[Cite as *State ex rel. Honda of Am. Mfg., Inc. v. Indus. Comm.*, 2013-Ohio-1572.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Honda of America Mfg., Inc.,	:	
Relator,	:	
v.	:	No. 12AP-269
Industrial Commission of Ohio and Krystol Alexander,	:	(REGULAR CALENDAR)
	:	
Respondents.	:	

D E C I S I O N

Rendered on April 18, 2013

Vorys, Sater, Seymour and Pease LLP, and *Robert A. Minor*, for relator.

Michael DeWine, Attorney General, and *Patsy A. Thomas*, for respondent Industrial Commission of Ohio.

Larrimer & Larrimer, and *Thomas L. Reitz*, for respondent Krystol Alexander.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

BROWN, J.

{¶ 1} Relator, Honda of America Mfg., Inc., has filed an original action requesting that this court issue a writ of mandamus ordering respondent, Industrial Commission of Ohio ("commission"), to vacate its order awarding working wage loss compensation to respondent, Krystol Alexander ("claimant"), and to issue a new order denying said compensation.

{¶ 2} This matter was referred to a magistrate of this court pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals. The magistrate issued the appended decision, including findings of fact and conclusions of law, recommending that this court deny relator's request for a writ of mandamus.

{¶ 3} Relator has filed objections to the magistrate's decision, arguing that the award of wage loss compensation in claimant's 2003 claim (allowed for right carpal tunnel syndrome and strain/sprain right wrist and forearm), following an award of wage loss compensation for a 2004 claim (allowed for left carpal tunnel syndrome and left wrist tenosynovitis), was not supported by medical evidence, thereby resulting in a duplicative award. Relator argues that the restrictions submitted in connection with the application for compensation in the 2003 claim were identical to those submitted in the 2004 claim, i.e., bilateral upper extremity restrictions. Relator contends the commission failed to address whether there was any evidence claimant was restricted solely due to the allowed conditions in the 2003 claim.

{¶ 4} The magistrate concluded that the commission did not abuse its discretion in finding that claimant has two claims allowed for separate and distinct conditions. The magistrate recognized that claimant's treating physician, Dr. Michael Ruff, in completing a C-140 medical report relating to the 2004 claim, noted that claimant had restrictions in both hands; the magistrate found, however, that this did not defeat an award for compensation in the 2003 claim because Dr. Ruff "specifically indicated that the allowed conditions in the claim caused the restrictions."

{¶ 5} Upon review, we agree with the magistrate that the medical evidence submitted indicates that claimant's treating physician was aware of the allowed conditions in the 2003 claim. On December 9, 2010, Dr. Ruff issued a medical report with respect to the 2003 claim, in which he recognized that the claim was allowed for right carpal tunnel syndrome. That report also noted that the claim was allowed for "tendonitis" of right wrist and forearm. In order to clarify the December 2010 report, Dr. Ruff's March 8, 2011 letter indicates the physician's awareness that the 2003 claim "is recognized for the conditions of sprain/strain right wrist and forearm as well as right carpal tunnel syndrome," and that the "work restrictions documented in my December 9, 2010, medical report are for the allowed conditions of sprain/strain right wrist and forearm as well as

right carpal tunnel syndrome." Dr. Ruff also completed an April 6, 2011 medical report, listing the allowed conditions of the 2003 claim as sprain/strain, right wrist and forearm, and right carpal tunnel syndrome. On November 16, 2011, Dr. Ruff completed a medical report listing the allowed conditions as sprain/strain right wrist and forearm and right carpal tunnel syndrome.

{¶ 6} Here, the record contains some evidence to support the commission's finding that claimant suffered wage loss as a result of restrictions arising from the allowed conditions in the 2003 claim, and we find unpersuasive relator's argument that the commission based its award on non-allowed conditions. Accordingly, we agree with the magistrate's determination that the commission did not abuse its discretion in awarding wage loss compensation to claimant.

{¶ 7} Based upon a review of the magistrate's decision and an independent review of the record, we find that the magistrate has properly determined the facts and applied the pertinent law to them. Accordingly, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein, and relator's objections are overruled. In accordance with the magistrate's recommendation, relator's request for a writ of mandamus is hereby denied.

Objections overruled; writ of mandamus denied.

KLATT, P.J., and McCORMAC, J., concur.

McCORMAC, J., retired of the Tenth Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Honda of America Mfg., Inc.,	:	
Relator,	:	
v.	:	No. 12AP-269
Industrial Commission of Ohio and Krystol Alexander,	:	(REGULAR CALENDAR)
	:	
Respondents.		
	:	

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

Rendered on September 27, 2012

Vorys, Sater, Seymour and Pease LLP, and *Robert A. Minor*, for relator.

Michael DeWine, Attorney General, and *Patsy A. Thomas*, for respondent Industrial Commission of Ohio.

Larrimer & Larrimer, and *Thomas L. Reitz*, for respondent Krystol Alexander.

IN MANDAMUS

{¶ 8} Relator, Honda of America Mfg., Inc., 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 awarding working wage loss ("WWL") compensation to respondent Krystol Alexander ("claimant") and ordering the commission to find that she is not entitled to that award.

Findings of Fact:

{¶ 9} 1. Claimant has two workers' compensation claims for injuries she sustained while working for relator. Her 2003 claim is allowed for:

> Sprain/strain right wrist and forearm; right carpal tunnel syndrome.

The date of injury/diagnosis is May 28, 2003.

{¶ 10} 2. Claimant's 2004 claim is allowed for:

> Left carpal tunnel syndrome; left wrist tenosynovitis.

The date of injury/diagnosis is September 29, 2004.

{¶ 11} 3. It is undisputed that claimant is unable to return to her former position of employment with relator.

{¶ 12} 4. In 2007, claimant filed an application for WWL compensation in the 2004 claim allowed for left carpal tunnel syndrome and left wrist tenosynovitis. Her request was supported by the C-140 signed by her treating physician Michael E. Ruff, M.D.

{¶ 13} Based on the medical examination performed January 31, 2007, Dr. Ruff noted the following relevant restrictions: claimant could occasionally lift and carry up to 15 pounds but could not carry more than 15 pounds, and claimant was to avoid the following repetitive actions: simple grasping, pushing and pulling arm controls, and fine manipulation. On the C-140, Dr. Ruff noted these hand restrictions were temporary and applied to both the left and the right hands.

{¶ 14} 5. Relator, as a self-insured employer, contested the award.

{¶ 15} 6. Claimant's request for WWL was heard before a district hearing officer ("DHO") on July 13, 2007. The DHO denied claimant's request for WWL compensation finding that the C-140 of Dr. Ruff was unpersuasive because claimant had been working as a data entry clerk and as a cashier. The DHO noted that both those jobs were hand and wrist intensive and claimant testified that she was not having any physical difficulty performing those two positions; however, she left them for a single higher paying job.

{¶ 16} 7. Claimant appealed and the matter was heard before a staff hearing officer ("SHO") on August 16, 2007. The SHO vacated the prior DHO order and awarded claimant WWL:

> Based on the C-140 restrictions of Dr. Ruff, the statement of restrictions from Dr. Ruff dated 01-31-2007, the C-140 application, the job search records, the wages in file, the statement of Bill Brown, filed 08-16-2007, and the testimony of the Injured Worker regarding her efforts to secure employment, this Hearing Officer finds the Injured Worker has sustained a working wage loss as a result of the injury and the allowed conditions upon which this claim is predicated.
>
> Therefore, working wage loss compensation is granted from 02-15-2007 through 07-13-2007, inclusive, and to continue upon the submission of appropriate proof.

{¶ 17} 8. Relator did not appeal this decision and claimant received 200 weeks of WWL in the 2004 claim.

{¶ 18} 9. In February 2011, claimant filed an application for WWL compensation in the 2003 claim allowed for sprain/strain right wrist and forearm; right carpal tunnel syndrome. Claimant's request was supported by the December 9, 2010 C-140 of Dr. Ruff. After properly identifying the allowed conditions in the 2003 claim, Dr. Ruff noted the following permanent restrictions: claimant could occasionally lift and carry up to 15 pounds but could not lift above 15 pounds, and claimant was prohibited from using her hands in the following repetitive actions: simple grasping, pushing and pulling arm controls, and fine manipulation. The hand restrictions were noted to be applicable to both the right and left hands.

{¶ 19} 10. Claimant's application was heard before a DHO on March 21, 2011. The DHO specifically denied the payment of WWL compensation from December 12 through 26, 2010 finding that claimant did not file sufficient documentation evidencing that she had conducted a good-faith job search during this period. However, the DHO did award WWL compensation from December 27, 2010 through March 8, 2011 after finding that claimant had injury induced restrictions associated with the recognized upper right extremity conditions in the 2003 claim which prevented her from returning to

comparably paying work and finding that she had demonstrated that she had made a good-faith job search during that time period.

{¶ 20} 11. Both claimant and relator appealed and the matter was heard before an SHO on May 2, 2011. The SHO modified the prior DHO order and granted claimant WWL compensation for the entire period requested: December 12, 2010 through March 8, 2011 and continuing based upon submission of proof of continuing wage loss. Relator raised two arguments for why claimant should not be awarded WWL compensation in the 2003 claim. First, relator argued that claimant had already received the full 200 weeks of WWL compensation for left carpal tunnel syndrome and left wrist tenosynovitis, and that it would be a windfall to award her an additional 200 weeks of WWL compensation for the allowed conditions of sprain/strain right wrist and forearm; right carpal tunnel syndrome. The SHO rejected that argument stating:

> The employer makes two arguments against payment of working wage loss. The employer first alleges the payment of wage loss is a "windfall" and it is a "policy issue." The employer argued that the Injured Worker received 200 weeks of wage loss in a 2004 claim which was allowed for left carpal tunnel syndrome and that receiving 200 weeks of working wage loss within this 2003 claim which is allowed, among other things, for right carpal tunnel syndrome is a windfall. The employer makes argument that an Injured Worker who had a claim allowed for bilateral carpal tunnel syndrome would only be allowed to receive 200 weeks of wage loss. Therefore, the employer argues it is not appropriate to pay 200 weeks of wage loss in the 2004 claim and 200 weeks of wage loss in this 2003 claim so that Ms. Alexander ultimately receives 400 weeks of wage loss. However, the employer has not pointed out case law or statute to support their argument.
>
> Following the employer's logic an Injured Worker who developed carpal tunnel with one employer in the right arm and carpal tunnel in the left arm with a separate employer would only be able to collect 200 weeks of wage loss. This would burden one employer without burdening the other and be a "windfall" to the employer not required to pay wage loss.
>
> The Injured Worker has two separate and distinct claims. The Injured Worker received wage loss in the first claim and is now requesting wage loss within the second. The Injured

> Worker has submitted reports from Dr. Ruff of 01/13/2010, 12/09/2010, 03/08/2011, and 04/06/2011 all supporting payment of working wage loss within this 2003 claim. The employer does not make argument that the Injured Worker does not have restrictions that prevent her from returning to work at her prior position of employment due to this 2003 claim. The evidence of Dr. Ruff is uncontroverted.
>
> As such, the Injured Worker has shown injury-related restrictions preventing a return to work at her prior position of employment due to this 2003 claim. The Injured Worker has returned to work, within restrictions. In doing so, she has suffered a wage loss as she is returned to a lesser paying job.

{¶ 21} Relator's second argument was that claimant had not performed a good-faith job search. The SHO rejected this argument as well.[1]

{¶ 22} 12. Relator's appeal was refused by order of the commission mailed June 8, 2011.

{¶ 23} 13. Relator's request for reconsideration was denied by order of the commission mailed August 17, 2011.

{¶ 24} 14. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶ 25} In this mandamus action, relator argues that it was an abuse of discretion for the commission to award claimant WWL compensation in each of her two allowed claims because the medical evidence upon which the commission relied in making each award provided the same restrictions. Specifically, relator points to the C-140 forms completed by Dr. Ruff. Relator points out that WWL compensation paid in the 2004 claim was based on claimant being restricted from using both her right and left hands for simple grasping, pushing and pulling arm controls, and fine manipulation and that later, in the 2003 claim, the C-140 also prohibited her from repetitive actions of simple grasping, pushing and pulling arm controls, and fine manipulation of both hands.

{¶ 26} Both the commission and claimant assert that Dr. Ruff was well aware of which conditions were allowed in each claim and that, with or without considering the

[1] In this mandamus action, relator does not challenge the commission's determination that claimant had in fact, conducted a good-faith job search.

fact that she was unable to use either hand for repetitive actions involving simple grasping, pushing and pulling arm controls, and fine manipulations. She did, in fact, have two allowed claims and was entitled to receive WWL compensation in each of those claims.

{¶ 27} For the reasons that follow, it is this magistrate's decision that this court should deny relator's request for a writ of mandamus.

{¶ 28} In order for this court to issue a writ of mandamus as a remedy from a determination of the commission, relator must show a clear legal right to the relief sought and that the commission has a clear legal duty to provide such relief. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141 (1967). A clear legal right to a writ of mandamus exists where the relator shows that the commission abused its discretion by entering an order which is not supported by any evidence in the record. *State ex rel. Elliott v. Indus. Comm.*, 26 Ohio St.3d 76 (1986). On the other hand, where the record contains some evidence to support the commission's findings, there has been no abuse of discretion and mandamus is not appropriate. *State ex rel. Lewis v. Diamond Foundry Co.*, 29 Ohio St.3d 56 (1987). Furthermore, questions of credibility and the weight to be given evidence are clearly within the discretion of the commission as fact finder. *State ex rel. Teece v. Indus. Comm.*, 68 Ohio St.2d 165 (1981).

{¶ 29} R.C. 4123.56(B)(1) pertains to the payment of wage loss compensation and provides:

> If an employee in a claim allowed under this chapter suffers a wage loss as a result of returning to employment other than the employee's former position of employment due to an injury or occupational disease, the employee shall receive compensation at sixty-six and two-thirds per cent of the difference between the employee's average weekly wage and the employee's present earnings not to exceed the statewide average weekly wage. The payments may continue for up to a maximum of two hundred weeks.

{¶ 30} In order to receive workers' compensation, a claimant must show not only that a work-related injury arose out of and in the course of employment, but, also, that a direct and proximate causal relationship exists between the injury and the harm or disability. *State ex rel. Waddle v. Indus. Comm.*, 67 Ohio St.3d 452 (1993). This principle is equally applicable to claims for wage loss compensation. *State ex rel. The Andersons v.*

Indus. Comm., 64 Ohio St.3d 539 (1992). As noted by the court in *State ex rel. Watts v. Schottenstein Stores Corp.*, 68 Ohio St.3d 118 (1993), a wage loss claim has two components: a reduction in wages and a causal relationship between the allowed condition and the wage loss.

{¶ 31} In the present case, Dr. Ruff was treating claimant for the allowed conditions in both the 2003 and the 2004 claims. As noted previously, the 2004 claim involves claimant's left hand and the 2003 claim involves claimant's right hand. The date of injury for the 2003 claim is May 28, 2003 while the date of injury for the 2004 claim is September 29, 2004. While both claims include carpel tunnel syndrome, the dates of injury are separated by one year and four months. As such, it appears that claimant began to experience symptoms in her right hand more than one year before she began experiencing symptoms in her left hand.

{¶ 32} Carpel tunnel syndrome is defined in *Taber's Cyclopedic Medical Dictionary*, 348-49 (20th Ed.2005), as follows:

> Pain or numbness that affects some part of the median nerve distribution of the hand (the palmar side of the thumb, the index finger, the radial half of the ring finger, and the radial half of the palm) and may radiate into the arm. Patients may have a history of cumulative trauma to the wrist, for example, in carpenters, rowers, typists, computer users, or those who regularly use vibrating tools or machinery. In addition, the condition may occur after wrist fracture, in pregnancy, or as a consequence of systemic or metabolic disorders such as diabetes mellitus, hypothyroidism, acromegaly, and amyloidosis. SEE: *repetitive motion injury.*

(Emphasis sic.) *Taber's Cyclopedic Medical Dictionary*, 349.

{¶ 33} The treatment which follows the diagnosis involves:

> The patient should rest the extremity, avoiding anything that aggravates the symptoms. This may require splinting of the wrist for several weeks to relieve tension on the median nerve. The patient's job requirements should be analyzed and recommendations provided for modified tools or a change in job assignment. The patient is taught how to avoid tension on the median nerve. Other treatments may include yoga, corticosteroid injections, or surgery.

Taber's Cyclopedic Medical Dictionary, 349.

{¶ 34} The following restrictions are recommended under patient care:

> Most patients with pain that is thought to come from the carpal tunnel are treated with modification of work, a wrist splint to hold the affected hand(s) in a neutral position, and an anti-inflammatory drug, such as ibuprofen. Occupational counseling is suggested if the syndrome necessitates a temporary or permanent job change.
>
> If surgery (carpal tunnel release) is required * * * [p]ostoperatively, the patient is encouraged to keep the hand elevated to reduce swelling and discomfort. The patient should perform prescribed wrist and finger exercises daily to improve circulation and to enhance muscle tone; he or she can perform these exercises in warm water if they are painful (wearing a surgical glove if dressings are still in place). He or she should avoid lifting anything weighing more than a few ounces. The patient should report severe, persistent pain or tenderness, which may point to tenosynovitis or hematoma formation.

Taber's Cyclopedic Medical Dictionary, 349.

{¶ 35} As above indicated, following a diagnosis of carpel tunnel syndrome, a patient has immediate restrictions—modification of work, using a wrist splint and anti-inflammatory medication. Immediate restrictions follow diagnosis because carpel tunnel syndrome is caused by repetitive actions. If conservative treatment fails, surgery may follow. As such, following the diagnosis of carpel tunnel in her right hand (2003 claim), claimant had immediate restrictions as part of her treatment. Further, according to the transcript, claimant underwent surgery for her right hand (2003 claim). Likewise, following the diagnosis of carpel tunnel syndrome in her left hand (2004 claim), claimant had immediate restrictions as part of her treatment.[2]

{¶ 36} Claimant first sought an award of WWL in the 2004 claim and Dr. Ruff completed a C-140 indicating that claimant was restricted in using her left hand. On that C-140, Dr. Ruff did note that claimant was likewise restricted in using her right hand. Subsequently, after receiving 200 weeks of WWL compensation in the 2004 claim,

claimant sought an award of WWL compensation in the 2003 claim allowed for right hand conditions. Dr. Ruff completed a second C-140 indicating that claimant had restrictions regarding the use of her right hand which would preclude her from working and also noted that she had restrictions regarding her left hand.

{¶ 37} To the extent that relator argues that a claimant can only receive 200 weeks of wage loss compensation, the magistrate finds that the commission properly addressed this issue. R.C. 4123.56 provides that WWL compensation is payable to an employee in any allowed claim where the employee suffers a wage loss as a result of returning to employment other than the employee's former position of employment. In the present case, for whatever reason, claimant's allowed conditions were awarded in two separate claims instead of one. Because there are two separate claims, nothing in R.C. 4123.56 would preclude claimant from receiving wage loss compensation in each of those two separate claims. The magistrate finds that the commission's determination that a claimant could receive wage loss compensation in more than one claim is accurate. As such, the magistrate finds that the commission did not abuse its discretion in making this finding.

{¶ 38} Relator's real argument appears to be that Dr. Ruff opined in both the 2004 and the 2003 claims that claimant had restrictions involving both hands. As such, relator argues that the evidence does not demonstrate that restrictions involving just the right hand alone or just the left hand alone precluded claimant from returning to her former position of employment; instead, relator contends that Dr. Ruff's C-140s demonstrate that it was restrictions concerning both the left and right hand which precluded relator from returning to her former position of employment.

{¶ 39} In the present case, it appears that claimant was unable to return to her former position of employment some time prior to 2007. At that time, claimant filed an application for WWL compensation in the 2004 claim which is allowed for left hand conditions. In granting that award, the commission relied on the C-140 application completed by Dr. Ruff wherein he did opine that relator had restrictions regarding both hands. In any event, relator did not challenge the commission's determination that she

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[2] Since the record involves the 2003 claim, it is unclear whether or not claimant also underwent surgery in the 2004 claim.

was entitled to an award of WWL compensation based solely upon the allowed conditions of left carpal tunnel syndrome and left wrist tenosynovitis.

{¶ 40} Claimant subsequently applied for WWL compensation in the 2003 claim allowed for sprain/strain right wrist and forearm; right carpal tunnel syndrome. In granting that award, the commission relied on reports from Dr. Ruff dated January 13, 2010 (according to the transcript, the date of this report is actually July 13, 2010), December 9, 2010, March 8, 2011, and April 6, 2011. The July 13, 2010 form fails to list a claim number and fails to list the allowed conditions. The form merely indicates permanent restrictions for both hands. The C-140 dated February 15, 2007 is based on an examination conducted January 31, 2007. The C-140 identifies the 2004 claim but does not specifically list the conditions allowed in that claim. Although relator challenged the award, after the SHO awarded WWL compensation, relator did not pursue any further approval.

{¶ 41} The December 9, 2010 and April 6, 2011 medical reports are C-140s which, as previously noted, list restrictions for repetitive actions of simple grasping, pushing and pulling arm controls, and fine manipulation with regard to both the left and the right hands. The reports identify the 2003 claim as well as the allowed conditions in that claim. The March 8, 2011 report from Dr. Ruff sought to clarify his December 9, 2010 C-140. Specifically, Dr. Ruff was asked whether he was aware that the 2003 claim was recognized for the conditions of sprain/strain right wrist and forearm; right carpal tunnel syndrome. Dr. Ruff answered in the affirmative. Dr. Ruff was also asked whether the work restrictions documented in the December 9, 2010 C-140 medical report were for the allowed conditions in that claim. Dr. Ruff again answered in the affirmative.

{¶ 42} While relator's frustration is understandable, the magistrate cannot say that the commission abused its discretion in awarding claimant WWL compensation in the 2003 claim after already allowing WWL compensation in the 2004 claim. Following the diagnosis in each claim, claimant would have had certain restrictions for each hand as part of her treatment. The fact that Dr. Ruff noted that she had restrictions in both hands does not defeat the award for compensation in the 2003 claim because Dr. Ruff specifically indicated that the allowed conditions in the claim caused the restrictions. Further, because relator did not challenge the August 16, 2007 SHO order awarding WWL

compensation in the 2004 claim, there is a final order from the commission finding that claimant demonstrated entitlement to an award of WWL compensation based solely upon the allowed conditions in the 2004 claim. Relator did not challenge that finding nor did relator raise an argument that any award of WWL compensation should have been apportioned between the two claims as the employer in *DaimlerChrysler Corp. v. Indus. Comm.*, 10th Dist. No. 06AP-895, 2007-Ohio-5093 argued, albeit belatedly. In fact, that may have been the better argument for relator to have raised. However, the fact remains that claimant has two claims allowed for separate and distinct conditions and it appears that the conditions in each of those claims both individually and collectively prevented claimant from returning to her former position of employment and caused her to suffer a loss of wages as a result. Because nothing in the statute nor in case law precludes awards of wage loss compensation to a claimant in more than one claim, the magistrate cannot say that the commission abused its discretion by awarding wage loss compensation in each of the two claims.

{¶ 43} Based on the foregoing, it is this magistrate's decision that relator has not demonstrated that the commission abused its discretion in granting claimant WWL compensation in the 2003 claim after already awarding WWL in the 2004 claim, and this court should deny relator's request for a writ of mandamus.

/S/MAGISTRATE
STEPHANIE BISCA BROOKS

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).