



denying her request for temporary total disability compensation and to find she is entitled to that compensation.

## I. Facts and Procedural History

{¶2} Pursuant to Civ.R. 53 and Section (M), Loc.R. 12 of the Tenth Appellate District, this matter was referred to a magistrate who issued a decision, including findings of fact and conclusions of law, appended to this decision. In her decision the magistrate concluded (1) the commission did not abuse its discretion in denying relator's request for temporary total disability compensation, because relator's C-84s listed both allowed and nonallowed conditions as the reason relator is unable to return to her former position of employment, and (2) any error in Dr. Williams' report is immaterial because the commission posited it only as an alternative reason for the commission's decision to deny temporary total disability compensation. Accordingly, the magistrate determined the requested writ should be denied.

## II. Objections

{¶3} Relator filed two objections to the magistrate's conclusions of law:

1. This Court's Magistrate wrongfully interprets *State ex rel. Waddle v. Indus. Comm.* in a manner that penalizes injured workers for suffering the misfortune of having non-allowed conditions.
2. The Magistrate erred when she concluded that it was appropriate for Dr. Williams to rely upon medical evidence generated in 2002 & 2003 to determine the injured workers' physical capabilities in 2008.

### A. First Objection

{¶4} Contrary to relator's first objection, the magistrate appropriately applied the Supreme Court of Ohio's decision in *State ex rel. Waddle v. Indus. Comm.* (1993), 67

Ohio St.3d 452, properly stating that "nonallowed medical conditions cannot be used, even in part, to advance or defeat a claim for compensation." (Mag. Dec., ¶44.) Although a claimant's having nonallowed conditions does not in itself defeat a request for compensation, the claimant nonetheless "must meet [her] burden of showing that an allowed condition independently caused the disability. The allowed condition cannot combine with a nonallowed medical condition to produce [temporary total disability] compensation." *State ex rel. Bradley v. Indus. Comm.*, 77 Ohio St.3d 239, 242, 1997-Ohio-48. Because relator's C-84s list one or more nonallowed conditions preventing her from returning to her former position of employment, the C-84s are not some evidence to support her application. Accordingly the commission properly stated "[t]he Injured Worker has not presented evidence that her disability from 11/17/2008 to 12/28/2009 was due solely to the allowed conditions herein, and therefore temporary total disability compensation for this period is denied." (Mag. Dec., ¶39.)

{¶5} The magistrate also properly concluded "relator is mistaken to assert that the commission was required to address the merits" of the reports of Drs. Marino and Kennington or to rely on them, neither of which relator submitted. Although we might prefer an explanation, the commission is not required to explain why it did not rely on other submitted evidence or reports in the record. *State ex rel. Fultz v. Indus. Comm.*, 69 Ohio St.3d 327, 1994-Ohio-426.

{¶6} In the end, relator failed to carry her burden of proof when she submitted the C-84s that included a nonallowed condition. *State ex rel. Jeep Corp. v. Indus. Comm.* (1991), 62 Ohio St.3d 64, 66. As a result, the commission did not abuse its discretion in so concluding. Relator's first objection is overruled.

### B. Second Objection

{¶7} Relator's second objection contends the commission wrongly considered Dr. Williams' report, since the report relied on medical evidence generated in 2002 and 2003 to determine relator's physical capabilities in 2008.

{¶8} The magistrate properly pointed out that the commission cited Dr. Williams' report as an alternative basis for its decision. Even if that report is removed from evidentiary consideration, the commission's decision stands on the first basis presented: relator failed to carry her evidentiary burden of supporting her request for compensation with C-84s based only on allowed conditions. As a result, whether Dr. Williams' report constitutes some evidence to support the commission's decision is immaterial. Relator's second objection is overruled.

### III. Disposition

{¶9} Following independent review pursuant to Civ.R. 53, we find the magistrate has properly determined the pertinent facts and applied the salient law to them. Accordingly, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained in it. In accordance with the magistrate's decision, we deny the requested writ of mandamus.

*Objections overruled;  
writ denied.*

FRENCH, J., concurs.  
TYACK, J., dissents.

TYACK, J., dissenting.

{¶10} Since I reach a different conclusion on some key issues, I respectfully dissent.

{¶11} Carolyn Hall was injured in 2002. Her workers' compensation claim has been recognized for "sprain sacroiliac (NOS)" and "herniated disc L4-L5." Her claim has not been recognized for radiculitis or any other form of radiculopathy. Radiculitis is an inflammation of the nerve root. A herniated disc can cause the nerve root to become inflamed, but such inflammation is not automatic.

{¶12} Hall received TTD compensation for a while in 2002 and then returned to work on a restricted level in September 2002. She later was cleared to return to work without restrictions.

{¶13} In January 2009, Hall filed a motion requesting a new period of TTD compensation. The two C-84's filed to support her claim both listed lumbosacral or lumbar radiculitis as a condition from which she suffered. The reports of Richard Gibbons, M.D. and Paul Oppenheimer, M.D. also listed left leg pain as a subjective complaint. The left leg pain would be consistent with radiculitis, but not an old sprain or disc herniation by itself.

{¶14} Rohn T. Kennington, M.D., examined Carolyn Hall on behalf of the Bureau of Workers' Compensation ("BWC") and concluded that Ms. Hall suffers from "herniated disk, L4/L5," "[l]umbosacral sprain/strain" and "[l]umbosacral radiculitis." Dr. Kennington then concluded that all three conditions were directly caused by the industrial injury of May 6, 2002. Dr. Kennington also concluded a period of TTD is "causally related to the allowed conditions." Since Dr. Kennington correctly listed the allowed conditions at the beginning of her report, this implies that she (Dr. Kennington) knew that Carolyn Hall suffered from radiculitis, but felt the allowed conditions were responsible for Hall's TTD.

{¶15} A fourth doctor to provide a report was Joseph Marino, M.D. Dr. Marino was hired to do an independent medical examination by Jefferson Industries Corporation. Dr. Marino found lumbosacral radiculitis not to "be substantiated." He found that Carolyn Hall could not return to her former position of employment because of her herniated disc at L4-L5.

{¶16} Dr. Marino made other findings which were more consistent with an examination for permanent total disability compensation than for issues related to TTD compensation.

{¶17} The evidence before us also includes a report of Anthony Williams, M.D., which is based upon a file review, not a physical examination. Dr. Williams concluded that nothing much had changed since the inception of the claim and that "physical disability is not found to be medically warranted." Apparently, Dr. Williams concluded both that Carolyn Hall had reached maximum medical improvement ("MMI"), without using that phrase. He also concluded that Ms. Hall's functional defects would not be work-prohibitive, despite all four physicians who actually examined Ms. Hall concluding that she could not return to her former job.

{¶18} The SHO who issued an order denying a new period of TTD compensation mentioned that Ms. Hall had not established a change in her medical circumstance. This may have been the result of a conclusion that Ms. Hall had reached MMI, but the phrase MMI is notably absent from the order.

{¶19} When the full commission reviewed the issue, the two-to-one majority did not rely on MMI-related issues, but commented on the flaws in the C-84s filed by Ms. Hall

and held "the Injured Worker has not presented evidence that her disability from 11/17/2008 to 12/28/2009 was due solely to the allowed conditions."

{¶20} The two-to-one majority relied on the file review of Dr. Williams and interpreted his report as concluding that TTD compensation was medically supported. Dr. Williams noted the lack of objective evidence of functional defects that would result in work restrictions.

{¶21} I disagree with the majority about the state of the medical evidence. Looking at the whole picture, the evidence showed that Hall could not do her former job. The issue which should have been addressed is whether Hall has reached MMI. The SHO who denied Hall a new period of TTD apparently felt she had reached MMI. The commission did not address the issue.

{¶22} I would sustain the second objection in part and grant a limited writ to compel the commission to further review the issues without reliance on the file review of Dr. Williams who ignored the findings of all the examining physicians. Since the majority does not do that, I respectfully dissent.

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# APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Carolyn J. Hall,	:	
	:	
Relator,	:	
	:	
v.	:	No. 10AP-765
	:	
Industrial Commission of Ohio and	:	(REGULAR CALENDAR)
Jefferson Industries Corporation,	:	
	:	
Respondents.	:	
	:	

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## MAGISTRATE'S DECISION

Rendered on April 29, 2011

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*Law Offices of Thomas Tootle Co., L.P.A., and Thomas Tootle, for relator.*

*Michael DeWine, Attorney General, and Andrew J. Alatis, for respondent Industrial Commission of Ohio.*

*Porter, Wright, Morris & Arthur, LLP, and Brian D. Hall, for respondent Jefferson Industries Corporation.*

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### IN MANDAMUS

{¶23} Relator, Carolyn J. Hall, 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 which denied her request for temporary total disability ("TTD") compensation and ordering the commission to find that she is entitled to that compensation.

Findings of Fact:

{¶24} 1. Relator sustained a work-related injury on May 6, 2002, and her workers' compensation claim has been allowed for "sprain sacroiliac (NOS); herniated disc L4-L5."

{¶25} 2. Relator received a brief period of TTD compensation and returned to work in a light-duty position on September 9, 2002.

{¶26} 3. Relator's treating physician, William O. Smith, M.D., completed two Physician's Report of Work Ability forms, one dated November 18, 2002 and one dated August 14, 2003 indicating that relator could return to work with no restrictions on November 5, 2002 and August 15, 2003, respectively.

{¶27} 4. The record is devoid of any evidence that would indicate that relator received any additional treatment for her allowed conditions until 2008.

{¶28} 5. On November 17, 2008, Richard Gibbons, M.D., completed a C-84 certifying that relator was disabled and listing the following conditions which were being treated and preventing relator from returning to work:

L4-5 Disc Herniation

L5 S/S [sprain/strain]

L5 Radiculitis

{¶29} 6. A physician review was performed by Rohn T. Kennington, M.D., on January 1, 2009. At the beginning of his report, Dr. Kennington correctly listed the allowed conditions and indicated that he accepted those conditions as well as the objective findings of the examining physicians. Dr. Kennington was asked a number of questions, including whether the allowed conditions were causally related to the work-related injury, whether the medical services requested were reasonably related to the allowed

conditions, whether the current symptoms and medical findings were causally related to the allowed conditions, and whether or not the allowed conditions rendered relator temporarily totally disabled. Dr. Kennington concluded as follows:

My conclusions, after review of the medical evidence in the file and within a reasonable degree of medical probability, are as follows: (1) Considering the allowed conditions in the claim, the mechanism and nature of injury, previous medical records, and the additional (most recent) medical information provided, the current symptoms and medical findings appear to be causally related to the allowed conditions of this previously active claim. (2) The medical services requested are reasonably related to the allowed conditions of the claim. (3) The medical services requested are reasonably necessary and appropriate for the treatment of the allowed conditions in the claim. (4) I am not aware of the specific costs of the services requested. (5) The current symptoms and medical findings appear to support the requested medical services and period of TTD as being causally related to the allowed conditions of this previously active claim. (6) The medical evidence supports that the [injured worker] suffers from the conditions of "herniated disk, L4/L5", "Lumbosacral sprain/strain", and "Lumbosacral radiculitis". (7) The medical evidence also supports that these conditions were directly caused by the industrial injury of 5/6/02.

{¶30} 7. On January 26, 2009, relator filed her motion for TTD compensation.

{¶31} 8. Relator also filed the January 2009 C-84 prepared by Paul Oppenheimer, M.D., certifying temporary total disability from May 6, 2002, with an estimated return-to-work date of March 15, 2009 based on the following conditions:

L-4-5 disc herniation

L5 S/S [sprain/strain]

L5 radiculitis

{¶32} 9. On February 25, 2009, relator was examined by Joseph Marino, M.D. Dr. Marino identified the allowed conditions, provided the history of relator's injury and

treatment, provided his physical findings upon examination, identified the medical records which he reviewed, and concluded that relator's claims should not be allowed for lumbosacral radiculitis. Specifically, Dr. Marino stated:

It is my medical opinion that a diagnosis of lumbosacral radiculitis cannot be substantiated. By history and medical documentation, Ms. Hall has had sciatica related to disc herniation at L4-L5. Sciatica is a term to describe pain radiating into the leg; however, sciatica is a symptom, not a condition. To establish a diagnosis of radiculitis, which is a condition, one must substantiate the symptoms of radicular pain with objective findings on physical or electro-diagnostic testing. Ms. Hall has not had electro-diagnostic studies. When Dr. Oppenheimer listed a diagnosis of lumbosacral radiculitis on November 17, 2008, he failed to support this diagnosis with any objective physical findings. On current physical examination, Ms. Hall has intact and symmetric lower extremity reflexes. The findings of breakaway weakness and sensory loss in her left leg do not track a nerve root distribution and therefore are nonspecific. Based on the lack of supportive physical examination and electro-diagnostic findings, it is my conclusion that a diagnosis of lumbosacral radiculitis cannot be made.

Dr. Marino did conclude that relator was not physically capable of returning to her former position of employment based solely on the allowed condition of herniated disc L4-L5; however, he also opined that relator had not been temporarily and totally disabled from November 17, 2008 to present. Specifically, Dr. Marino stated:

It is my medical opinion that Ms. Hall has not been temporarily and totally disabled from November 17, 2008 to the present. She reports that for the last four years, she has been performing housekeeping and shopping tasks for her family. While symptomatic with back and leg pain, she has not, in my judgment, been disabled. In his office notes and C-84, Dr. Gibbons (Oppenheimer) does not document physical findings that indicate that Ms. Hall would be incapable of working. For example, there is no documentation of an antalgic gait, loss of lumbar range of motion, lower extremity weakness or difficulty with position

transfers that would interfere with her physical abilities. Based on the medical documentation and my findings on physical examination, I believe Ms. Hall has been and continues to be physically capable of working with appropriate restrictions.

{¶33} 10. A file review was performed by Anthony Williams, M.D. Although the date of his report is listed as February 26, 2006, it is undisputed that the date should be February 26, 2009. Dr. Williams concluded that relator's request for TTD compensation was not substantiated by the record, as follows:

The requested POD from 11/17/08 to present does not appear medically justifiable based on the medical documentation. There are no real objective changes in the claimant's clinical status and her subjective complaints are essentially unchanged since the inception of the claim. The POR does not describe any functional deficits that would be work-prohibitive. Physical disability is not found to be medically warranted based on the objective medical record.

{¶34} 11. Relator's motion was heard before a district hearing officer ("DHO") on March 30, 2009. In denying relator's request for compensation, the DHO concluded that relator had failed to establish by a preponderance of the medical evidence that she had been temporarily and totally disabled and unable to perform the duties of her former position of employment due to the allowed conditions. The DHO relied on the February 26, 2009 report of Dr. Williams.

{¶35} 12. Relator's appeal was heard before a staff hearing officer ("SHO") on May 18, 2009. The SHO affirmed the prior DHO order and denied relator's request for compensation:

The Staff Hearing Officer finds that the evidence establishes that the Injured Worker returned to employment with the subject employer in 2002 and remained in that capacity through sometime in 2004.

The evidentiary record further establishes that there was a gap in medical care in this claim for the period of 2003 through November of 2008.

Presently, the only pending approved care is a consultation with an orthopedic specialist. No further care has been authorized at this time by the appropriate managed care organization or by the Bureau of Workers' Compensation.

In his report dated 11/17/2008, Dr. Oppenheimer provides diagnoses of lumbosacral strain/sprain and lumbosacral radiculitis. Neither of these of [sic] are allowed conditions in the claim. A C-9, Physician's Request for Medical Service, has been submitted requesting amending of the claim to include a lumbar radiculitis, but that C-9 has not been acted upon by the Bureau of Workers' Compensation. The Staff Hearing Officer finds that the report of Dr. Oppenheimer dated 11/17/2008 (11/15/2008), clearly establishes that Ms. Hall's continuing complaints arise from two diagnoses that are not allowed in this claim at this time.

The Staff Hearing Officer does not find the allowed consultation, by itself, to constitute a change in circumstance supporting a new period of temporary total compensation. The Staff Hearing Officer finds that a consultation, is simply that, a request for a second opinion and not any request for specific [sic] additional care.

It is the finding of the Staff Hearing Officer that the Injured Worker has not met her burden of proof with respect to this request. Specifically, that she has not established by a preponderance of the evidence, a change in circumstance supporting the new period of disability. Accordingly, the Injured Worker's request is denied in its entirety.

This order is based upon the report of Dr. Marino, the report of Dr. Williams dated 2/26/2006 (2/26/2009) and the failure of the Injured Worker to submit a signed, reliable and probative medical evidence establishing a change in circumstance supporting the requested period of disability.

{¶36} 13. Relator's further appeal was refused by order of the commission mailed

August 15, 2009.

{¶37} 14. Relator filed a motion for reconsideration, arguing that the SHO mistakenly applied a new and changed circumstances standard and that, if the correct standard of review was utilized, then there was no evidence in the record to deny her request for TTD compensation.

{¶38} 15. In an interlocutory order mailed October 23, 2009, the commission concluded that relator had presented evidence of sufficient probative value to warrant adjudication of her request for reconsideration. Specifically, the commission indicated that the SHO mistakenly relied on the report of Dr. Marino to deny TTD compensation when, in fact, that report actually supported an award of compensation. As such, the commission vacated the prior SHO order, and the matter was set for hearing.

{¶39} 16. Relator's request for reconsideration was heard on March 18, 2010. In spite of the fact that the commission granted relator's request for reconsideration, the commission ultimately determined that relator's request for TTD compensation beginning November 17, 2008 should be denied. Specifically, the commission stated:

The Commission finds the Injured Worker failed to establish her entitlement to temporary total disability compensation from 11/17/2008 to 12/28/2009. Richard Gibbons, M.D., completed C84 forms dated 11/17/2008 and 04/06/2009, which certified temporary total disability from 11/17/2008 through 05/15/2009. Dr. Gibbons also completed a Medco-14 form on 04/15/2009. Both C84 forms list the disabling conditions as "L4-5 disc herniation, lumbosacral sprain-strain, and lumbosacral radiculitis." The Medco-14 lists the same conditions as well as "spinal stenosis."

The claim is allowed for "sprain sacroiliac and herniated disc L4-5." In accordance with State ex rel. Waddle v. Indus. Comm. (1993), 67 Ohio St.3d 452, temporary total disability compensation cannot be based, even in part, on nonallowed conditions. See also State ex rel. Jackson Tube Services, Inc. v. Indus. Comm., 99 Ohio St.3d 1, 2003-Ohio-2259.

The Injured Worker has not presented evidence that her disability from 11/17/2008 to 12/28/2009 was due solely to the allowed conditions herein, and therefore, temporary total disability compensation for this period is denied.

This decision is further supported by the review from Anthony Williams, M.D., dated 02/26/2006 (sic 2009). Dr. Williams concluded that temporary total disability compensation was not medically supported. Dr. Williams noted the lack of objective evidence of functional deficits that would result in work restrictions.

{¶40} 17. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶41} Relator argues that the commission abused its discretion in denying her request for TTD compensation. Specifically, with regard to her C-84s, relator states in her brief: "As correctly noted by the Commission, the C-84s of Dr. Gibbons do not precisely parrot the allowed conditions. One could argue, however, that either: 1) these conditions are closely related to those that are allowed; or, 2) radiculopathy is merely a symptom of the allowed condition of herniated L4-5." (Relator's brief, at 8, fn. 2.) Relator also asserts that the commission abused its discretion by failing to mention the evidentiary impact of the reports of Drs. Marino and Kennington and further that Dr. Williams' report cannot constitute some evidence upon which the commission could rely because she had never been found to have reached maximum medical improvement ("MMI"), and Dr. Williams does not specifically indicate whether or not he is referring to relator's job as a PQ Welder.

{¶42} The magistrate finds that the commission did not abuse its discretion by denying relator's request for TTD compensation. Specifically, relator's medical evidence does list nonallowed conditions as part of the reason she is unable to return to her former

position of employment. Further, to the extent that Dr. Williams' report is not clear, it was an alternative reason to deny TTD compensation and, inasmuch as the commission's first explanation stands, any error here is immaterial.

{¶43} TTD compensation awarded pursuant to R.C. 4123.56 has been defined as compensation for wages lost where a claimant's injury prevents a return to the former position of employment. Upon that predicate, TTD compensation shall be paid to a claimant until one of four things occurs: (1) claimant has returned to work; (2) claimant's treating physician has made a written statement that claimant is able to return to the former position of employment; (3) when work within the physical capabilities of claimant is made available by the employer or another employer; or (4) claimant has reached MMI. See R.C. 4123.56(A); *State ex rel. Ramirez v. Indus. Comm.* (1982), 69 Ohio St.2d 630.

{¶44} It is undisputed that, pursuant to *State ex rel. Waddle v. Indus. Comm.* (1993), 67 Ohio St.3d 452, nonallowed medical conditions cannot be used, even in part, to advance or defeat a claim for compensation. In *State ex rel. Bradley v. Indus. Comm.*, 77 Ohio St.3d 239, 1997-Ohio-48, after citing *Waddle*, the Supreme Court of Ohio stated:

\* \* \* The mere presence of a nonallowed condition in a claim for TTD does not in itself destroy the compensability of the claim, but the claimant must meet his burden of showing that an allowed condition independently caused the disability. The allowed condition cannot combine with a nonallowed medical condition to produce TTD. Cf. *State ex rel. LTV Steel Co. v. Indus. Comm.* (1992), 65 Ohio St.3d 22, 599 N.E.2d 265.

Id. at 242.

{¶45} In the present case, relator's C-84s list a nonallowed condition as one of the conditions being treated and keeping relator from returning to her former position of

employment. Specifically, the C-84s list ICD-9 Code 724.4, which refers to L5 radiculitis. Although relator argues that radiculopathy can be considered a symptom and not necessarily a condition, as Dr. Marino explained in his report, relator's treating physicians specifically listed it as a condition and not a symptom. Pursuant to *Waddle and Bradley*, the commission did not abuse its discretion in finding that relator did not meet her burden of proving that she was temporarily and totally disabled due solely to the allowed conditions in her claim.

{¶46} Further, to the extent that relator argues that the reports of Drs. Marino and Kennington would support her request for TTD compensation, relator is mistaken to assert that the commission was required to address the merits of that evidence or required to rely on that evidence. In *State ex rel. Fultz v. Indus. Comm.*, 69 Ohio St.3d 327, 1994-Ohio-426, the commission reiterated that the commission is only required to list the evidence upon which it relies in granting or denying compensation. However, where the commission sets out to list all the evidence considered and the commission omits certain reports from that list, one is left with only one conclusion and that is that the commission either inadvertently or intentionally ignored that evidence. Here, the commission only identified that evidence upon which it relied, and there was no abuse of discretion on the part of the commission in failing to address the other medical evidence. Further, pursuant to *State ex rel. Teece v. Indus. Comm.* (1981), 68 Ohio St.2d 165, questions of credibility and weight to be given evidence are clearly within the discretion of the commission as fact finder and, pursuant to *State ex rel. Pass v. C.S.T. Extraction Co.* (1996), 74 Ohio St.3d 373, it is immaterial if any other evidence, even if greater in quality and/or quantity, supports a decision contrary to the commission's.

{¶47} Relator's final argument involves the report of Dr. Williams. Relator argues that Dr. Williams appeared unaware that she had never returned to work as a PQ Welder. Relator points to Dr. Williams' statement that there is no real objective change in relator's clinical status and subjective complaints. Relator argues this is proof that Dr. Williams is ignoring the fact that she was never released to return to her former position of employment. Further, relator challenges Dr. Williams' statement that her physician of record did not describe any functional deficits that would be work-prohibitive as evidence that Dr. Williams applied the wrong standard.

{¶48} With regard to relator's first challenge to Dr. Williams' report, the magistrate finds that, while relator indicates in her brief that she was never released to return to work without restrictions, the Physician's Report of Work Ability signed by Dr. Smith indicates that relator was released to return to work with no restrictions as of November 5, 2002 and August 15, 2003. Further, Dr. Williams specifically referenced the fact that Dr. Smith had released relator to return to work without restrictions.

{¶49} Based on the stipulated evidence, the magistrate cannot determine whether or not relator actually returned to her former position of employment. However, there is medical evidence that she was released to do so. Further, inasmuch as the record is clear that relator did not receive medical treatment for her allowed conditions for several years, and in the absence of any other evidence in this stipulated evidence, the magistrate cannot say that Dr. Williams was incorrect in stating that there were no objective changes in her clinical status or her subjective complaints. As such, the magistrate finds that this is not a reason to remove Dr. Williams' report from evidentiary consideration.

{¶50} Further, to the extent that Dr. Williams indicated that relator's physician of record did not describe any functional deficits that would be work-prohibitive, and that there are no real objective changes in relator's clinical status or her subjective complaints, it is unclear whether he applied the wrong standard here. Again, within the body of his report, Dr. Williams referenced the evidence indicating that relator had returned to work without restrictions. Further, there is evidence that relator was released to return to work. Given that there is evidence that she was released to return to work and that there is a lack of evidence demonstrating objective changes, Dr. Williams opined that, in his opinion, she was not temporarily and totally disabled. The magistrate finds that Dr. Williams' statements do not reveal that he applied a new and changed circumstances test.

{¶51} However, even if Dr. Williams' report is removed from evidentiary consideration, relator has not demonstrated an abuse of discretion. As stated previously, there is no abuse of discretion for the commission to cite alternative reasons for denying compensation. See *State ex rel. Smith v. Indus. Comm.*, 10th Dist. No. 09AP-214, 2009-Ohio-6661; *State ex rel. Bennett v. Indus. Comm.*, 10th Dist. No. 07AP-139, 2007-Ohio-6854; and *State ex rel. Tressler v. Indus. Comm.*, 10th Dist. No. 05AP-654, 2006-Ohio-2449. Because the magistrate finds that the commission did not abuse its discretion in finding that relator's medical evidence was insufficient to support her request, and because that determination is sufficient by itself, the determination of whether or not Dr. Williams' report does constitute some evidence is immaterial.

{¶52} Based on the foregoing, it is this magistrate's decision that relator has not demonstrated that the commission abused its discretion in denying her request for TTD compensation, and this court should deny relator's request for a writ of mandamus.

/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).