

WORKERS' COMPENSATION CASE LAW UPDATE

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State ex rel. Chrysler LLC v. Industrial Commission (10th Dist. Jan. 14, 2010), 2010 WL 153886, 2010-Ohio-85.

Issue: Permanent partial/offset of scheduled loss award.

The claimant received a scheduled loss award for the loss of her toes in a work-related injury. Specifically, claimant was awarded 70 weeks of compensation for the loss of her toes. The claim was later additionally allowed for depression. Claimant then made an application for and received a 10% PPD award. Claimant later applied for and received a 22% increase in PPD. Chrysler requested a writ of mandamus ordering the Commission to vacate the additional 22% award and enter an order offsetting the prior scheduled loss award against any award of an increase in her percentage of PPD. The Magistrate agreed and issued a writ of mandamus vacating the PPD award.

In approving the Magistrate's determination, the Court relied upon *State ex rel. Maurer v. Industrial Commission*, which held that a claimant who has received a permanent partial award for an injury which subsequently deteriorates to the point of a total loss of use of an appendage may not be awarded scheduled benefits without an offset. The Court also relied upon the recent case of *State ex rel. Honda of America Mfg., Inc. v. Indus. Comm.*, which held that "because the same injury gave rise to the two awards, permitting a scheduled loss of use award for the claimant's four fingers without deducting the prior PPD award, would result in a double recovery." The Court noted that it did not matter that in the present case, unlike the *Maurer* and *Honda* cases, that the scheduled loss award preceded the PPD award because "[i]t is difficult to see how this distinction can make a difference. Regardless of which award precedes the other, there is still a double recovery problem to be resolved."

Gayleen Parker v. Honda of America Mfg., Inc. (3rd Dist. Dec. 28, 2009), 2009 WL 5064582, 2009-Ohio-6866.

Issue: Right to participate/death claim

After suffering a work-related back injury, Parker was prescribed and began using OxyContin, to which he subsequently became addicted. In August 2004, Parker sought treatment for his addictions, which had grown to include cocaine, OxyContin, Percocet, and heroin. In March 2006, he was discovered dead due to an overdose of OxyContin, which he had melted down and injected intravenously. The claimant filed a claim for death benefits under the Workers' Compensation Act. The claim was denied by the Industrial Commission. The claimant argued that Parker's drug abuse was unwillful and nonvolitional because it was caused by his work-injury-induced addiction.

Honda argued that two medical experts had found that Parker's death was the result of his abuse of prescription medication in concert with illegal drugs and that it was not an accidental overdose, but a purposeful ingestion of controlled and illegal substances. Honda further argued that Parker's acts of melting OxyContin, injecting it into his bloodstream, and using street drugs represented an intervening cause that broke the chain of causation between his work injury and his death. Finally, Honda argued that the facts surrounding Parker's death were distinguishable from those set forth in *Borbely v. Prestole Everlock, Inc.*, which carved out a narrow exception to the workers' compensation recovery exclusion for self-inflicted injuries in certain cases of suicide. The Court of Appeals agreed with Honda, explaining that *Borbely* did not apply because that case pertains to suicide, not death caused by drug abuse.

State ex rel. Scott v. Industrial Commission (10th Dist. Dec. 22, 2009), 2009 WL 4932207, 2009-Ohio-6769.

Issue: temporary total/voluntary abandonment

Claimant successfully sought a writ of mandamus ordering the Commission to vacate its orders terminating TTD on the grounds that claimant voluntarily abandoned his employment with Delphi when he accepted Delphi's "Special Attrition Program." The court's magistrate based his decision on the Supreme Court's holdings in *State ex rel. Reitter Stucco, Inc. v. Indus. Comm.* and *State ex rel. Pretty Products, Inc. v. Indus. Comm.* The magistrate noted that to the extent that claimant was medically unable to return to his former position of employment at the time he accepted Delphi's "Special Attrition Program," he remained eligible for TTD compensation. Under such circumstances, Claimant was eligible for TTD despite the fact that he signed an agreement stating: "I am able to work and suffer from no disability that would preclude me from doing my regularly assigned job. As such, I acknowledge that I am not entitled to disability pay or benefits...The release does not include workers' compensation claims."