

Case Nos. 2014-1881, 2014-1962

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**In the Supreme Court of Ohio**

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**Appeal from the Court of Appeals  
Sixth Appellate District  
Erie County, Ohio  
Case No. E-14-009**

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**MICHAEL P. ONDERKO,  
Plaintiff-Appellee**

v.

**SIERRA LOBO, INC.,  
Defendant-Appellant.**

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**MERIT BRIEF OF APPELLEE MICHAEL P. ONDERKO**

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## SUMMARY OF ARGUMENT

This is a simple case of an employee who was injured at work and was fired from his employment because he filed a claim for workers' compensation. Michael Onderko suffered the ultimate punitive action prescribed by R.C. 4123.90 because he did not appeal an unfavorable order of the Industrial Commission.

R.C. 4123.90 is clear, “[n]o employer shall discharge, demote, reassign, or take any punitive action against any employee because the employee *filed a claim or instituted, pursued, or testified* in any proceedings under the Workers’ Compensation Act (“Act”) for an injury or occupational disease which occurred in the course of and arising out of his employment with that employer.” R.C. 4123.90 does not require the employee to win his hearing at the Industrial Commission in order to avail himself of the protection of R.C. 4123.90. The protection is for the filing, instituting, pursuing or testifying in any proceedings under the Act. R.C. 4123.01 *et. seq.*

The Act is premised on the recognition that industrial accidents are inevitable and that employees are injured at work. The Act shifts the burden of the consequences of the workplace injury away from the individual employee to the employer, but ultimately to society at large. Further, the Act operates as a balance of mutual compromises between the interests of the employee and the employer. The goal of the Act is to benefit both employees and employers.

R.C. 4123.90 expresses a clear public policy prohibiting retaliatory employment action against employees because of proceedings filed under the Act. The General Assembly intended to proscribe retaliatory firings. Appellant’s alternative interpretation --- that the legislature mandated the employee prove a workplace injury instead of *filing a claim or instituting, pursuing, or testifying* in any proceeding under the Act, is at odds with the basic purpose of the anti-retaliation statute, which is to “enable employees to freely exercise their rights without fear

of retribution from their employers.” *Coolidge v. Riverdale Local School Dist.*, 100 Ohio St.3d. 141, 2003 Ohio-5357, 797 N.E.2d 61, ¶43 (2003).

### STATEMENT OF FACTS

Onderko began his employment with Employer on July 20, 2010, as an intermittent employee working as an engineering tech. Onderko was also working for Ford Motor Company during this time. Appellant offered Onderko a full-time position and agreed to match his Ford salary. Onderko left his employment at Ford, and was hired by Appellant on November 15, 2010. (Onderko Aff. at ¶¶ 1 and 2, App. 1-4)

On August 9, 2013, Onderko was injured at work while moving a big desk and a table. Onderko told his co-workers that his right knee was hurting and that he needed to sit down for awhile. About an hour later, Onderko helped to slide heavy cabinets. Onderko could not assist with the linoleum flooring because of his right knee pain. (Onderko Aff. at ¶ 3, App. 1-4)

Because of the pain, Onderko left work early and stopped at a gas station. As Onderko was stepping off of the curb, his right knee gave out. Onderko went home and his wife drove him to the emergency room. At the emergency room, Onderko did not mention the work injury because he was concerned that he would be fired, as it was well known that Appellant was very concerned about their safety record. The emergency room doctor told Onderko to see an orthopedic doctor. (Onderko Aff. at ¶ 4, App. 1-4)

On August 10, 2012, Onderko sought treatment with Dr. Biro. Onderko had never treated with Dr. Biro before, and Onderko told Dr. Biro that his knee was bothering him because of all the heavy lifting at work. When Onderko read Dr. Biro’s report on-line, he noticed that Dr. Biro had incorrect information in his report. Dr. Biro stated that Onderko had hurt his knee six weeks prior to his work injury. Instead, Onderko had told Dr. Biro that he had previous injury to

**his left knee.** Onderko's left knee injury was not work-related. Onderko attempted numerous times to contact Dr. Biro to correct the information in his report, but when Dr. Biro found out that Onderko's claim was a workers' compensation claim, he refused to see Onderko. (Onderko Aff. at ¶¶ 4 and 5, App. 1-4)

On August 13, 2012, Onderko told Appellant that Dr. Biro had told him he had blown out his ACL. Onderko asked Appellant if he could return to work, but Appellant refused to allow Onderko to return to work because of his pain medication. Onderko told Appellant that he had his prescription bottle with 98 pills in it because he had only taken 2 of the pills. Appellant still would not allow Onderko to return to work. (Onderko Aff. at ¶¶ 6 and 7, App. 1-4) Appellant described this conversation in his Merit Brief, p. 4, noting that Onderko filed a First Report of Injury with the Ohio Bureau of Workers' Compensation two hours after speaking with his Appellant and because Appellant would not permit Onderko to return to work, "[o]n August 17, 2012, in furtherance of his attempt to replace his lost income, Onderko filed a Request for Temporary Total Compensation." Appellant's hostility towards Onderko regarding his injury and his request to return to work was evident from the very first conversation Onderko had with Appellant regarding his injury.

Onderko filed a First Report of Injury with the Bureau of Workers' Compensation report of injury because Dave Hamrick, Corporate Director of Human Resources, told him he did not have a work injury. (Onderko First Report of Injury, App. 5) Onderko wanted to ensure that his injury was treated as work related. (Onderko Aff. at ¶ 8, App. 1-4)

When Onderko learned there was going to be a hearing regarding his injury, he contacted his claim representative at the Bureau of Workers' Compensation to find out about the hearing because he had never attended an Industrial Commission hearing. The claim representative told

Onderko the hearing was no big deal, and that he did not even have to attend the hearing. Onderko definitely did not think that he needed an attorney for the hearing or that he was even allowed to have an attorney present at the hearing. Onderko was very surprised when he attended the hearing and there was an attorney representing Appellant at the hearing. Onderko believed that someone from Sierra Lobo would be present, not an attorney. Onderko thought the issue of the injury was only between him and Appellant. (Onderko Aff. at ¶ 9, App 1-4) When Onderko received the notice denying his claim, he did not file an appeal because he had already returned to work and wanted the ordeal to be over because he needed his job. (Onderko Aff. at ¶ 10, App. 1-4)

On December 12, 2012, Onderko was terminated from his employment. Onderko had no idea that his Employer was considering firing him. Dave Hamrick told Onderko that he was being fired because of the workers' compensation claim. Onderko could not believe it as he was never charged or investigated for workers' compensation fraud. (Onderko Aff. at ¶ 11, App. 1-4).

Onderko was not fired because of deceptive behavior. Specifically, David A. Hamrick, wrote in a letter dated February 13, 2013, that "Mr. Onderko's injury did not occur in the course of employment with Sierra Lobo. Based on the overwhelming evidence in support of that fact, and subsequent ruling of the Ohio Bureau of Workers' Compensation confirming that fact, a claim of an alleged violation of ORC 4123.90 has no merit." (David A. Hamrick correspondence, dated 02-13-13, App. 6; O'Bryon Aff., App 7) Onderko was fired because he, a non-attorney, did not win his workers' compensation hearing and he did not appeal that decision.

While employed with Appellant, Onderko received three performance bonuses and he had no discipline write-ups or unexcused absences. (Sierra Lobo Performance Evaluations, App. 8-16) Onderko also received unemployment compensation because he was not fired for cause.

(Determination of Unemployment Compensation Benefits issued 1-2-2013, App. 17-19) The only reason provided by Employer for Onderko's termination was the fact that he had filed a workers' compensation claim. (Onderko Aff. at ¶ 11, App. 1-4)

Additionally, Dr. Ahn, the Bureau of Workers' Compensation's doctor, (not Onderko's or Appellant's doctor) determined that "[a]s for the right knee sprain/strain, this appears directly related to the injury from 08/09/2012.... Therefore, it would appear that the claimant does have a right knee sprain/strain that would be directly related to the injury that was incurred. The mechanism of injury is consistent, the time course with respect to presentation is also consistent." (O'Bryon Aff., App. 7) (See also, Nicholas Ahn, M.D. report dated 9-6-12, App. 20-22)

Finally, the statements from Onderko's co-workers, Antony Skaff, Jeff Sultzbaugh and Martin Roth relate that Onderko said he had aggravated his knee while moving cabinets in the shop. (Skaff Statement, App. 23-24; O'Bryon Aff., App. 7), (Sultzbaugh Statement, App. 25-26, O'Bryon Aff., App. 7) and (Roth Statement, App. 27, O'Bryon Aff., App. 7).

### **ARGUMENT AND LAW**

#### **Proposition of Law No. 1: A prima facie claim for retaliatory discharge under R.C. 4123.90 does not require proof of a workplace injury.**

R.C. 4123.90 is clear, "[n]o employer shall discharge, demote, reassign, or take any punitive action against any employee because the employee *filed a claim or instituted, pursued, or testified* in any proceedings under the worker's compensation act for an injury or occupational disease which occurred in the course of and arising out of his employment with that employer." R.C. 4123.90 does not require the employee to win his hearing at the Industrial Commission in order to avail himself of the protection of R.C. 4123.90; it just requires that the employee *filed a*

*claim or instituted, pursued, or testified* in any proceedings under the Act for a work-related injury.

Appellant's reliance on *Wilson v. Riverside Hospital*, 18 Ohio St.3d 8 (1985) is misplaced. *Wilson* did not hold that proof of a workplace injury is a necessary element of a retaliatory discharge. There was no dispute in *Wilson* that the employee had been injured at work. Instead, *Wilson* stands for the proposition that the complaint is sufficient if it alleges the employee was injured on the job, filed a claim for worker's compensation and was discharged by that employer contravention of R.C. 4123.90.

A close examination of *Wilson*, as explained by the Sixth District Court of Appeals in *Onderko v. Sierra Lobo, Inc.*, 20 N.E.3d 322 (Ohio App. 6 Dist. 2014) demonstrates that the "...focus of the holding is that a reference to R.C. 4123.90 in the complaint for retaliatory discharge was sufficient to satisfy the notice pleading requirements, and that the plaintiff was not required to specifically allege discharge was in retaliation for her filing of a workers' compensation claim." *Id.* at ¶ 22.

**A. The Ohio Workers' Compensation system is predicated upon a mutual balance of interests between employer and employee.**

The Ohio workers' compensation system is part of the Ohio Constitution through Article II, Section 35, which states in part that "[l]aws may be passed establishing a board which may be empowered \*\*\* to collect, administer and distribute" from the state workers' compensation fund. The workers' compensation system is based upon the premise that an employer is protected from a suit in negligence in exchange for compliance with the Worker's Compensation Act, which:

\*\*\* operates as a mutual balance between the interests of the employer and the employee whereby employees relinquish their common law remedy and accept lower benefit levels coupled with the greater assurance of recovery and employers give up their common law defenses and are protected from unlimited liability. *Blankenship v. Cincinnati Milacron Chem.*, 69 Ohio St.2d 608,614 (1982).

Article II, Section 35 of the Ohio Constitution represents a social bargain in which employers and employees exchange their respective common-law rights and duties for a more certain and uniform set of statutory benefits and obligations. *Holeton v. Crouse Cartage Co.*, 92 Ohio St.2d 115, 119 (2001).

Article II, Section 35 does not stand for the proposition that a non-appealed Industrial Commission Order prohibits an employee from pursuing a retaliatory action pursuant to R.C. 4123.90 when wrongfully discharged from employment.

**B. The purpose of R.C. 4123.90 is to permit employees to freely exercise their rights without fear of retribution from their employer.**

In examining the rules for statutory construction, it is important to keep in mind that “[t]he primary rule in statutory construction is to give effect to the legislature’s intention.” *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St.3d 93, 97 (1991). (In dealing with ambiguity, the legislature has stated its intention that “where a section of the Workmen’s Compensation Act will bear two reasonable but opposing interpretations, the one favoring the claimant must be adopted.” *State ex rel. Sayre v. Indus. Comm.*, 17 Ohio St.2d 57, 62 (1969) citing R.C. 4123.95 (“Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and dependents of the deceased employees.”)).

One of the aids of construction in determining the intent of the legislature is to discover the reason for the anti-retaliation provision in R.C. 4123.90. To that end, the Ohio Supreme Court has stated that the basic purpose of the anti-retaliation provision in R.C. 4123.90 is “to enable employees to freely exercise their rights without fear of retribution from their employers.” *Sutton v. Tomco Machining, Inc.*, 129 Ohio St.3d 153, 2011-Ohio-2723, 950 N.E.2d 938, ¶22 (2011), quoting *Coolidge* at ¶43. Under Appellant’s interpretation, this purpose would be

frustrated where it is unknown at the time of the injury, the precise causation of the injury because multiple incidents may have substantially aggravated a condition resulting in an injury.

Further, requiring an employee to successfully prove that the injury occurred at work for purposes of a retaliation discharge claim would have a chilling effect on the exercise of the employee's rights because the employee would be forced to choose between a continuation of employment and the submission of a workers' compensation claim. "This choice must be made by the employee knowing that if he does not prove that the cause of the injury is work-related, not only will his or her claim be denied, but the employer would then in turn be free to terminate the employment simply because the claim was filed." *Onderko* at 27.

**Proposition of Law No. 2: Failure to file an appeal to an order issued by the Industrial Commission of Ohio does not preclude an employee from bringing a claim of retaliation pursuant to R.C. 4123.90.**

As explained by the Appellate Court in *Kilbarger v. Anchor Hocking Glass Co.*, 107 Ohio App.3d 763 (1995), it would be contrary to public policy to fire an employee because he did not win his workers' compensation claim. "R.C. 4123.90 does not require the claimant win his workers' compensation claim, but rather, just that he bring a claim for workers' compensation." *Kilbarger* emphasized that "an employee may hesitate to pursue a workers' compensation claim if the claimant knows an unfavorable outcome could cost him his job." "R.C. 4123.90 was specifically enacted to prevent this." The court found that it would have a chilling effect upon the pursuit of statutory benefits. *Id.* at 768. The filing of the workers' compensation claim, not the allowance of the claim triggers the statutory protection from discharge.

With regard to a claim brought under R.C. § 4123.90, a court must determine whether a plaintiff employee has made out a *prima facie* case by showing: (1) the employee filed a

workers' compensation claim for an injury incurred in the course and scope of their employment with the defendant employer; (2) the employee suffered an adverse employment action; and (3) there was a causal connection between the filing of the claim and adverse action. If the employee meets their burden, then the employer must articulate a legitimate, non-discriminatory reason for termination of employment. If the employer does so, the court must then determine whether the employer's stated reason was pre-textual and if the real reason the employer fired the employee was because of the filing of the workers' compensation claim. *Hall v. ITT Automotive*, 362 F. Supp.2d 952, hn 5 (N.D. Ohio 2005).

Issue preclusion is intended to bar litigants from relitigating issues that have already been decided. The question of why Onderko was terminated was not decided by the Industrial Commission. Appellant's second proposition of law would bar Onderko from ever having the opportunity to demonstrate the real reason for his termination. In other words, Onderko would have no opportunity to show that Appellant's stated reason for firing was pretextual. Three months after his injury, Onderko was terminated from his employment -- fourteen days after the Hearing Order denying his claim, immediately after the appeal period for the Order had passed. Those facts under Appellant's interpretation of R.C. 4123.90 would prohibit Onderko from demonstrating that the real reason for his discharge from employment was the actual fining of the workers' compensation claim not because he had an unsuccessful claim.

Onderko was not fired because of deceptive behavior. David A. Hamrick, Corporate Director of Human Resources, wrote in a letter dated February 13, 2013, stated that "Mr. Onderko's injury did not occur in the course of employment with Sierra Lobo. Based on the overwhelming evidence in support of that fact, and subsequent ruling of the Ohio Bureau of Workers' Compensation confirming that fact, a claim of an alleged violation of ORC 4123.90

has no merit.” (David A. Hamrick correspondence dated 2-13-2013, App. 6; O’Byron Aff., App. 7) Onderko was fired because he appeared pro-se at his worker’s compensation hearing. Onderko, representing himself, did not win against his employer’s attorney. Onderko did not appeal the Order because he wanted to keep his job.

The legislature did not mandate that an employee prove a workplace injury as part of a prima facie case of retaliation. Instead, the legislature intended to protect employees who *file a claim or institute, pursue, or testify* in any proceeding under the Act. The basic purpose of anti-retaliation, is to “enable employees to freely exercise their rights without fear of retribution from their employers.” *Coolidge v. Riverdale Local School Dist.*, 100 Ohio St.3d. 141, 2003 Ohio-5357, 797 N.E.2d 61, ¶43 (2003). Onderko should not be precluded from exercising his rights to demonstrate that the real reason he was fired from his employment was because of the filing of his workers’ compensation claim not because he received an unfavorable order regarding his claim.

### CONCLUSION

As held by the Sixth District Court of Appeals, R.C. 4123.90 requires that an employee must prove only that he or she “filed a claim, or instituted, pursued or testified in any proceedings under the workers’ compensation act” and suffered an adverse employment action based upon the filing, instituting, pursuing or testifying under the Act. “The employee is not required to prove definitively that the injury occurred and arose out the course of employment.” *Onderko* at 28.

Respectfully submitted,

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/s/ Margaret O'Bryon

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**CERTIFICATE OF SERVICE**

A copy of the Merit Brief of Appellee was served by email and ordinary United States Mail, postage prepaid, this 8<sup>th</sup> day of May, 2015, upon the following:

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/s/ Margaret O'Bryon  
Margaret O'Bryon

Attorney for Appellee

**In the Supreme Court of Ohio**

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**Appeal from the Court of Appeals  
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**MICHAEL P. ONDERKO,  
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**APPENDIX INDEX AND SUPPLEMENT TO  
APPELLEE, MICHAEL P. ONDERKO'S MERIT BRIEF**

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## APPENDIX

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Revised Code 4123.90	
Ohio Constitution, Article II, Section 35	

IN THE COURT OF COMMON PLEAS  
ERIE COUNTY, OHIO

MICHAEL ONDERK )  
 )  
Plaintiff, )  
 )  
v. ) AFFIDAVIT OF MICHAEL ONDERKO  
 )  
SIERRA LOBO, INC., )  
 )  
Defendant. )

CASE NO. 2013CV0187

JUDGE TYGH TONE

AFFIDAVIT OF MICHAEL ONDERKO

Michael Onderko, after being duly sworn, depose and state that I have personal knowledge of the factual assertions contained in this Affidavit.

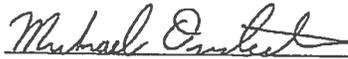
1. I was employed by Sierra Lobo, Inc., from July 2008 to July 20, 2010. I was an intermittent employee working as an engineering tech. During that time frame I was also employed with the Ford Motor Company.
2. Sierra Lobo offered me a full time position and after Sierra Lobo agreed to match my salary at Ford Motor Company, I left Ford and I was hired at Sierra Lobo on November 15, 2010.
3. On August 9, 2013, the day of my injury, I was working at Sierra Lobo with Marty Roth and Scott Baaske. First, we moved a big desk and a table. My right knee was hurting so I told them that I needed to sit down for awhile. About an hour later, we slid heavy cabinets on the floor, and laid linoleum flooring. I could not do the linoleum flooring because of my right knee pain.
4. Because of the pain, I left work early and I stopped at a gas station. As I stepped off of the curb, my knee gave out. I went home and my wife drove me to the ER. At the ER I

told the doctor about the curb but I did not mention work because I was afraid of being fired because it was known at work that Sierra Lobo was very concerned about their safety record. The ER doctor told me to see an orthopedic doctor and I went to see Dr. Biro on August 10, 2012.

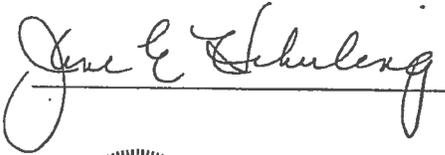
5. I had never treated with Dr. Biro before and I told Dr. Biro that my knee had been bothering me at work due to the heavy lifting that I was doing at the time. When I read Dr. Biro's report on-line I noticed that he had incorrect information in his report that the injury had occurred six weeks prior. I did not have a prior injury to my right knee. There are no medical records to support that I had a prior injury to my right knee. I had a prior injury to my left knee. My knee injury was not a work-related injury. I tried to contact Dr. Biro to change the incorrect information in his report but when he found out this was a workers' comp injury he refused to see me.
6. On August 13, 2012, I told April Reeves that Dr. Biro told me that I blew out my ACL. I never told April Reeves that my right knee injury did not happen at work. All of my previous problems were with my left knee, which was not work-related.
7. I wanted to come back to work, but Dave Hamrick would not allow me to return to work because of my pain medication. I told Dave that I had taken two pain pills previously and that I had the prescription bottle with 98 pills in the bottle. He still would not let me return to work.
8. On August 13, 2012, I filed a First Report of Injury (Exhibit H) with the Bureau of Workers' Compensation, I filed this report because Dave Hamrick told me that I did not have a work injury and I wanted to make sure that it was filed as a work injury.

9. When I found out that there was going to be a hearing regarding my injury, I contacted my claim rep at the Bureau of Workers' Compensation to find out what the hearing was about since I had never been to workers' comp hearing. The claim rep told me that hearing was not a big deal and that I did not have to attend the hearing. I definitely did not know that I needed an attorney for the hearing or that I could even have an attorney at the hearing. I was really surprised when I went to the hearing and there was an attorney there for the Sierra Lobo. I thought someone from Sierra Lobo would be at the hearing not an attorney I did not know. I thought the hearing was between me and Sierra Lobo only.
10. When I received the hearing order denying my claim, I did not file an appeal because I was already back at work and I just wanted this ordeal to be over. I needed my job.
11. December 12, 2012 was the date of my termination from Sierra Lobo. I had no idea that my employer was considering firing me. Dave Hamrick told me it was due to the workers' comp claim outcome. I could not believe it. I was never charged or even investigated for workers' compensation fraud. I did not lie about my injury. While I was employed at Sierra Lobo I received three performance bonuses, I had no discipline write-ups and no un-excused absences. (Exhibits J & K) I also received unemployment compensation because I was not fired for just cause reasons. (Exhibit I) The only reason I was fired was because I was injured at work and filed a claim for a work injury.

FURTHER AFFIANT SAYETH NAUGHT.

  
Michael Onderko

SWORN TO BEFORE ME and subscribed in my presence this 18 day of October, 2013.





JANE E. HEBERLING  
Notary Public, State of Ohio  
My Commission Expires 12/1/2014

Claim Number: 12-840216



Bureau of Workers' Compensation

First Report of an Injury, Occupational Disease or Death

By signing this form, I:

- Elect to only receive compensation and/or benefits that are provided for in this claim under Ohio workers' compensation laws;
- Waive and release my right to receive compensation and benefits under the workers' compensation laws of another state for the injury or occupational disease, or death resulting from an injury or occupational disease, for which I am filing this claim;
- Agree that I have not and will not file a claim in another state for the injury or occupational disease or death resulting from an injury or occupational disease for which I am filing this claim;
- Confirm that I have not received compensation and/or benefits under the workers' compensation laws of another state for this claim, and that I will notify BWC immediately upon receiving any compensation or benefits from any source for this claim.

WARNING:

Any person who obtains compensation from BWC or self-insuring employers by knowingly misrepresenting or concealing facts, making false statements or accepting compensation to which he or she is not entitled, is subject to felony criminal prosecution for fraud.

(R.C. 2913.48)

Tear off this sheet and return the completed form to your employer's managed care organization (MCO) or to your local BWC customer service office.

Injured worker and injury/disease/death info.

Treatment info.

Employer info.

Last name, first name, middle initial Sonderko, Michael P			Social Security number 273667222		Marital status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married		Date of birth 12/15/1960	
Home mailing address 14217 KNEISEL RD			Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		<input type="checkbox"/> Divorced		Number of dependents 4	
City VERMILION		State OH	9-digit ZIP code 44069-9201		Country if different from USA		Department name	
Wage rate \$ 33.75			<input checked="" type="checkbox"/> Hour <input type="checkbox"/> Month <input type="checkbox"/> Week		What days of the week do you usually work? <input type="checkbox"/> Sun <input checked="" type="checkbox"/> Mon <input checked="" type="checkbox"/> Tues <input checked="" type="checkbox"/> Wed <input checked="" type="checkbox"/> Thur <input checked="" type="checkbox"/> Fri <input type="checkbox"/> Sat			Regular work hours From 7:00 AM To 3:30 PM
Have you been offered or do you expect to receive payment or wages for this claim from anyone other than the Ohio Bureau of Workers' Compensation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No. If yes, please explain.								Occupation or job title engineering tech. 4
Employer name SIERRA LOBO INC								
Mailing address (number and street, city or town, state, ZIP code and county) 11401 HOOVER RD MILAN, OH 44846-9711								
Location, if different from mailing address								
Was the place of accident or exposure on employer's premises? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If no, give accident location, street address, city, state and ZIP code)								
Date of injury/disease 8/9/2012		Time of injury 1:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.		If fatal, give date of death		Time employee began work <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.		Date last worked 8/9/2012
Date hired		State where hired		Date employer notified		State where supervised OH		Date returned to work
Description of accident (Describe the sequence of events that directly injured the employee, or caused the disease or death.) lifting and pushing equipment						Type of injury/disease and part(s) of body affected (For example: sprain of lower left back) right knee torn acl		
Benefit application release of information - I am applying for a claim under the Ohio Bureau of Workers' Compensation Act for work-related injuries that I did not inflict. I affirm that I elect to receive compensation and benefits under the Ohio workers' compensation laws for my claim, and I waive and release my right to file for and receive compensation and benefits under the laws of any other state for this claim. I request payment for compensation and/or medical benefits as allowable, and authorize direct payment to my medical provider. I permit and authorize any provider who attends, treats or examines me, and the Ohio Rehabilitation Services Commission (where relevant) to release medical, psychological, psychiatric, vocational or social information that is causally or historically related to my physical or mental injuries relevant to issues necessary for the administration of my claim to BWC, the Industrial Commission of Ohio, the employer in this claim, the employer's BWC managed care organization and any authorized representatives. My previous or future BWC claims may affect decisions made in this claim. Proper administration of the present claim may require BWC to share claims information with the employers of record (or their authorized representatives) and/or my authorized representative for any and all such previous or future claims. The released claims information may include any record maintained in my claim files.								
Injured worker signature A. BWC USER - MPO (Electronic Signature)			Date 8/13/2012		E-mail address msonderko@sierralobo.com		Telephone number (440)320-8728	
Work number ( )		Health-care provider name Dr. Jeffrey A. Biro		Telephone number ( )		Fax number ( )		Initial treatment date
Street address 5275 N. Abbe RD			City Sheffield Village		State OH		9-digit ZIP code 44035	
Diagnosis(es): Include ICD code(s)								
Will the incident cause the injured worker to miss eight or more days of work? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Is the injury causally related to the industrial incident? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
E code			11-digit BWC provider number		Date			
Health-care provider signature								

Employer policy number 1140673-0			Check if <input type="checkbox"/> Employer is self-insuring					
Telephone number (419) 499-9653		Fax number (419) 499-4449		E-mail address pkingsborough@sierralobo.com		Federal ID number 341759655		Manual number
Was employee treated in an emergency room? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Was employee hospitalized overnight as an inpatient? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
If treatment was given away from work site, provide the facility name, street address, city, state and ZIP code								
<input type="checkbox"/> Certification - The employer certifies that the facts in this application are correct and valid.			<input type="checkbox"/> Rejection - The employer rejects the validity of this claim for the reason(s) listed below:			For self-insuring employers only		
						<input type="checkbox"/> Clarification - The employer clarifies and allows the claim for the condition(s) below.		
						<input type="checkbox"/> Medical only <input type="checkbox"/> Lost time		
Employer signature and title						Date		OSHA case number



February 13, 2013

Ms. Margaret O'Bryon  
Stumphauzer, O'Toole, McLaughlin,  
McGlamery & Laughman CO., LPA  
5455 Detroit Road  
Sheffield Village, OH 44054

Dear Ms. O'Bryon:

I am responding to your letter dated February 1, 2013, regarding the termination of Michael Onderko. You indicated that Mr. Onderko believes he was "wrongfully terminated" in violation of ORC 4123.90. ORC 4123.90 states in part: *"No employer shall discharge, demote, reassign, or take any punitive action against any employee because the employee filed a claim or instituted, pursued or testified in any proceedings under the workers' compensation act for an injury or occupational disease which occurred in the course of and arising out of his employment with that employer."*

By his own admission and confirmed by the medical evidence, Mr. Onderko's injury did not occur in the course of his employment with Sierra Lobo. Based on the overwhelming evidence in support of that fact, and the subsequent ruling by the Ohio Bureau of Workers Compensation confirming that fact, a claim of an alleged violation of ORC 4123.90 has no merit.

Sincerely,

David A. Hamrick  
Corporate Director of Human Resources  
Sierra Lobo, Inc.

DAH:sjk  
cc: Mark Valponi, ESQ

IN THE COURT OF COMMON PLEAS

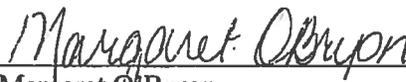
ERIE COUNTY, OHIO

MICHAEL ONDERKO ) CASE NO. 2013CV0187  
Plaintiff, ) JUDGE TYGH TONE  
v. ) AFFIDAVIT OF MARGARET O'BRYON  
SIERRA LOBO, INC., )  
Defendant. )

Margaret O'Bryon, after being duly sworn, depose and state that I am legal counsel for Michael Onderko in the above-captioned case. I have personal knowledge of the factual assertions concerning the documents contained in this Affidavit.

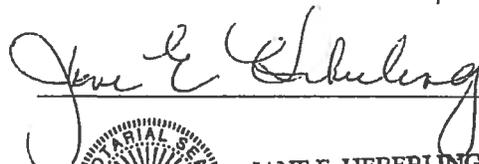
1. Exhibits B-K as attached to Plaintiff's Brief in Opposition, are the true and accurate copies of documents obtained from Defendant through the discovery process, obtained from Plaintiff Michael Onderko, and obtained from the Ohio Bureau of Workers' Compensation file for claim number 12-840216.

FURTHER AFFIANT SAYETH NAUGHT.

  
Margaret O'Bryon

SWORN TO BEFORE ME and subscribed in my presence this 9/17 day of October, 2013.

G:\27\27576\O'Bryon affidavit .wpd

  
  
JANE E. HEBERLING  
Notary Public, State of Ohio  
My Commission Expires 12/1/2014



SIERRA LOBO

Title: Performance Evaluation	
Document No.: SLI-16-00-F015	Revision: 1.0

### Performance Evaluation

Employee Name: Mike Onderko EE#: 5190

Job Title: <u>Engineering Technician</u>	Date of Last Performance Review: <u>9/2010</u>
Grade Level: <u>III</u>	Date of this Performance Review: <u>11/2011</u>
Organization: <u>TDEC</u>	Next Scheduled Review (Approx.): <u>11/2012</u>
Supervisor: <u>Martin Offineer</u>	Review Type: <input type="checkbox"/> New Hire (<90 days) <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Other _____

Summary of Duties: Perform Engineering Tech. III duties as identified in SLI procedures. Assist in the performance of required test programs and work safely while achieving many successes for SLI.

### APPRAISAL OF GENERAL COMPETENCIES

#### 1. Promotes Sierra Lobo's mission, vision, values, and norms of behavior

**Employee Self-Assessment:**  
I will always strive to do my best, top quality work, work safe, and give the customers quality workmanship and services.

**Manager Comments:**  
Mike has done an excellent job for us this past year; including having to move his work station to GRC WITHOUT ANY complaining. Not only did he accept this graciously, he also made MAJOR contributions at GRC and saved them thousands of dollars on potential repairs. Mike also did great work in Milan on the K68B Project and provided great service to SLI by plowing the parking lot in the winter, coming in at very early hours to make sure everything was done by 8AM.

#### 2. Safety (Employs work in a safe manner; ensures peers and/or subordinates work safely)

**Employee Self-Assessment:**  
I'm always looking at each duty I perform safely, at the beginning, during, and the end of each task. I'm willing to help fellow workers in suggesting helpful ways of performing task safely.

**Manager Comments:**  
I concur with no additional comments

#### 3. Diversity (Its cognizan of company's commitment to diversity, its compliance with EEO and AEP policies)

**Employee Self-Assessment:**  
I never consider race, color, or gender as an ability to perform a job.

**Manager Comments:**  
I concur with no additional comments

#### 4. Decision Quality (Makes good decisions (without considering how much time it takes) based upon a mixture of analysis, wisdom, experience, and judgment; most of his/her solutions and suggestions turn out to be correct and accurate when judged over time; sought out by others for advice and solutions)

**Employee Self-Assessment:**  
I'm always looking back at my training, books, past experience to make safe and good decisions





**SIERRA LOBO**

Title:  
Performance Evaluation

Document No.:  
SLI-16-00-F015

Revision:  
1.0

**OVERALL EVALUATION SUMMARY**

<b>1.</b>	<b>Employee Strengths</b>	Mike is an excellent mechanic. He understands mechanical systems quite well and helps all of our projects achieve their maximum performance. He has an excellent attitude and works well with all personnel. Mike also did a great job for SLI when plowing snow in the winter from our parking lots.
<b>2.</b>	<b>Areas Requiring Further Development</b>	Make sure all records of test validations and welding are performed right after they are done to ensure that nothing is lost or missed as a result of letting time slip by. Also, help to improve mechanical cost estimates for labor and materials to improve the accuracy SLI cost proposals. Always ensure good communications with electrical / I&C engineers and technicians to improve SLI's efficiency and capabilities. Keep better cleanliness in the shop and help to maintain equipment records.
<b>3.</b>	<b>General Comments</b>	Mike's abilities make him a great asset to SLI and a pleasure to work with as part of any project team. Mike has stepped up big on the K68B Project and at projects at GRC to maximize SLI's success.

EVALUATOR: \_\_\_\_\_ TITLE: Director of Engineering Services DATE: \_\_\_\_\_

**EMPLOYEE WRITTEN COMMENTS**

**I Have Received An Explanation Of This Review And Would Like To Make The Following Comments:**

EMPLOYEE SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Employee's signature indicates that appraisal discussion has occurred)

REVIEWED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

 <b>SIERRA LOBO</b>	Title: Performance Evaluation	
	Document No.: SLI-16-00-F015	Revision: 1.0

## Performance Evaluation

Employee Name: Michael P. Onderko      EE#: 990073

Job Title: <u>Engineering Technician</u>	Date of Last Performance Review: <u>8/2011</u>
Grade Level: <u>111</u>	Date of this Performance Review: <u>8/2012</u>
Organization: <u>TDEC</u>	Next Scheduled Review (Approx.): <u>8/2013</u>
Supervisor: <u>Martin Offinier</u>	Review Type: <input type="checkbox"/> New Hire (<90 days) x Annual <input type="checkbox"/> <input type="checkbox"/> Other _____

**Summary of Duties:**  
 Perform Engineering Tech. III duties as identified in SLI procedures. Assist in the performance of required test programs and work safely while achieving many successes for SLI. Work with the TDEC Directors performing tasks requested while providing direction and insight into these various tasks.

### APPRAISAL OF GENERAL COMPETENCIES

#### 1. Promotes Sierra Lobo's mission, vision, values, and norms of behavior

**Employee Self-Assessment:**  
 I always strive to do my best, top quality workmanship, work safe, and give the customers quality services

**Manager Comments:**  
 Mike has done excellent work this past year especially when he was asked to perform work on the heaters at PSL and the SPF Cryoshroud. He also performs duties requested by the director of Engineering Services to help facilitate small jobs around the facility.

#### 2. Safety (Performs work in a safe manner, ensures peers and/or subordinates work safely)

**Employee Self-Assessment:**  
 I'm always looking at each task I perform to do safely. I'm willing to suggest safe ways of performing a task to peers to keep them safe.

**Manager Comments:**  
 Mike has a mind set of safety when he performs all his tasks. He also helps to watch and monitor others to keep everyone safe.

#### 3. Diversity (Is cognizant of Company's commitment to Diversity, is compliant with EEO and ADE Policies)

**Employee Self-Assessment:**  
 I never consider race, color, or gender as an ability to perform a job.

**Manager Comments:**  
 I concur with the above and have no further comments.

#### 4. Decision Quality (Makes good decisions without considering how much time it takes based upon a thorough analysis, wise discernment, and judgment; most of his/her solutions and suggestions turn out to be practical and are what the organization truly needs for style and solutions)

**Employee Self-Assessment:**  
 I'm always looking back at my training, and past experience to make safe and good decisions.



**SIERRA LOBO**

Title: Performance Evaluation	
Document No.: SLI-16-00-F015	Revision: 1.0

**Manager Comments:**

I concur with the above and have no additional comments.

**5. Integrity & Trust** (Is widely trusted, is seen as a direct, forthright individual, communicates in a straightforward, honest manner, and reports to a manager, keeps confidences, doesn't blame others for his/her own mistakes or misdeeds, or minimize his/her own role in a problem.)

**Employee Self-Assessment:**

I believe that I'm responsible for all of my decisions good or bad, right or wrong and will never blame others.

**Manager Comments:**

I concur with the above and have no additional comments.

**6. Interpersonal Savvy** (Relates well to all kinds of people, up, down, and sideways, inside and outside the organization, builds appropriate rapport, listens, builds constructive and effective relationships, uses diplomacy and tact, and values people's contributions even when they don't align with his/her own.)

**Employee Self-Assessment:**

I respect others and their positions, I'm a good listener, and I'm easy to get along with.

**Manager Comments:**

I concur with the above and have no additional comments.

**7. Communications** (Is capable of communicating effectively and efficiently in different modes of communication, written, verbal, e-mail, presentation.)

**Employee Self-Assessment:**

I'm very quiet but will communicate when needed and trying to improve.

**Manager Comments:**

I concur with the above and have no additional comments.

**8. Peer Relationships** (Can quickly find common ground and solve problems for the good of all, can represent his/her own interests and yet be fair to the group, can solve problems with peers with a minimum of effort, is seen as a team player, works to help others solve problems, has a strong support of peers, encourages collaboration, can deliver feedback, mediates conflict, and is seen as a team player.)

**Employee Self-Assessment:**

I'm open minded, I have the ability to see a problem early and come up with a solution and willing to use others suggestions, and a team player.

**Manager Comments:**

Mike has earned respect from his peers and also the engineering staff. His skills are well respected.

**9. Planning & Organizing** (Is able to set priorities, set goals, and manage time effectively, is able to set priorities, set goals, and manage time effectively, is able to set priorities, set goals, and manage time effectively.)

**Employee Self-Assessment:**

**Manager Comments:**

**10. Financial Acumen** (Understands and uses financial information to make decisions, is able to understand and use financial information to make decisions, is able to understand and use financial information to make decisions.)

**Employee Self-Assessment:**

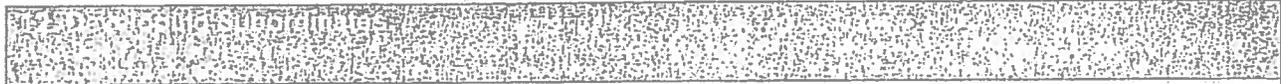
**Manager Comments:**

**11. Process Management** (Is able to manage processes, is able to manage processes, is able to manage processes.)

**Employee Self-Assessment:**

 <b>SIERRA LOBO</b>	Title: Performance Evaluation	
	Document No.: SLI-16-00-F015	Revision: 1.0

Manager Comments:



Employee Self-Assessment:

Manager Comments:

 <b>SIERRA LOBO</b>	Title: Performance Evaluation	
	Document No.: SLI-16-00-F015	Revision: 1.0

## PERFORMANCE OBJECTIVES AND ACCOMPLISHMENTS

### 1. ACCOMPLISHMENTS: WHAT RESULTS WERE ACHIEVED ON THE MAJOR OBJECTIVES ESTABLISHED DURING THE LAST EVALUATION?

<b>A</b>	Objective	Always keep safety as the #1 thought in his mind to keep himself safe as well as all other SLI employees and customers.
	Results	Worked safely throughout the year
<b>B</b>	Objective	Continue to work for Sierra Lobo and help build the company to the very best it can be through my performance and the success of the TDEC team while trying to improve in all areas and maintaining our AS9100 and CMMI certifications.
	Results	Worked hard all year at Milan, Plum Brook, and GRC
<b>C</b>	Objective	Assist engineers in defining test programs and the associated test operations required to perform them safely.
	Results	Helped solved problems with drawings on layout of materials.
<b>D</b>	Objective	Perform necessary duties requested by any of the Directors to support their work efforts.
	Results	Helped with snow removal and recyclable material.
<b>E</b>	Objective	Help to oversee and perform shop safety standards, shop cleanliness, and maintain equipment records.
	Results	Continued to keep shop, equipment and vehicles clean
<b>F</b>	Objective	
	Results	

### 2. OBJECTIVES: LIST THE MAJOR OBJECTIVES THAT HAVE BEEN MUTUALLY AGREED UPON AND ESTABLISHED FOR THE NEXT EVALUATION PERIOD

<b>A</b>	Always keep safety as the #1 thought in his mind to keep himself safe as well as other SLI employees and customers. Also assist engineers in defining test programs and the associated test operations required to perform them safely.
<b>B</b>	Always perform project work to the best of his ability; keeping in mind all AS-9100 and CMMI requirements that apply to his work. Continue improving mechanical cost estimates for labor and materials to improve the accuracy SLI cost proposals. Make sure all records of test validations and welding are performed right after they are done to ensure that nothing is lost or missed as a result of letting time slip by. Work with Director of Engineering Services in performing ASME certified for Stainless Steel Welding.
<b>C</b>	Help to oversee and perform shop safety standards, shop cleanliness, and maintain equipment records.
<b>D</b>	Perform necessary duties requested by any of the Directors to support their work efforts. This includes being observant about maintenance items needed for the TDEC building and performing any requested maintenance of the facility, internal or external.
<b>E</b>	Continue to improve communications with mechanical / I&C technicians and all engineers to improve SLI's efficiency and capabilities. This communication effort must also be extended to our procurement personnel as SLI enters a whole new mindset under the guidelines of CPSR to make the process as good as it can be.
<b>F</b>	



**SIERRA LOBO**

Title: Performance Evaluation	
Document No.: SLI-16-00-F015	Revision: 1.0

### OVERALL EVALUATION SUMMARY

1.	<b>Employee Strengths</b>	Mike's skills as a mechanic are excellent. I know that any task Mike is assigned to is going to have his utmost attention and be performed with excellence. His overall demeanor is excellent too which makes it an absolute pleasure to work with. Mike is also able to relocate to any facility SLI is requested to perform work and perform the same excellent work there too.
2.	<b>Areas Requiring Further Development</b>	Make sure all records of test validations and welding are performed right after they are done to ensure that nothing is lost or missed as a result of letting time slip by. Also, help to improve mechanical cost estimates for labor and materials to improve the accuracy SLI cost proposals. Always ensure good communications with electrical / I&C engineers and technicians to improve SLI's efficiency and capabilities. Keep better cleanliness in the shop and help to maintain equipment records.
3.	<b>General Comments</b>	Mike is a real pleasure to work with and is a valuable asset for SLI. Mike always does what is requested of him and does it with a smile.

EVALUATOR: \_\_\_\_\_ TITLE: Director of Engineering Services DATE: \_\_\_\_\_

### EMPLOYEE WRITTEN COMMENTS

*I Have Received An Explanation Of This Review And Would Like To Make The Following Comments:*

EMPLOYEE SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Employee's signature indicates that appraisal discussion has occurred)

REVIEWED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

 <b>SIERRA LOBO</b>	Title: Performance Evaluation	
	Document No.: SLI-16-00-F015	Revision: 1.0

**OVERALL EVALUATION SUMMARY**

1	<b>Employee Strengths</b>	Mike's skills as a mechanic are excellent. I know that any task Mike is assigned to is going to have his utmost attention and be performed with excellence. His overall demeanor is excellent too which makes it an absolute pleasure to work with. Mike is also able to relocate to any facility SLI is requested to perform work and perform the same excellent work there too.
---	---------------------------	---

2	<b>Areas Requiring Further Development</b>	Make sure all records of test validations and welding are performed right after they are done to ensure that nothing is lost or missed as a result of letting time slip by. Also, help to improve mechanical cost estimates for labor and materials to improve the accuracy SLI cost proposals. Always ensure good communications with electrical / I&C engineers and technicians to improve SLI's efficiency and capabilities. Keep better cleanliness in the shop and help to maintain equipment records.
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3	<b>General Comments</b>	Mike is a real pleasure to work with and is a valuable asset for SLI. Mike always does what is requested of him and does it with a smile.
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EVALUATOR: \_\_\_\_\_ TITLE: Director of Engineering Services DATE: \_\_\_\_\_

**EMPLOYEE WRITTEN COMMENTS**

I Have Received An Explanation Of This Review And Would Like To Make The Following Comments:

EMPLOYEE SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
 (Employee's signature indicates that appraisal discussion has occurred)

REVIEWED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
OFFICE OF UNEMPLOYMENT COMPENSATION  
DETERMINATION OF UNEMPLOYMENT COMPENSATION BENEFITS**

JFS-83000 07/18/2011

Claimant's Name <b>MICHAEL P. ONDERKO</b>		Social Security Number 273-66-7222	Determination Identification Number 225514850-1
Benefit Year Beginning Date 12/09/2012	Benefit Year Ending Date 12/07/2013	Application Date 12/12/2012	Date Issued 01/02/2013
MICHAEL P. ONDERKO 14217 KNEISEL RD VERMILION, OH 44089-9201 		ODJFS Office  Youngstown Processing Center PO Box 182212 Columbus, OH 43218-2212  Phone: (866) 221-0558 Fax: (614) 466-7449	



**THIS NOTICE IS A DETERMINATION OF AN INITIAL APPLICATION FOR UNEMPLOYMENT BENEFITS, ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 4141.28(D) & (E), OHIO REVISED CODE**

The Ohio Department of Job and Family Services has ALLOWED the claimant's application for unemployment compensation benefits with a benefit year that begins 12/09/2012. During this one-year benefit period, the claimant's benefits rights are as follows:

Weekly Benefit Amount is: **\$485.00**  
 Dependency Class is: **B**  
 Total Benefits Payable Amount is: **\$12,610.00**

The claimant's employment during the base period, 07/01/2011 to 06/30/2012, met the weeks and wages eligibility requirement. The chart below shows the claimant's Total Base Period Wages and Total Qualifying Weeks with each base period employer.

Employer Name	Total Base Period Wages	Total Qualifying Weeks
FORD MOTOR CO. (INC.) NESC ROTUNDA CT IV	\$20.08	00
SIERRA LOBO, INC.	\$67,605.43	51

The claimant was discharged by SIERRA LOBO, INC. on 12/12/2012. The employer discharged the claimant for violating a company rule. The employer failed to establish negligence or willful disregard of the rule on the part of the claimant. Ohio's legal standard that determines if a discharge is without just cause is whether the claimant's acts, omissions, or course of conduct were such that an ordinary person would find the discharge not justifiable. After a review of the facts, this agency finds that the claimant was discharged without just cause under Section 4141.29(D)(2)(a), Ohio Revised Code.

Interested Parties: **FORD MOTOR CO. (INC.) NESC ROTUNDA CT IV STE 401**  
**SIERRA LOBO, INC.**

**App. 17**

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traducción.

**APPEAL RIGHTS:** If you do not agree with this determination, you may file an appeal by mail or fax to the ODJFS office provided. You may also file an appeal online at <https://unemployment.ohio.gov>. The appeal should include the determination ID number, name, claimant's social security number, and any additional facts and/or documentation to support the appeal. **TO BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 01/23/2013** (21 calendar days after the 'Date Issued'). If the 21st day falls on a Saturday, Sunday, or legal holiday, your deadline has already been extended to include the next scheduled work day. If you do not file your appeal within the 21-day calendar period, include a statement with the date you received the determination and your reason for filing late. If your appeal is late due to a physical or mental condition, provide certified medical evidence that your condition prevented you from filing within the 21-day period. In order for your appeal to be considered timely, it must be received/postmarked no later than 21 calendar days after the ending date of the physical or mental condition. If **unemployed**, claimants should continue to file weekly claims for benefits while the determination is under appeal. For additional information, call the ODJFS automated telephone system at 1-877-644-6562 and select the General Information option or visit the agency's website at <https://unemployment.ohio.gov>. Claimants may also review the **Worker's Guide to Unemployment Compensation**.



A35226525E0020784001

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traducción.

## Allowed Application Definitions

**Benefit Year Beginning Date** - This date establishes the effective date of this application.

**Weekly Benefit Amount** - This is the amount of benefits potentially payable for a week of total unemployment. It represents fifty percent of the claimant's average weekly wage for all base period employment, not to exceed the amount specified in Section 4141.30(B), Ohio Revised Code, for the claimant's dependency.

**Dependency Class** - This designation is assigned in accordance with the schedule established by law and remains in effect for the benefit year.

**Class A-1** - Indicates either that the claimant did not list any dependents or that one or more of his/her dependents has been disallowed for any of the following reasons:

- Identity of dependent(s) could not be verified;
- Amount of support contributed by the claimant does not meet requirements;
- Spouse's income exceeds requirement to qualify as a dependent;
- Child listed is not a birth child, step-child, or adopted child;
- Child listed is over 18 years of age with no physical/mental handicap.

**Class A-2** - Indicates that the claimant's spouse has an overlapping benefit year with allowed dependents.

**Class A-3** - Indicates that the claimant listed dependent(s), but base period wages were insufficient to qualify for a higher benefit amount.

**Class B** - Indicates one or two eligible dependents.

**Class C** - Indicates three or more eligible dependents.

**Total Benefits Payable** - This is the total amount of benefits that can be paid to the claimant during the benefit year. The total is computed by multiplying the weekly benefit amount by 20 (for the first 20 qualifying weeks in the base period), plus one times the weekly benefit amount for each additional qualifying week. Total benefits cannot exceed 26 times the weekly benefit amount.

**Employer's Amount Chargeable** - This is the amount of benefits that is potentially chargeable to each employer's account.

**Employer's Proportion Charge** - Employers are charged proportionally, based on the wages paid to the claimant by each employer during the base period. This amount is the percentage of the claimant's benefit entitlement that may be charged to each account.

**Base Period Employment History** - The base period includes the first four of the last five completed calendar quarters, prior to the benefit year beginning date. If the **Alternate Base Period** was used, the base period includes the four most recently completed calendar quarters prior to the benefit year beginning date.

**Employer Name** - All employers for whom the claimant worked during the base period are listed.

**Total Base Period Wages** - This figure reflects total earnings in the base period with the corresponding employer(s).

**Total Qualifying Weeks** - This is the number of weeks in the base period in which the claimant earned or was paid wages with the base period employers.

For additional information, employers may refer to the **Ohio Unemployment Compensation Guide**; claimants may refer to the **Workers' Guide to Unemployment Compensation**.

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traducción.



**Nicholas Ahn, M.D.**  
*Board Certified, Orthopaedic Surgery*

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**FILE REVIEW**  
September 6, 2012

**CLAIMANT:** Michael Onderko  
**CLAIM#:** 12-840216  
**REFERRAL SOURCE:** Mansfield Service Office  
**DATE OF INJURY:** 08/09/2012  
**DATE OF REVIEW:** 09/06/2012

**Allowed Conditions:**

1. New claim

**Alleged Conditions:**

1. Right knee sprain/strain
2. Right knee medial meniscus tear

**Clinical Summary:**

The claimant was a 51-year-old man at the time of the injury. He is now still 51 years old. He was initially injured on 08/09/2012.

On the date of injury, he was lifting and pushing equipment as per the first report of injury. He injured his right knee as a result.

The claimant was evaluated in the emergency department on 08/09/2012 and was found to have discomfort about the right knee. X-rays demonstrated mild degenerative disease. There was no evidence of acute radiographic findings about the right knee. There was no evidence of a joint effusion.

The claimant was subsequently evaluated on 08/10/2012. This was one day after the injury that was incurred. It was noted "Some 6 weeks prior to office visit, the patient incurred an injury wherein the knee was flexed, internally rotated, and the patient fell. Post-fall there was a knee effusion, ecchymosis and severe pain. For this, he self treated with ice, relative rest, crutch walking with resolution after several weeks time. The patient then went on with activities of daily living and ended up climbing a curb when the knee "completely let go" causing a second fall."

During the course of the evaluation on 08/10/2012, the claimant was found to have positive McMurray sign. An MRI was ordered. MRI was completed on 08/16/2012 which demonstrated tear of the posterior horn medial meniscus. Minimal chondromalacia patella was also identified.

CLAIMANT: Michael Ouderko  
CLAIM#: 12-840216  
DATE OF INJURY: 08/09/2012  
DATE OF REVIEW: 09/06/2012

The claimant was seen on 08/17/2012. The claimant was having ongoing knee pain with positive meniscal signs. Evaluation on 08/28/2012 again demonstrated ongoing knee pain with positive meniscal signs. Physical therapy was recommended.

The disputed issue here is whether or not the claimant suffers from the alleged conditions as noted above.

**Opinion:**

I reviewed the medical records provided, and I accept the objective findings of the examining physicians in regards to the allowed conditions in this claim. The following conclusions and opinions are made within a reasonable degree of medical certainty.

After thorough review of the records provided, I believe there is no question that the claimant has a right knee sprain/strain and a right knee medial meniscus tear. This is clearly demonstrated in the records provided.

As for the right knee sprain/strain, this appears to be directly related to the injury from 08/09/2012. The claimant did incur an injury on this date and had worsening knee pain immediately afterwards. Therefore, it would appear that the claimant does have a right knee sprain/strain that would be directly related to the injury that was incurred. The mechanism of injury is consistent, the time course with respect to presentation is also consistent.

There is no evidence that the claimant has preexisting knee sprain/strain that would have been substantially aggravated by the injury that was incurred. Causation via flow-through, i.e. causation many weeks or months after the injury that was incurred is not consistent with the mechanism of injury which took place which was a direct trauma.

As for the medial meniscus tear, there is no question that this condition is present. However, it would appear that this meniscal tear occurred 6 weeks prior to the date of injury as per the note from 08/10/2012.

In the emergency department, as well as on the index x-ray on 08/09/2012, there is no evidence of a knee joint effusion. Furthermore, on 08/10/2012, again there is no evidence of an effusion of significance. The MRI of the right knee performed on 08/16/2012 demonstrates only a very small knee joint effusion. The meniscal tear does appear to be fairly acute.

If the right knee medial meniscus tear were directly caused by the injury from 08/09/2012, or if there was substantial aggravation of preexisting, the claimant would have been expected to have a significant knee effusion immediately after the injury that was incurred. Yet both the x-ray and MRI performed very shortly after the injury that was incurred demonstrates no evidence of an effusion of significance, and evaluation on the date of injury as well on 08/10/2012 do not demonstrate evidence of a significant knee effusion as well.

The claimant had a severe injury to the right knee 6 weeks prior to the date of injury as per the note from 08/10/2012. The meniscal tear most likely would have been a result of this incident.

CLAIMANT: Michael Ouderko  
CLAIM#: 12-840216  
DATE OF INJURY: 08/09/2012  
DATE OF REVIEW: 09/06/2012

The MRI from 08/16/2012 does demonstrate a relatively acute meniscus tear but there is no evidence of significant effusion. This would suggest that the meniscus tear had occurred at least one month prior, and did not occur within a week or so prior to the date of the MRI that was performed.

Certainly, the mechanism of injury which took place 6 weeks prior would be consistent with a meniscus tear based on the description from the note from 08/10/2012. Simply lifting or pushing equipment would be unlikely to cause a medial meniscus tear. Rather, the twisting injury that was described to have occurred 6 weeks prior on 08/10/2012 would be most consistent with causation of the medial meniscus tear that was subsequently identified.

As such, I believe that the claimant does have a right knee sprain/strain. I believe that this condition is related to the injury from 08/09/2012 via direct causation.

I believe that the claimant does have a right knee medial meniscus tear. However, I believe that this occurred well before the date of injury and is not related to the injury from 08/09/2012 via direct causation, substantial aggravation of preexisting, or causation via flow-through. Substantial aggravation of preexisting as noted above is not supported by the records provided since there is no evidence of a significant knee effusion that was identifiable after the injury that was incurred either clinically or radiographically. Causation via flow-through, i.e. causation many weeks or months after the injury that was incurred is simply not consistent with the mechanism of injury which took place which is a direct trauma.

Respectfully Submitted,



Nicholas Ahn, M.D.

*Board Certified, Orthopaedic Surgery*

Time spent: 160 minutes

12-840 216

	Title: Incident/Close Call Witness Statement	
	Document No.: TDEC-11-100-F020	Revision: 1.0

### Incident/Close Call Witness Statement

Date: 8/17/2012	Name: Antony Skaff
Title: Director of Engineered Systems	
Employee Number: 5027	Phone Number: 419-499-9653 ext 103
Address: Sierra Lobo, Inc. 11401 Hoover Rd. Milan, OH 44846	
Location of Incident: Milan, Ohio, TDEC Shop	
Date of Incident: 8/9/12	Time of Incident: Afternoon
<p>Witness Statement - Describe what you observed at the time of the incident:</p> <p>I did not observe the incident that occurred on Thursday, 8/9/2012. On Friday, 8/10/2012, I was in a C7V7 concept review in the small conference room. Scott Baaske notified me (as acting supervisor for Marty Offineer) that Mike Onderko was going to call me to see if we had any light duty work for him to perform. I noticed a message from an odd number on my cell. I checked the message and it was Mike asking me to give him a call.</p> <p>After the C7V7 review I proceeded to April Reeves office to discuss this issue. I told her that Scott had told me that Mike had injured himself and wanted to come in for light duty work. I asked her if I needed to fill out any paperwork and if I should call him. She told me that this was not a work related injury and that I was able to give him a call. After my meeting with April, I called Mike and left him a message that I hoped he was well; that we should be able to find some light duty work and finally to call me back. I did not receive any phone calls over the weekend.</p> <p>Monday morning Mike stopped by to get set up for light duty work. He forgot his keyFOB was told to wait to meet with Dave Hamrick/April Reeves to get set up with a temporary keyFOB. I saw him in the lobby and told him he could wait in my office. At that time, he told me that he had aggravated his knee while moving cabinets in the shop, and worse, he had stepped off of a curb at a gas station that same evening. Mike was told that he was unable to come back to work until 1) he was off any narcotics; 2) he had a written description of restrictions from his doctor. Mike came back to my office to fill out his time sheet for that week and I walked him to his car. I requested that he let me know that he made it home. He texted me several hours later stating he made it home.</p>	

12 OCT 25 AM 9:42  
HAMRICK'S OFFICE

Sierra Lobo, Inc. Proprietary  
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Title: Incident/Close call Witness Statement

Document Number: TDEC-11-100-F019

Version: 0.1

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Witness Signature: [Signature] Date: 8/17/12

Received by: April Reews Signature April Reews Date: 8/20/12

12 OCT 25 AM 0:12  
MANAGEMENT OFFICE

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12-840216

	Title: Incident/Close Call Witness Statement	
	Document No.: TDEC-11-100-F020	Revision: 1.0

## Incident/Close Call Witness Statement

Date: 8-17-12	Name: Jeff Sultzbaugh
Title: Senior Project Manager (Acting TDEC SQA Specialist)	
Employee Number: 5041	Phone Number: 419-499-9653 ext. 104
Address: Sierra Lobo, Inc. 11401 Hoover Rd. Milan, OH 44846	
Location of Incident: TDEC Shop	
Date of Incident: 8/09/2012	Time of Incident: Unknown
<p>Witness Statement - Describe what you observed at the time of the incident:</p> <p>While enroute to work at 9:30 am Monday 8/13/2012, I received a text from Tony Skaff, SLI Director of Engineered Services stating that Mike Onderko was in the TDEC lobby and wanted to speak with me. Upon arrival at work, I had an e-mail from Dave Hamrick, SLI Director of Human Resources. I went to Dave's office and he explained to me that Mike Onderko had claimed to have injured his right knee at work the previous Thursday (8/09/2012).</p> <p>Dave explained that he did not believe the injury to be work related as Mike had also told him that he had injured the knee while stepping off of a curb after work on Thursday night. Apparently Mike was hoping to continue working under light duty restrictions. Dave informed me that Mike had told him that he was taking prescription pain medication and so he had told Mike that returning to work under restrictions was not possible while he was taking such medication.</p> <p>I returned to my office and observed Mike driving away from the facility. I then went to see Tony and he gave me Mike's phone number and said Mike wanted me to call him. I called Mike and he said he was aggravated that he tried to talk to Dave about light duty and Dave would not allow it. Mike claimed that he had aggravated his knee on the prior Thursday both at work and following work. He said that after he had gone home he stepped off of a curb and his knee "collapsed". I asked him why he thought the injury was work-related since I was aware that his knee had been bothering him for several months from an old injury sustained before he ever started working at SLI. Mike said it was moving tables and cabinets on the previous Thursday that was "the straw that broke the camels back".</p> <p>In view of the following facts I do not believe the moving of tables was a significant aggravation of the pre-existing condition:</p> <ol style="list-style-type: none"> <li>1.) I am aware of the pre-existing condition to Mike's right knee from a conversation I had with him following some surgery he had on his other knee several months ago. Upon his return to work, when I asked him how he was doing he said his repaired knee was fine but now the other one hurt from an old injury.</li> <li>2.) Mike did not properly report the injury to management immediately when it occurred as he was aware is SLI policy. On 4/23/2012 Mike sustained a fat lip while working in the TDEC shop and reported it to me immediately.</li> <li>3.) The later injury while stepping off of a curb seems to have had a more significant effect that the moving of tables and cabinets</li> </ol>	

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Title: *Incident/Close call Witness Statement*

Document Number: *TDEC-11-100-F019*

Version: *0.1*

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17 OCT 25 10 28 AM  
FBI - TULSA  
RECEIVED

Witness Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Received by: \_\_\_\_\_ Signature \_\_\_\_\_ Date: \_\_\_\_\_

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12-840216

	Title: Incident/Close Call Witness Statement	
	Document No.: TDEC-11-100-F020	Revision: 1.0

### Incident/Close Call Witness Statement

Date: 8-13-12	Name: Martin Roth
Title: Mechanical Engineering Technician V	
Employee Number: E990005	Phone Number: 419-499-9653 x130
Address: Sierra Lobo, Inc. 11401 Hoover Rd. Milan, OH 44846	
Location of Incident: TDEC Shop	
Date of Incident: 8-9-12	Time of Incident: 3pm ?
<p>Witness Statement - Describe what you observed at the time of the incident:</p> <p>Mike Onderko was filling his time sheet out on Thursday 8-9-12 around 3pm. I talked to him and he stated that his knee was hurting. He stated at that time that his knee was aggravated by the shop rearranging that we had been doing, specifically moving some heavy cabinets.</p> <p>Mike had been complaining for some time that his knee had been bothering him and that he was probably going to have to have it looked at sometime.</p>	

12 OCT 25 01 08:12

Witness Signature: *Martin Roth* Date: 8-21-12

Received by: Jeff Sultzbaugh Signature: *Jeff Sultzbaugh* Date: 8-21-12

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**Office Visit**

**Michael P Onderko (MR# 28580819)**

**Contact Information**

Date & Time	Provider	Department	Encounter #	Center
8/28/2012 1:30 PM	Andrew J Matko, DO	Orth Lorain Kolbe	232015598	Lora Comm HI

**Patient Info**

Patient Name	Sex	DOB
Onderko, Michael P (28580819)	Male	12/15/1960

**Progress Notes**

**Andrew J Matko, DO 8/28/2012 4:43 PM Signed**

This note has been dictated.

Andrew J Matko, DO

**Transcription**

Type	ID	Author	Activity Date
Transcribed Clinic Note (sol)	sw0829201228580819CNEC80819SECLOSORTHKOLCZUN80819CNEC	Andrew J Matko	8/28/2012

Signed by Andrew J Matko, DO on 08/30/12 at 1640

Document Text

\*\* D R A F T until signed by Physician \*\*

THE CLEVELAND CLINIC FOUNDATION  
9500 Euclid Ave. Cleveland, Ohio 44195

CLINIC NOTE  
Department of Orthopaedics - Lorain  
Andrew J. Matko, D.O.

NAME: Onderko, Michael P.  
CLINIC NO.: 2-858-081-9  
DATE OF SERVICE: 08/28/2012

**HISTORY:** This is a patient who has recently been treated by Dr. Biro for a work-related right knee injury that he suffered on 08/09/2012. He states that he had been moving heavy items when he felt discomfort in the back of his right knee. He states that he went to push or pull another heavy item later on and he felt a significant pain in the back of his right knee and actually had to refrain from what he was doing due to the pain. He states that he had to leave work an hour early due to the pain in the knee causing him inability to finish his job duties. He states that he tried anti-inflammatory medications which did not seem to help. He states that through the amount of rest that he has been able to do up to this point, he is noticing some improvements in the back of his right knee pain. He denies any pain on the inner aspect of the right knee. He denies any prior problems or injury to the right knee. He states that his range of motion and strength in the right knee and lower leg have improved over the last few weeks. Patient states that he did undergo an MRI of his right knee through Dr. Biro and was told that he had a medial meniscus tear and was referred here for evaluation.

The patient's past medical history, surgical history, social history, family history, medications and allergies were reviewed with the patient today and are available in the chart for further review.

EXAM: Patient has no right or left hip tenderness to palpation. He has no lumbar spine tenderness and he has no discomfort with bench test or supine straight leg raise in either lower extremity. He has no right or left hip discomfort with hip range of motion, heel strike or log rolling. No greater trochanteric bursal tenderness to palpation. He does have some very mild tenderness to palpation along the lateral distal hamstring and lateral proximal calf musculature. This is where he states his pain seems to reside. He has no medial or lateral joint line tenderness to palpation. He has negative medial and lateral McMurray exam. No instability or discomfort with varus or valgus stress testing to either knee. Lachman, anterior and posterior drawer exams are negative bilaterally. Patellar and Achilles reflexes are 2/4 bilaterally. Sensation to touch is intact in all dermatomal distributions in both lower extremities. His calves are supple and nontender. Homan's is negative bilaterally.

RADIOGRAPHS: X-rays of the patient's right knee reveal no fractures or dislocations and no significant osseous or articular abnormalities.

MRI: An MRI of the patient's right knee was reviewed and shows very vague minimal signal in the posterior horn of the medial meniscus suggesting a possibility of a medial meniscus tear. There does appear to be some increased signal within the proximal third of the medial collateral ligament suggesting a sprain of this structure.

IMPRESSION:

1.Right knee pain secondary to sprain and strain. 2.MRI findings consistent with a medial meniscal tear.

PLAN: I recommend patient begin physical therapy for his right knee hamstring and calf musculature. He can return to light restricted duty at work with no lifting over 40 pounds at this point. We will have him follow-up in 3-4 weeks for reevaluation.

Dictated By: Andrew J. Matko, D.O.

Date Dictated: 08/28/2012  
Date Typed: sw 08/29/2012  
LWCODE:CNEC  
BC:07921:EPICARE

Display only: Transcription (sw0829201228580819CNEC80819SECLOSORTHKOLCZUN80819CNEC)  
by Andrew J Matko

**Referring Provider**

Self

**Allergies as of 08/28/2012**

No Known Allergies  
Date Verified: 08/28/2012

**Reason for Visit**

Right Knee Pain

**Visit Diagnoses and Assoc Orders**

Sprain and strain of unspecified site of knee and leg [844.9] - Primary

Tear of medial cartilage or meniscus of knee, current [836.0]

**Outpatient Encounter Meds: End of Enc- 8/28/2012**

ropinirole (REQUIP) 1 mg tablet	Take 1 tablet by mouth three times daily.
amlODIPine 5 mg ORAL tablet	Take 1 tablet by mouth once daily.
olmesartan-hydrochlorothiazide (BENICAR HCT) 40-12.5 mg ORAL per tablet	

**Stop Taking**

oxyCODONE-acetaminophen (PERCOCET) 5-325 mg tablet	Take 1 tablet by mouth four times daily as needed. FOR PAIN.
--	--

**Preferred Pharmacy**

E- DISCOUNT DRUG MART #29 - VERMILION, OH 44089 - 4208 LIBERTY AVENUE - 440-967-3000 29

**Problem List as of 08/28/2012**

Problem	Noted
Tear of meniscus, medial[836.0K]	10/25/2010
Chondromalacia[733.92]	6/6/2011
TEAR MEDIAL MENISCUS [836.0][836.0]	6/6/2011
POST OP VISIT [V67.00][V67.00]	6/30/2011
SPRAIN KNEE [844.9][844.9]	8/28/2012

**Patient Instructions**

None

**Visit Notes**

Brandi M Shimrock, RT Tue Aug 28, 2012 1:40 PM

Pt has been identified by name and birthdate: Yes

Allergies reviewed: Yes

Medication - prescribed and OTC reviewed and updated: Yes

Do you need any prescription refills prior to your next visit: No

Health Maintenance: Reviewed and not up to date, and patient instructed to follow up with PCP.

Latex allergy: no.

Is the patient having any pain? Yes: Location #1: pain rated 5 on a scale of 0-10 (0=none, 10=worst).

Location: RIGHT KNEE.

Character: aching.

Duration: 3 weeks.

Frequency: occurs Intermittently.

Does this patient have:

Unintentional weight loss or gain of greater than 10 pounds due to a change of appetite and/or intake? No

Difficulty chewing and/or swallowing? No

Concerns about personal safety or safety in the home? No

Concerns about falling or have they fallen in the past year? No

Difficulty performing or completing routine daily living activities? No

Is the patient active on MyChart No: verbal information given

**eBilling Report**

eBilling Encounter Report

HDS Report

**Encounter Status**

Closed by Andrew J Matko, DO on 8/28/12 at 4:43 PM

Baldwin's Ohio Revised Code Annotated  
Title XLI. Labor and Industry  
Chapter 4123. Workers' Compensation (Refs & Annos)  
Miscellaneous Provisions

R.C. § 4123.90

4123.90 Discriminatory acts prohibited

**Currentness**

The bureau of workers' compensation, industrial commission, or any other body constituted by the statutes of this state, or any court of this state, in awarding compensation to the dependents of employees, or others killed in Ohio, shall not make any discrimination against the widows, children, or other dependents who reside in a foreign country. The bureau, commission, or any other board or court, in determining the amount of compensation to be paid to the dependents of killed employees, shall pay to the alien dependents residing in foreign countries the same benefits as to those dependents residing in this state.

No employer shall discharge, demote, reassign, or take any punitive action against any employee because the employee filed a claim or instituted, pursued or testified in any proceedings under the workers' compensation act for an injury or occupational disease which occurred in the course of and arising out of his employment with that employer. Any such employee may file an action in the common pleas court of the county of such employment in which the relief which may be granted shall be limited to reinstatement with back pay, if the action is based upon discharge, or an award for wages lost if based upon demotion, reassignment, or punitive action taken, offset by earnings subsequent to discharge, demotion, reassignment, or punitive action taken, and payments received pursuant to section 4123.56 and Chapter 4141. of the Revised Code plus reasonable attorney fees. The action shall be forever barred unless filed within one hundred eighty days immediately following the discharge, demotion, reassignment, or punitive action taken, and no action may be instituted or maintained unless the employer has received written notice of a claimed violation of this paragraph within the ninety days immediately following the discharge, demotion, reassignment, or punitive action taken.

**CREDIT(S)**

(1989 H 222, eff. 11-3-89; 1978 H 1282; 1953 H 1; GC 1465-107)

Notes of Decisions containing your search terms (0)

[View all 270](#)

R.C. § [4123.90](#), OH ST § [4123.90](#)

Current through 2015 Files 1 to 4 of the 131st GA (2015-2016).

Baldwin's Ohio Revised Code Annotated  
Title XLI. Labor and Industry  
Chapter 4123. Workers' Compensation (Refs & Annos)  
Miscellaneous Provisions

R.C. § 4123.95

4123.95 Liberal construction

Currentness

Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees.

**CREDIT(S)**  
(128 v 743, eff. 11-2-59)

Notes of Decisions (61)

R.C. § 4123.95, OH ST § 4123.95  
Current through 2015 Files 1 to 4 of the 131st GA (2015-2016).

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End of Document

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Baldwin's Ohio Revised Code Annotated  
Constitution of the State of Ohio  
Article II. Legislative (Refs & Annos)

OH Const. Art. II, § 35

O Const II Sec. 35 Workers' compensation

Currentness

For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, insofar as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employees, enacted by the general assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

**CREDIT(S)**

(110 v 631, am. eff. 1-1-24; 1912 constitutional convention, adopted eff. 1-1-13)

Notes of Decisions (352)

Const. Art. II, § 35, OH CONST Art. II, § 35  
Current through 2015 Files 1 to 4 of the 131st GA (2015-2016).