

ORIGINAL

IN THE SUPREME COURT OF OHIO

MARK A. BENNETT,	:	
	:	
Plaintiff-Appellant,	:	On Appeal from the
	:	Lucas County Court of Appeals
v.	:	Sixth Appellate District
	:	
ADMINISTRATOR,	:	
OHIO BUREAU OF WORKERS'	:	Supreme Court
COMPENSATION,	:	Case No. 2011-0902
	:	
Defendant-Appellee,	:	
	:	
and	:	
	:	
GOODREMONT'S INC.	:	
	:	
Defendant.	:	

APPELLANT, MARK A. BENNETT'S
MOTION FOR RECONSIDERATION

PAUL E. HOEFFEL * (0008697)
**Counsel of Record*
 Kennedy, Purdy, Hoeffel & Gernert LLC
 111 West Rensselaer Street
 Bucyrus, Ohio 44820
 419-562-4075
 419-562-7850 fax
 kphg@embarqmail.com

Counsel for Appellant
 Mark A. Bennett

MICHAEL DEWINE (0009181)
 Attorney General
 ALEXANDRA T. SCHIMMER* (0075732)
 Solicitor General
**Counsel of Record*
 ELISABETH A. LONG (0084128)
 MATTHEW P. HAMPTON (*pro hac vice*)
 Deputy Solicitors
 ELISE PORTER (0055548)
 Assistant Section Chief
 Workers' Compensation
 JOSHUA W. LANZINGER (0069260)
 Assistant Attorney General
 30 East Broad Street, 17th Floor
 Columbus, Ohio 43215
 614-466-8980
 614-466-5087 fax
 alexandra.schimmer@ohioattorneygeneral.gov

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Counsel for Appellee Administrator, Ohio
 Bureau of Workers' Compensation

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MOTION FOR RECONSIDERATION

Pursuant to Rule XI (2) of the Supreme Court Rules of Practice, Appellant, Mark A. Bennett, respectfully moves this Court to reconsider its decision on the merits issued December 5, 2012. Appellant respectfully submits that the majority opinion misperceived his argument, and in so doing reached a result which fails to give effect to the language of R.C. 4123.512 or to the mandate of R.C. 4123.95 to liberally construe such language in favor of the injured worker. The bases for this motion are more fully developed below.

I. The jurisdiction of a Court in a R.C. 4123.512 proceeding is limited to a determination of the issue(s) decided in the industrial commission order appealed.

This decision should be reconsidered because it fundamentally and improperly expands the role of the judiciary in R.C. 4123.512 appeals.

Beginning with *Kroger v. Ward*, 106 Ohio St.3d 35 (2005-Ohio-3560) this Court has limited R.C. 5123.512 appeals "...to those conditions that were addressed in the administrative order from which the appeal is taken." This was because;

The requirement that Workers' Compensation claims must be presented in the first instance for administrative determination is a necessary and inherent part of the overall adjudication framework of the Workers Compensation Act. (*Kroger* at ¶ 9)

In this case the Industrial Commission "order appealed" was that the "injured worker was not in the course of his employment when he was injured" (Supplement to Merit Brief of Appellant, page 6 & 7).

This order was an initial finding of alleged non-validity which was the only basis of denying Mr. Bennett's "right to participate".

This type of validity denial differs from the “body of law” that the majority refers to where the order of the Industrial Commission specifically determines, after administrative review, the issues of the employee’s “injury” or “medical conditions” that are compensable. In those cases expert medical evidence is required at the R.C. 4123.512 trial.

R.C. 4123.512(D) directs that, “The court...shall determine the right of the claimant to participate...upon the evidence adduced at the hearing of the action.” The statute as noted by the dissent does not use the term “*de novo*”. *Bennett*, at ¶ 50. Therefore the evidence to be presented is not of every element of the claim, but simply the evidence relevant to the order appealed.

In *Marcum v. Barry*, 76 Ohio App. 3d 536, at p. 539, 602 N.E. 2d 419 (10 Dist. 1991) cited by the majority, it is explained that the statutory language simply excludes from the R.C. 4123.514 hearing “...consideration of...or deference to, the decision of the Industrial Commission...” but is to be decided on the evidence presented in the RC. 4123.514 trial.

II. Once the Court decides the specific issue presented by the order “...the commission and the administrator shall thereafter proceed...as if the judgment were the decision of the commission...” R.C. 4123.512 (G).

Here, the R.C. 4123.512 court ruled that contrary to the Industrial Commission order appealed Mr. Bennett was not barred from participation by the “coming and going” rule.

In this case that means the claim returns to the post validity stage of the BWC’s administrative review and the agency perform its responsibilities as the General Assembly directed. Mr. Bennett does not seek a “remand” but as stated in his R.C. 4123.512 Petition (at ¶ 16) that he be determined to have the “...right to participate in the fund upon the evidence adduced at the hearing...”. The reference to a “remand” is merely semantics. Mr. Bennett is not

seeking to have BWC or the Industrial Commission to make any further finding of fact or law as to his validity denial on the basis of the “coming and going” rule. That issue has been conclusively decided by the R.C. 4123.514 court. Mr. Bennett seeks only to have his claim administratively proceed from the point of the error.

III. The interpretation of Chapter 4123 of the Ohio Revised Code is required by R.C. 4123.95 to be liberally construed in favor of claimants.

This Court has previously addressed how their decisions comport with the dictates of R.C. 4123.95. *Kroger v. Ward*, at ¶ 12. However in this case the majority does not explain how this decision, which requires validity claimants to produce expert medical evidence of an “injury” or “medical condition” which have not been administratively considered, decided, or a part of the order appealed from, is favorable to claimants. On the contrary, this will place a substantial and unnecessary financial burden on the claimant. This is especially true if the claimant does not prevail on the validity claim.

Further, this will likewise force the Administrator to expend funds for medical experts at trial where those questions have not been addressed by the BWC. In fact a trial will be had without any administrative determination that any of the “injury” or “medical conditions” are disputed.

A reconsideration of the decision by application of R.C. 4123.95 is warranted and necessary.

CONCLUSION

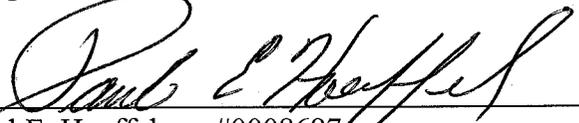
The majority opinion is a retreat from this Court's prior decisions that limit the judiciary's role in Workers Compensation cases.

Central to those decisions is the fact that this Court has held that the jurisdiction of a R.C. 4123.512 court is limited to the specific issues set forth in the Industrial Commission order appealed.

Limiting the R.C. 4123.512 court's jurisdiction to the issue contained in the order appealed comports with the legislative framework for Workers Compensation claims and issues to be administratively processed.

For these reasons Appellant, Mark A. Bennett, respectfully urges this Court to reconsider its decision here issued December 5, 2012 and to reverse the judgment of the Court of Appeals for Lucas County.

Respectfully submitted,



Paul E. Hoeffel #0008697
KENNEDY, PURDY, HOFFEL
& GERNERT LLC
111 West Rensselaer Street
P.O. Box 191
Bucyrus, Ohio 44820
Phone: 419-562-4075
Fax: 419-562-7850
Email: kphg@embarqmail.com

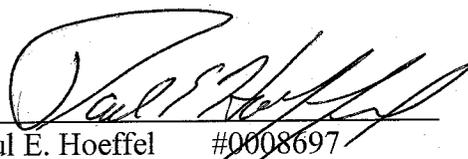
COUNSEL FOR APPELLANT,
MARK A. BENNETT

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by ordinary U.S. mail to the following on this 17th day of December, 2012:

Michael DeWine, Attorney General
Alexandra T. Schimmer, Solicitor General
Elisabeth A. Long and Matthew P. Hampton, Deputy Solicitors
Joshua W. Lanzinger, Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215

COUNSEL OF RECORD FOR APPELLEE, ADMINISTRATOR,
OHIO BUREAU OF WORKERS' COMPENSATION


Paul E. Hoeffel #0008697

COUNSEL FOR APPELLANT,
MARK A. BENNETT