

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel.
GARY W. ROBERTS,

Appellant,

v.

STEPHENS PIPE & STEEL, LLC

and

INDUSTRIAL COMMISSION OF OHIO,

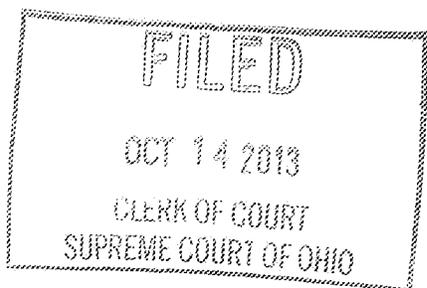
Appellees.

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: **On Appeal From the Franklin**
: **County Court of Appeals,**
: **Tenth Appellate District**
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: Supreme Court
: Case No: 2013-0349
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: Court of Appeals
: Case No: 12AP-298 :
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REPLY BRIEF OF APPELLANT, GARY W. ROBERTS

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LAW AND ARGUMENT

Now comes Appellant, Gary W. Roberts, and submits his Reply Brief. In addition to the arguments submitted in his Merit Brief, Roberts respectfully submits this Reply Brief in response to the Merit Brief of Appellee, the Industrial Commission of Ohio.

The Industrial Commission submitted its Proposition of Law that the Commission is within its discretion to deny Permanent Total Disability Compensation where the evidence in the record shows that claimant's medical impairments, and disability factors, do not prevent sustained remunerative employment. Appellant, Roberts, cannot argue with that general proposition. However, the Industrial Commission of Ohio has a duty to analyze the "evidence in the record," to determine whether or not any restrictions or limitations would, in fact, prevent employment.

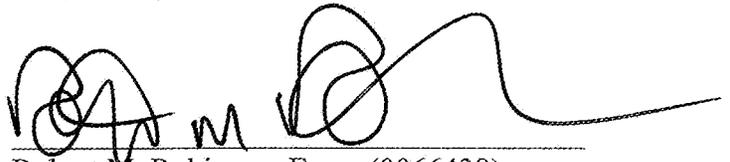
In the present case, the entirety of the matter turns on restrictions found by the Industrial Commission physician, Dr. Skillings. Dr. Skillings performed a psychological evaluation and, without any doubt, found psychological restrictions. He noted in the body of his report that psychological restrictions exist and also, completed a form outlining restrictions.

Therefore, where the Staff Hearing Officer for the Industrial Commission of Ohio made a specific finding that, "the allowed psychological condition does not preclude, nor restrict, employment," this must constitute an abuse of discretion. The analysis is as simple as: it is an abuse of discretion for the Industrial Commission to indicate that a condition does not preclude, nor restrict employment, when the evidence relied upon indicates that the condition does, in fact, preclude and restrict employment.

Appellant, Roberts, respectfully submits that the Industrial Commission clearly abused its discretion.

Appellant, Roberts, respectfully requests that this Honorable Court issue a Writ of Mandamus directing the Industrial Commission of Ohio to reconsider the application for permanent total disability and approve the requested compensation.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Reply Brief of Appellant, Gary W. Roberts, was served this 14th day of October, 2013 upon the following:

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