[Cite as *Coleman v. Indus. Comm.*, 2011-Ohio-3819.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lucille Coleman,	:	
Relator,	:	
v.	:	No. 10AP-757
Industrial Commission of Ohio and Universal Veneer Mill Corporation,	:	(REGULAR CALENDAR)
	:	
Respondents.	:	

D E C I S I O N

Rendered on August 4, 2011

Connor, *Evans & Hafenstein, LLP*, and *Katie W. Kimmet*, for relator.

Michael DeWine, Attorney General, and *Jeanna R. Volp*, for respondent Industrial Commission of Ohio.

IN MANDAMUS
ON OBJECTION TO MAGISTRATE'S DECISION

TYACK, J.

{¶1} Lucille Coleman filed this action in mandamus, seeking a writ to compel the Industrial Commission of Ohio ("commission") to grant her permanent total disability ("PTD") compensation.

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings. The parties stipulated the pertinent evidence and filed briefs. The magistrate than issued a magistrate's decision containing detailed findings of fact and conclusions of law which is appended to this decision. The magistrate's decision includes a recommendation that we deny the request for a writ.

{¶3} Counsel for Ms. Coleman has filed objections to the magistrate's decision. Counsel for the commission has filed a memorandum in response. The case is now before the court for a full, independent review.

{¶4} Ms. Coleman was still working fulltime at age 64 when she suffered a serious injury in June 2004. Her conditions which have been recognized are:

923.21	CONTUSION OF WRIST	LEFT	
923.21	CONTUSION OF WRIST	RIGHT	
927.21	CRUSHING INJURY OF WRIST	RIGHT	
840.9	SPRAIN SHOULDER/ARM NOS	RIGHT	SHOULDER
842.00	SPRAIN OF WRIST NOS	LEFT	
840.4	TEAR ROTATOR CUFF	RIGHT	
726.10	BURSITIS	RIGHT	SHOULDER
726.2	IMPINGEMENT SHLDR/R	RIGHT	
840.8	LABIAL TEAR SHLDR/R	RIGHT	LABRUM
726.12	BICEPS TENDINOPATHY/R	RIGHT	

{¶5} All of her injuries were suffered while she worked for Universal Veneer Mill Corporation ("Universal Veneer"), which employed her for 20 years. She was 69 years of age when she applied for PTD compensation. She had not worked for almost five years when she filed.

{¶6} A staff hearing officer ("SHO") for the commission issued an order denying Ms. Coleman's PTD compensation. The SHO relied upon an independent medical examination by Paul Hogya, M.D. Dr. Hogya reported Ms. Coleman as being capable of light work and sedentary work, as long as the work did not involve overhead lifting with the right arm. No one seriously contests her medical condition.

{¶7} The SHO's analysis of the medical disability factors, commonly called the *Stephenson* factors,[1] is the central issue in this litigation. As to that issue, counsel for Ms. Coleman raises three specific issues:

> The Magistrate erred in concluding that the Commission did not have to specifically state whether Ms. Coleman's work history was vocationally favorable.
>
> The Magistrate erred in that the Commission did not consider all of Ms. Coleman's nonmedical disability factors, in combination, in finding that she can be retrained to performed [sic] sedentary or light duty jobs.
>
> The Magistrate erred in finding that the Commission adequately identified transferable skills from Ms. Coleman's work history pursuant to *Noll*.

{¶8} Addressing the first objection, a careful reading of the SHO's order denying PTD compensation can only result in the conclusion that, taken as a whole, Ms. Coleman's work history was a positive factor. No work history is 100 percent positive or 100 percent negative. Ms. Coleman had worked in both skilled and unskilled jobs, both with Universal Veneer and with other employers. The SHO's analysis of Ms. Coleman's work history was detailed and accurate. More analysis was not required.

{¶9} The first objection is overruled.

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[1] *State ex rel. Stephenson v. Indus. Comm.* (1987), 31 Ohio St.3d 167.

{¶10} Turning to the second objection, we find no fault with the SHO's analysis of the nonmedical disability factors. Ms. Coleman was raised in Mississippi and left school at age 16 in order to help her family financially. Nothing in the evidence before us indicates that she is intellectually limited. She mastered a significant range of jobs in the past. There is no reason to believe she could not master the minimal skills required for several jobs itemized by the SHO.

{¶11} The second objection is overruled.

{¶12} Finally, addressing the third objection, Ms. Coleman is still capable of skilled and unskilled work. Unskilled work does not require transferable skills. Her history of doing housekeeping as an occupation and office cleaning involves skills she can still use. Her increasing age does not, in and of itself, take her out of the job market. The SHO did not need to itemize each and every skill Ms. Coleman retains.

{¶13} The third objection is overruled.

{¶14} In summary, we overrule all three objections. We adopt the findings of fact in the magistrate's decision, except we correct the reference to Ms. Coleman's age to age 69 in findings of fact No. 7. We adopt the conclusions of law in the magistrate's decision. As a result, we deny the request for a writ of mandamus.

Objections overruled; writ of mandamus denied.

BRYANT, P.J., and FRENCH, J., concur.

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lucille Coleman,	:	
Relator,	:	
v.	:	No. 10AP-757
Industrial Commission of Ohio and Universal Veneer Mill Corporation,	:	(REGULAR CALENDAR)
	:	
Respondents.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on March 23, 2011

Connor, *Evans & Hafenstein, LLP*, and *Katie W. Kimmet*, for relator.

Michael DeWine, Attorney General, and *Jeanna R. Volp*, for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶15} Relator, Lucille Coleman, has filed this original action requesting that this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order award which denied her application for permanent total

disability ("PTD") compensation and ordering the commission to find that she is entitled to that compensation.

Findings of Fact:

{¶16} 1. Relator has sustained three work-related injuries while in the course of her employment with respondent Universal Veneer Mill Corporation. The fourth and most recent injury was June 11, 2004. Relator's three workers'-compensation claims have been allowed for the following conditions:

> 92-68797: Dislocated left shoulder; sprain left shoulder.
>
> 94-16819: Sprain/strain right knee; cervical sprain/strain; cerebral concussion.
>
> 04-836086: Contusion of left wrist; contusion of right wrist; crushing injury right wrist; sprain right shoulder; sprain left wrist; tear right rotator cuff; labial tear, right shoulder; right shoulder bursitis and right shoulder impingement; right biceps tendinopathy; right rotator cuff tendinopathy; right shoulder adhesive capsulitis; right shoulder AC joint arthropathy.

{¶17} 2. Relator did not return to work following the 2004 injury.

{¶18} 3. Relator was awarded temporary total disability ("TTD") compensation from December 4, 2006 until it was determined that her allowed conditions had reached maximum medical improvement ("MMI") and her TTD compensation was terminated pursuant to an order of the Bureau of Workers' Compensation mailed June 17, 2008.

{¶19} 4. Two major right shoulder surgeries have been performed on relator. Relator's physicians have also provided her with right shoulder and left wrist injections, physical therapy, home exercise programs, and a TENS unit.

{¶20} 5. Following a hearing before a district hearing officer ("DHO") conducted on January 27, 2009, it was determined that relator's percentage of permanent partial disability had increased by six percent and was now 27 percent.

{¶21} 6. Relator filed an application for PTD compensation with the commission on May 20, 2009.

{¶22} 7. At the time she filed her application, relator was 59 years of age, had completed the 10th grade and had not received her GED, and was able to read, write, and perform basic math. Relator's prior work experience consisted of housekeeping work and as a laminating-machine off-bearer worker.

{¶23} 8. An independent medical evaluation was performed by Paul T. Hogya, M.D. In his August 17, 2009 report, Dr. Hogya provided a history of relator's claims as well as her treatment, documented her current symptoms, provided his physical findings upon examination, and ultimately concluded that relator's allowed conditions had reached MMI and concluded that relator is capable of performing light duty work provided the job did not require her to perform overhead work. Specifically, Dr. Hogya stated:

> In my medical opinion, the objective medical evidence and examination findings do not support Ms. Coleman to be permanently and totally disabled from all forms of sustained remunerative employment based solely on the allowed physical conditions in the above claims. Based solely on those allowed conditions, she only has permanent restrictions relative to the right shoulder. With the right shoulders [sic], she can participate in light industrial demand activities, which includes exerting up to 20 pounds of force occasionally and/or up to 10 pounds of force frequently and/or a negligible amount of force constantly in the course of lifting, carrying, pushing or pulling objects. She should avoid overhead reaching and lifting with the right arm.

> Certainly, she may do so with the left. Otherwise, she does not require any additional restrictions.
>
> This opinion is based on the medical file documentation provided to me by The Industrial Commission of Ohio as well as information given to me by the claimant. In formulating these recommendations, only the allowed condition(s) of record were considered, but no other unrelated factors. If there are any questions, please do not hesitate to contact me.

{¶24} 9. Relator's application was heard before a staff hearing officer ("SHO") on October 30, 2009 and was denied. The SHO relied upon the medical report of Dr. Hogya and determined that relator was capable of performing sedentary and light duty work provided there was no overhead lifting with her right arm. With regard to the nonmedical disability factors, the SHO determined as follows:

> The nonmedical disability factors are as follows: The Injured Worker was born on 12/23/1939 and is currently 69 years old. She went to school through the 10th grade according to her application and can read, write and do basic math. The Injured Worker testified that she left school for financial reasons and initially worked doing housekeeping work in private homes. She testified that in approximately 1984 she started working part-time at a mill as a laminating-machine off-bearer and continued working part-time as a housekeeper, later going full-time as an off-bearer. At some point she picked up a second job working part-time cleaning a bank according to her testimony. The Injured Worker last worked in July of 2004.
>
> * *
>
> The Injured Worker has a 10th grade education and can read, write, and do basic math. There has been no objective evidence or testing submitted to indicate that her intellect and literacy skills are anything less than consistent with the level of education. With this education the Injured Worker was able to learn and perform work that is considered semi-skilled work (home housekeeper) according to the Dictionary

of Occupational Titles (DOT). This shows that the Injured Worker has the intellect and academic skills to learn and perform at least entry level sedentary and light unskilled jobs. Young v. U.S. Energy Corp. (2002), 95 O.S.3d 324.

The Injured Worker's prior job as a laminating machine offbearer is considered light duty according to the DOT. There are a number of light duty offbearer jobs listed in the DOT, a few of which, such as assembly-machine offbearer (pen and pencil) and injection-molding-machine offbearer (pen and pencil), do not appear to involve overhead lifting.

Therefore, the Injured Worker's prior work experience would be transferable to this type work. Further, she spent 20 years at one employer, which indicates a loyal and dependable employee and would be an asset to further employment. Ewart v. I.C. (1996), 76 O.S.3d 139.

Finally, according to Ewart the nonexistence of transferable skills is not critical when the issue is whether the Injured Worker can be retrained. To the extent there may be a lack of transferable skills, it is found the Injured Worker is capable of unskilled work within the physical restrictions noted above, even at her current age of 69. This finding is based on the fact that unskilled work, by its very definition, does not require transferable skills. Further, according to the DOT, unskilled work only requires up to 30 days of training, often on the job. Even at age 69 the Injured Worker has sufficient work life expectancy to complete 30 days of training and, pursuant to Moss v. I.C. (1996), 75 O.S.3d 414, there is no age that bars re-employment as a matter of law. Finally, as noted above, the Injured Worker has demonstrated the intellect and academic skills needed to learn and perform unskilled light work. There are a number of sedentary unskilled entry level jobs that require no more education than that possessed by the Injured Worker. Some examples include: lens inserter optical; jewelry preparer; telephone quotation clerk; order clerk food and beverage; paramutual ticket checker; surveillance system monitor; charge account clerk; parking garage cashier, check cashing agency cashier, check cashier and tube room cashier. Some of these jobs, such as surveillance system monitor, parking garage cashier, paramutual ticket checker, and telephone quotation clerk, would appear to offer a sit/stand option if

> required. Further, as sedentary jobs these jobs would not usually require overhead lifting. This list is exemplary and not exhaustive. When one considers light duty work the number of job opportunities only increases.

{¶25} 10. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶26} Relator contends that the commission's analysis of the nonmedical disability factors was insufficient. Specifically, relator points out that the SHO never specifically indicated that her work history was positive, failed to explain how her prior work history constituted a positive nonmedical factor, failed to identify any transferable skills, and failed to explain how all of her nonmedical disability factors impacted her ability to be re-employed. Relator also asks for relief pursuant to *State ex rel. Gay v. Mihm*, 68 Ohio St.3d 315, 1994-Ohio-296.

{¶27} The magistrate finds that relator has not demonstrated the commission abused its discretion. In so finding, the magistrate concludes that the commission's analysis of the nonmedical disability factors was sufficient.

{¶28} The relevant inquiry in a determination of permanent total disability is claimant's ability to do any sustained remunerative employment. *State ex rel. Domjancic v. Indus. Comm.*, 69 Ohio St.3d 693, 1994-Ohio-95. Generally, in making this determination, the commission must consider not only medical impairments but also the claimant's age, education, work record and other relevant nonmedical factors. *State ex rel. Stephenson v. Indus. Comm.* (1987), 31 Ohio St.3d 167. Thus, a claimant's medical capacity to work is not dispositive if the claimant's nonmedical factors foreclose employability. *Gay*. The commission must also specify in its order what evidence has

been relied upon and briefly explain the reasoning for its decision. *State ex rel. Noll v. Indus. Comm.* (1991), 57 Ohio St.3d 203.

{¶29} Relator's first argument is that the commission never specifically stated something to the effect that "we find that relator's work history is a positive vocational factor." However, relator acknowledges that, when reading the commission's analysis of her prior work history, the only conclusion that could be reached is that the commission did consider her prior work history to be a positive vocational factor. Relator cites *State ex rel. Waddle v. Indus. Comm.* (1993), 67 Ohio St.3d 452, and *State ex rel. Hayes v. Indus. Comm.*, 78 Ohio St.3d 572, 1997-Ohio-180, for her assertion that the commission is obligated to state whether or not the vocational factor at issue is a positive vocational factor.

{¶30} In *Waddle*, the court criticized the commission for merely reciting the vocational factors and stated:

> As this case demonstrates, the permanent total disability decisions that are appealed to this court are, factually, close calls. Almost all involve a claimant who retains some medical capacity for work, making the role of nonmedical factors even more critical. It is not enough, in this case, for the commission to merely recite that "claimant is 53 years old, has an eighth grade education, and has worked as a cement finisher and working foreman." These factors are susceptible to both positive or negative interpretations depending on the reviewer, and, therefore, mere recitation gives no insight into the commission's reasoning. If, for example, the commission views these factors as assets to retraining, it should say so. Specific recitation, without more, is only slightly better than the old boilerplate language assailed in *Noll*. We, therefore, return the order to the commission for further consideration and an amended order.

{¶31} Similarly, in *Hayes*, the court criticized a similar commission order stating:

The commission's order of March 4, 1993, explains:

> "In accordance with the assessment of Mr. Kontosh, it is found that the claimant's age of 62 would not prevent her from performing such sedentary jobs, nor would her tenth grade education pose as a barrier to her being retrained to do them. Certainly, her past work history as a nurse's aide would be an asset in obtaining a job as either an Outpatient Admitting Clerk or Hospital Admitting Clerk."

This order provides no insight into how the various nonmedical disability factors in this case support the denial of PTD compensation. It does not disclose whether the commission considered claimant's age and education to be vocationally favorable or unfavorable. To the contrary, the phraseology of the order is elusive in this regard, and reveals little more than that claimant is sixty-two years of age, has a tenth grade education, is capable of sedentary work and, therefore, is not permanently and totally disabled. "If, for example, the commission views these factors as assets to retraining, it should say so." *State ex rel. Waddle*, 67 Ohio St.3d at 458, 619 N.E.2d at 1022.

{¶32} The same complete lack of analysis occurred in *State ex rel. Jackson v. Indus. Comm.*, 79 Ohio St.3d 266, 1997-Ohio-152. In that case, the commission's analysis of the nonmedical disability factors consisted of nothing more than:

> Claimant is 57 years of age, has his G.E.D. and work experience as a construcitlon [sic] laborer for 23 years. * * * Claimant last worked less than 3 years ago. * * * Based upon a consideration of all of the above factors, including claimant's relatively high level of education, it is concluded that claimant retains the physical and mental abilities to engage in sustained remunerative employment.

The court found that this explanation was "too cursory to withstand scrutiny under *Noll*, *supra*."

{¶33} The problems inherent in the aforementioned cases are not present here. Here, the commission noted that relator was 69 years of age and indicated that, even at

age 69 years, relator had sufficient time to complete 30 days of training. The Supreme Court of Ohio has stated numerous times that there is no age, ever, at which re-employment is held to be a virtual impossibility as a matter of law. See *State ex rel. Pass v. C.S.T. Extraction Co.*, 74 Ohio St.3d 373, 1996-Ohio-126 (64 years of age); *State ex rel. DeZarn v. Indus. Comm.*, 74 Ohio St.3d 461, 1996-Ohio-143 (71 years of age); *State ex rel. Moss v. Indus. Comm.*, 75 Ohio St.3d 414, 1996-Ohio-306 (78 years of age); and *State ex rel. Bryant v. Indus. Comm.*, 74 Ohio St.3d 458, 1996-Ohio-67 (79 years of age).

{¶34} In regard to relator's education, the commission noted that relator had completed the tenth grade, left school for financial reasons, and indicated on her application that she could read, write, and perform basic math. The commission also noted that there was no objective evidence or testing that would indicate that relator's intellect and literacy skills were less than consistent with her level of education. The commission noted that, with this education, relator had been able to learn and perform work that was considered semi-skilled according to the Dictionary of Occupational Titles ("DOT"). The commission concluded that this demonstrated that relator had the intellect and academic skills to learn and perform at least entry level sedentary and light unskilled jobs.

{¶35} In *State ex rel. Shepard v. Indus. Comm.*, 10th Dist. No. 09AP-675, 2010-Ohio-3742, this court upheld a commission order finding that an injured worker's tenth grade education enabled him to perform entry level unskilled sedentary employment. In *State ex rel. Ankenbauer v. Indus. Comm.*, 10th Dist. No. 07AP-909, 2008-Ohio-4892, this court upheld a commission order finding that a claimant with a limited ninth grade

education could perform entry level unskilled work tasks which were sedentary in nature. Further, in *State ex rel. Waldron v. Indus. Comm.*, 10th Dist. No. 06AP-55, 2007-Ohio-618, this court again upheld a commission order denying PTD compensation to an injured worker with a tenth grade education, the ability to read, write, and perform basic math, and was capable of performing unskilled work. The commission's treatment of her education here was sufficient.

{¶36} Lastly, with regard to relator's prior work history, the commission specifically noted that relator's prior job as a laminating-machine off-bearer was considered light duty and specifically indicated that there were several similar jobs which did not appear to involve overhead lifting, for which, in the commission's opinion, relator's prior work experience would be transferable. The commission noted that even if it was accepted that relator had no transferable skills, her education and prior work history would enable her to be retrained. Thereafter, the commission listed several light duty jobs which it determined that relator was capable of performing.

{¶37} Pursuant to *State ex rel. Ewart v. Indus. Comm.*, 76 Ohio St.3d 139, 1996-Ohio-316, the commission has discretion to view work history as indicative of possible traits even when specific, transferable skills were not acquired as a result. Further, the commission generally is not required to enumerate the jobs it believes the claimant is capable of performing. See *State ex rel. Mann v. Indus. Comm.*, 80 Ohio St.3d 656, 1998-Ohio-660. In the present case, the commission did list several jobs which it determined relator would be capable of performing.

{¶38} As the above explanation demonstrates, the commission's order clearly indicates that relator's prior work history was considered to be a positive factor and the commission explained how her prior work history constituted a positive factor. Further, the commission did explain how all the nonmedical disability factors impacted her ability to be re-employed. Unlike the cases cited by relator where the commission provided nothing other than a boilerplate recitation of the nonmedical disability factors, here the commission's analysis was sufficient.

{¶39} Relator also challenges the commission's order for its failure to specifically identify transferable skills. As an initial matter, as stated previously, in *Ewart*, the court indicated that it was not an abuse of discretion for the commission to find that an injured worker, with no transferable skills, was capable of performing sustained remunerative employment provided the injured worker had the ability to be retrained. In the present case, the commission did make that finding. Further, "unskilled work" is defined in Ohio Adm.Code 4121-3-35(B)(3)(c)(i) as follows:

> [W]ork which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. Jobs are unskilled if the primary work duties are handling, feeding, and off bearing (placing or removing materials from machines which are automatic or operated by others), or machine tending and a person can usually learn to do the job in thirty days and little specific vocational preparation and judgment are needed.

{¶40} As the commission noted, unskilled work includes jobs which a person can usually learn to perform in 30 days and which need little specific vocational preparation or

judgment. These jobs can be performed by persons with less than a high school education.

{¶41} Further, the commission did find that relator had some skills from her prior work which would transfer to similar jobs which would not require overhead lifting with her right arm. With regard to "transferability of skills," Ohio Adm.Code 4112-2-34(B)(3)(c)(iv) provides as follows:

> [S]kills which can be used in other work activities. Transferability will depend upon the similarity of occupational work activities that have been performed by the injured worker. Skills which an individual has obtained through working at past relevant work may qualify individuals for some other type of employment.

{¶42} The commission indicated that there are a number of light duty off-bearer jobs listed in the DOT which relator should be able to perform. It is undisputed that relator's prior job included work as a laminating-machine off-bearer, and, as stated, the commission listed other off-bearer jobs which, in the commission's opinion, relator could perform.

{¶43} Relator first cites *State ex rel. Rhoten v. Indus. Comm.*, 77 Ohio St.3d 8, 1996-Ohio-110, in support of her argument; however, the magistrate finds that *Rhoten* is distinguishable.

{¶44} In *Rhoten*, the commission found that claimant's prior factory work was favorable to her potential for obtaining sedentary employment. However, the court was bothered by the commission's failure to provide an explanation and stated:

> The commission's treatment of claimant's work history is more tenuous. The commission noted claimant's prior factory employment, including her jobs in the 1940s as a

cookie packer and as a tobacco bag catcher. While we acknowledge the commission's considerable latitude in the interpretation of nonmedical disability factors, we find that, in this instance, the commission's reliance on two positions that claimant performed nearly fifty years ago constitutes an abuse of discretion. Removing these jobs from our consideration leaves claimant with only one year of factory experience that is vastly outweighed by claimant's years of housekeeping—work she can no longer perform.

Two assumptions by the commission further undermine its analysis. The first is that every job produces some transferable skill. The second is that this claimant's prior jobs left her with skills transferable to sedentary work.

The commission's first assumption ignores the plethora of *un*skilled jobs in the workplace. The second ignores that none of claimant's jobs had been sedentary. It is thus unclear how claimant's jobs would yield sedentary skills.

The commission could, of course, have facilitated review by identifying these perceived "skills." Under similar circumstances, the court in *State ex rel. Haddix v. Indus. Comm.* (1994), 70 Ohio St.3d 59, 61, 636 N.E.2d 323, 324, held:

"The commission determined that claimant's prior work as a gas station attendant and press operator provided him with skills transferable to sedentary employment. The

> commission's order, however, does not identify what those skills are. Such elaboration is critical in this case, since common sense suggests that neither prior work is, in and of itself, sedentary.
>
> "The commission responds that it 'inferred' from claimant's gas station job that claimant 'perform[ed] a variety of duties, which would include such things as pumping gas, washing windows, dealing with customers at retail, making change, filling out credit card slips, operating the cash register, and light custodial work.' Again, however, none of this explanation was stated in the order. Moreover, pumping gas, washing windows and light custodial duties do not suggest sedentary employment.
>
> "The commission's order, contrary to *Noll*, does not, therefore, adequately explain how these vocationally neutral and/or unfavorable factors combine to produce a claimant who is able to work. * * *"
>
> In summary, claimant spent all but one year of her recent work history employed as a housekeeper—a job that is now foreclosed by injury. At best, claimant's work history could be considered as vocationally neutral if viewed as being offset by claimant's capacity to retrain. It is perhaps more accurate to view claimant's work history unfavorably, but under no circumstances should it be deemed an asset. In so doing, the commission abused its discretion.

(Emphasis sic.)

{¶45} In the present case, the commission identified other off-bearer jobs to which the commission believed that relator would have some transferable skills. The magistrate finds that this is not the same kind of stretch or assumption which the court criticized in either *Rhoten* or *State ex rel. Haddix v. Indus. Comm*., 70 Ohio St.3d 59, 1994-Ohio-443.

{¶46} Relator also argues that her situation is similar to the situation of the claimant in *State ex rel. LeVan v. Young's Shell Serv.*, 80 Ohio St.3d 55, 1997-Ohio-357. In that case, the claimant, George LeVan, had a sixth grade education and a work history

as a laborer, cab driver, trash collector, service station attendant, painter, and mechanic. The commission concluded that his work history "indicate[d] a flexibility and adaptability to various kinds of work environments that would be assets in performing sedentary to light work for which he retains the physical capacity."

{¶47} The court found the commission's treatment of LeVan's prior work history to be inadequate stating:

> At issue is the commission's nonmedical analysis, which we find to be deficient in two respects.
>
> The first involves the commission's treatment of claimant's work history, which is little more than a recitation of claimant's past jobs. The commission's attempt to add a substantive dimension to this recitation by using the phrases "wide and varied" and "flexibility and adaptability" fails. Such hollow phrases are reminiscent of the boilerplate previously decried in *Noll*, and simply restate what the earlier recitation had already revealed—that claimant had worked many jobs prior to injury. These phrases do not explain how claimant's occupational history enhances his reemployment potential.
>
> We also find the commission's explanation to be inadequate for a second reason. The cornerstone of the commission's order is the future—the many years of work-force participation available to one of claimant's age. The commission's order, however, merely says that this availability exists. It does not address whether claimant is, or could be, vocationally capable of taking advantage of it. The order says nothing about claimant's retraining or rehabilitation potential.
>
> We conclude, therefore, that the commission's order violates *Noll*.

{¶48} Again, relator's factual situation as well as the commission's order and explanation differs greatly from the situation presented in *LeVan*.

{¶49} Finding that the commission's analysis of the nonmedical disability factors was sufficient, the magistrate finds that relator has not demonstrated the commission abused its discretion and relator's request for a writ of mandamus should be denied.

/s/Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).