearing officer considered Dr. Panigutti's office notes. "Reviewing courts must not micromanage the commission as it carries out the business of compensating for industrial/occupational injuries and illness." *State ex rel. Mobley v. Indus. Comm.*, 78 Ohio St.3d 579 (1998). Further, courts must defer to the commission's expertise in evaluating disability and not substitute their judgment for the commission's. *State ex rel. Pass v. C.S.T. Extraction Co.*, 74 Ohio St.3d 373, 376 (1996). The lower court erred in finding the commission did not consider medical evidence of record contemporaneous with Black's retirement.

Appellee's Second Proposition of Law:

A correct finding of fact about the lack of medical advice about retiring does not indicate an improper shift of the burden of proof.

The commission adopts and incorporates Park Ohio's arguments in its second proposition of law. The commission's finding of fact that no medical evidence indicates any of Black's treating physicians advised him to retire is one of several circumstances indicating he voluntarily

retired from the workforce. Abandonment of employment is largely a question “of intent * * * [that] may be inferred from words spoken, acts done, and other objective facts.” *State ex rel. Pierron v. Indus. Comm.*, 120 Ohio St.3d 40, 2008-Ohio-5245. The lower court concedes the commission correctly found that there is a lack of medical evidence to substantiate Black was advised to retire. Decision at ¶ 18, A.App. 72. However, the lower court makes a leap of logic that this finding of fact indicates the commission has a fundamental misunderstanding of the law concerning voluntary abandonment of the workplace and the burden of proof. Nothing in the plain language of the commission’s finding of fact indicates a misunderstanding of the law or a shift of the burden of proof for an affirmative defense. The appellate court has no basis for its conclusion. “[T]he nature of the claimant's retirement is a factual question that revolves around the claimant's intent at the time of retirement and * * * questions of credibility and weight to be given evidence are within the commission's discretion as fact finder.” *State ex rel. Hoffman v. Rexam Beverage Can Co.*, 10th Dist. No. 11AP-533, 2012-Ohio-2469 at ¶ 59, citing *Pierron*. The lower court erred in finding the commission shifted the burden of proving the affirmative defense of voluntary abandonment to Black.

CONCLUSION

The lower court erred in granting a writ of mandamus. Its decision fails to defer to the commission as fact finder. The lower court has weighed the evidence that was before the commission, determined the credibility of the evidence, and substituted its own judgment for the

commission's. Accordingly, the commission respectfully requests that the lower court's decision be overruled.

Respectfully submitted,

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I hereby certify that a copy of the foregoing brief was served upon the following by regular U.S. Mail service, this 17th day of December, 2012:

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