

# ADJUDICATOR 2011



## Decades of Leadership Come To the Industrial Commission *Karen Gillmor Appointed to Serve as New IC Chairman*

Over the summer, the Industrial Commission of Ohio (IC) welcomed a new chairman to lead the agency.

Governor John Kasich appointed Commissioner Karen L. Gillmor as the new chairman on July 14, 2011.

"Over the last six months, it has been a pleasure to serve as the chairman of this agency," Chairman Gillmor said. "I have enjoyed working with our talented staff and my fellow commissioners, Gary DiCeglio and Jodie Taylor."

Chairman Gillmor was appointed as the public member of the Commission. Her term expires in June 2017.

"As chairman, I am able to use my experience in employment law to ensure expeditious and impartial resolution of all workers' compensation claims coming before us, and have placed a priority on providing exceptional customer service for all claimants and employers," Chairman Gillmor stated.

During these tough economic times, Chairman Gillmor says she is dedicated to managing the agency with dependable leadership and fiscal accountability.

"From day one, I arrived at this agency ready to work and will be the leader who will do more with less," Chairman Gillmor says. "Our customers will experience swift, efficient service, while the rate payers' dollars will be spent judiciously."



Karen L. Gillmor was appointed to the IC in July by Governor Kasich.

Chairman Gillmor's career shows a passionate interest in the fields of health care, labor relations and workers' compensation.

From 1983 to 1986, Chairman Gillmor served as Chief of Management Planning and Research at the Industrial Commission of Ohio. In this position, she authored a study of self-insurance, which was incorporated into Ohio's omnibus workers' compensation reform law. She also served as the employee representative to the Industrial Commission of Ohio's Regional Board of Review, and the Ohio Bureau of Workers' Compensation Oversight Commission.

A native of Ohio, Chairman Gillmor earned her diploma from Rocky River High School before earning a bachelor's degree with honors from Michigan State University and a master's degree and Ph.D. from The Ohio State University.

Before coming to the IC, she was elected to Ohio's 26th Senate

District seat in 1992, 1996 and 2008. She chaired the Senate Insurance, Commerce and Labor Committee, was a member of the Unemployment Compensation Advisory Committee, and the Labor-Management-Government Committee. She served as vice chair of the State Employment Relations Board from 1997 to 2007 and was a consultant to the United States Secretary of Labor.

Nationally, Chairman Gillmor served on the Health Committee of the

American Legislative Exchange Council, as well as on the Health and Human Services Committee of the Council of State Governments Midwestern Region.

Chairman Gillmor was married to United States Congressman Paul Gillmor, who tragically passed away in 2007. They have five children, Linda, Julie, Paul Michael and twins Connor and Adam.

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## Statewide Hearing Officer Meeting Returns to the IC



*Chairman Gillmor speaks at the Statewide Hearing Officer Meeting in Maumee Bay.*

After a three-year hiatus, the Statewide Hearing Officer Meeting made a triumphant return to Maumee Bay in October.

"I think it is very important that our hearing officers receive current information to make sure their job duties are performed well," Chairman Karen Gillmor says. "The Statewide Hearing Officer Meeting is an excellent opportunity for this training."

After a warm welcome by Commissioners Karen Gillmor, Gary

DiCeglio, and Jodie Taylor, IC hearing officers and members of the public enjoyed an extensive training session at Maumee Bay State Park, near Toledo.

As part of the training, participants watched presentations involving case law, professionalism and substance abuse.

"I thought all of the training sessions were exceptionally well done," Gillmor said.

During the meeting, attendees learned about surgical repairs for upper extremities that could put injured workers back to work quickly. They also listened to an in-depth analysis of Commission-level orders regarding voluntary abandonment in the workplace.

The Ohio Supreme Court Commission on Continuing Legal Education approved the course for 6.75 CLE credit hours, including 0.50 hours in substance abuse and 1.00 hours in professionalism instruction.

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## Industrial Commission of Ohio Releases New Filing Guidelines

In an effort to streamline its filing practices throughout the state, the Industrial Commission of Ohio released new filing guidelines for submitting documents.

Every night, the Bureau of Workers' Compensation and the IC exchange imaged documents when there is a contested issue. Therefore, if a document has been filed at one agency, it is not necessary to file it with the other. Filing with both agencies clutters the electronic file with duplicate documents.

By following the new guidelines, ICON users will help ensure documents are placed into the correct electronic file on a timely basis and are available within 24-48 hours after submission.

Please review the following guidelines:

- Write the claim number on the first page of each document. By definition, the IC classifies a "document" as original paper with

information that has never been seen (scanned) by or was not created by the IC or BWC. A single copy is sufficient.

- Submit documents on white paper because colored paper does not scan legibly. Do not highlight on documents because they appear completely blacked out after scanning. Use black ink. Submit documents that are legible to ensure readability. Pay attention to font size and copy quality.
- If there is a contested issue, filing the documents with the IC will ensure proper review in preparation for the hearing process. Documents submitted to the BWC are imaged and sent to the IC overnight.
- File documents using one of the following methods: facsimile, US Mail, or over-the-counter, as multiple filings are not necessary. If you submit documents for a DHO hearing, it is not necessary to resubmit them for the SHO hearing.

- Submit documents as you receive them so they can be imaged and reviewed prior to hearing.
- Utilize the electronic hearing folder located in the ICON system (Industrial Commission Online Network) on the IC website rather than re-submitting documents already on file.
- Documents submitted to the IC one day prior to hearing or on the day of hearing are held for the hearing officer's review and will be imaged after the hearing. If you are not sure we received them, contact our office prior to resubmitting them.
- File continuances/cancellations at the IC. To expedite the process, file them at [www.ohioic.com](http://www.ohioic.com). Withdrawals and dismissals that are not set for hearing should also be filed at the IC. This will ensure proper handling in a timely manner.

- The electronic file is organized with well-named documents that are broken down so they are easy to find and access. All medical documents are separated by provider, date of service and document type. Submit documents on IC/BWC forms obtained through their websites. The IC is automating form recognition and creating your own forms will delay recognition.
- When reviewing the electronic file, you may see "Entire Document Split." This means we have split the documents previously scanned together into the correct document type and have indexed them so they are easily identifiable.

The filing tips can also be found on the "Appeals Process" page of the IC's website, [www.ohioic.com](http://www.ohioic.com).

For questions regarding the new filing guidelines or to request training, please call 1-800-521-2691.

## IC News and Notes

### Reminder: Put Oral Motions in Writing

If a party at a hearing makes an oral motion, the subject of such motion must be put into writing post hearing.

Only after the written motion is filed will the Industrial Commission take action.

The IC is not opposed to oral motions being made at the table, but they will only be valid once they are filed in written form.

### Unsigned FROIs Will Be Dismissed

Per Hearing Officer Manual Memo S6, the Industrial Commission may exercise continuing jurisdiction over any motion, application or appeal that a party in interest has signed.

In the case of an unsigned FROI, the focus is on the intent of the claimant.

Regardless of the medical evidence that may or may not be on file, if it is unclear as to whether or not the claimant intended to file a claim, the hearing officer will dismiss the application when it is unsigned and the claimant is not present at hearing.

### Mansfield IC Office Gets a New Address

The Mansfield Industrial Commission office address has changed due to a mandated change by the U.S. Postal Service.



The address of the Mansfield IC Office has been changed from Mansfield to Ontario.

While the Mansfield IC Office is still in the same building, the new address is: 240 Tappan Drive N, Suite A, Ontario, OH 44906.

Please note the phone number of the Mansfield IC Office has not changed.

# Hearing Officer Manual Updates

October 13, 2011:

## **Memo K6 Corrected Orders**

Corrected orders are intended to correct typographical or other minor errors, which may be necessary, and may be requested on a Request for a Corrected Order form. Corrected orders are not intended to change the decision that was made involving the merits of the issue that came to hearing. Hearing Officers shall review requests for corrected order and determine whether such order should be issued.

Corrected orders may be issued during the appeal period to the order that is to be corrected so long as no appeal has been filed to that order. Once an appeal to an order is filed, the Hearing Officer can no longer correct the order without the party agreeing to withdraw the appeal.

Requests for a corrected order that are filed outside of an appeal period for orders that have already become final should be treated as requests to exercise continuing jurisdiction and docketed at the appropriate level.

If all parties agree to the requested correction, whether in the appeal period or outside of the appeal period, a corrected order may be issued without hearing to reflect the agreed correction.

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October 13, 2011:

## **Memo F2 Loss of Vision - Corneal Transplants and Corneal Implants**

The improvement of vision resulting from a corneal transplant or corneal implant is a correction of vision and thus shall not be taken into

consideration in determining the percentage of vision actually lost pursuant to the scheduled loss provision of O.R.C. 4123.57. The proper measure for loss of vision is the percentage of vision actually lost when comparing the pre-injury vision to the post-injury vision, prior to any corrective treatment. However, if the result of the attempted corrective procedure is that the vision has worsened, that fact may be taken into account when making an award.

NOTE: *State ex rel. Kroger Co. v. Stover* (1987) 31 Ohio St.3d 229; *State ex rel. Gen. Elec. Corp. v. Indus. Comm.* (2004) 103 Ohio St.3d 420; *State ex rel. Baker v. Coast to Coast Manpower, L.L.C.*, 129 Ohio St.3d 138, 2011-Ohio-2721.

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October 13, 2011:

## **Memo C3 Jurisdiction over the issue of Maximum Medical Improvement**

In order for a Hearing Officer to proceed on the issue of Maximum Medical Improvement (MMI), it is necessary that Temporary Total Disability be an issue in the claim.

A Hearing Officer has the ability to proceed on the issue of MMI when claimant is: (1) on TTD compensation at the time a party files a request that the claimant be found to have reached MMI, or (2) when the claimant is on TTD compensation at the time of the hearing. A hearing notice that lists Temporary Total or Termination of Temporary Total as issues to be heard is sufficient to allow a hearing officer to address MMI.

When terminating ongoing TTD compensation due to the issue of MMI, TTD compensation should be paid through the date of the hearing at which the compensation is being terminated.

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## Supreme Court Case Updates

### ***Hypertension is Not a Cardiac Disease per se for Purposes of Handicap Reimbursement***

In *State ex rel. Fairfield City Schools v. Indus. Comm.*, 129 Ohio St.3d 312, 2011-Ohio- 2378 (Decided May 24, 2011), the claimant, who had been diagnosed pre-injury with hypertension, suffered a low back injury which resulted in awards of TTD and PTD. The employer filed an application for handicap reimbursement, alleging that the claimant's hypertension was a "cardiac disease" and that this disease had delayed the claimant's recovery and contributed to the cost of the claim. The Commission denied the application finding that (1) hypertension is not a cardiac disease, (2) the claimant's hypertension did not constitute a cardiac disease and (3) there was insufficient proof that the hypertension contributed to the cost of the claim.

The Court agreed with the Commission that hypertension is not a cardiac disease per se. The Court specifically noted that the mere fact that a disease affects blood does not transform the disease into a cardiac condition, citing to the diseases of leukemia and anemia as examples of this point. The Court further noted that controlled hypertension may never manifest itself as a cardiac disease. Finally, the Court noted that the purpose of the handicap reimbursement program is to encourage employers to hire employees suffering from the enumerated diseases. Given the number of hypertensive employees who are already a part of the workforce, the Court concluded that there was no need to encourage employers to hire employees with hypertension.

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## Supreme Court Case Updates

### ***Surgical Removal of a Lens or Cornea to Treat a Workplace Injury Does Not Automatically Entitle a Claimant to an Award for Total Loss of Vision***

In *State ex rel. Baker v. Coast to Coast Manpower, L.L.C.*, 129 Ohio St.3d 138, 2011-Ohio-2721 (Decided June 9, 2011), the claimant suffered an eye injury which caused a traumatic cataract. To treat the cataract, a surgeon removed the claimant's natural lens and replaced it with an implant. Prior to this surgery, the claimant's visual acuity was 20/30. Following the lens implant, his visual acuity was 20/25. The claimant filed for compensation for total loss of vision based on the cataract surgery and was examined by a physician who opined that the claimant had suffered eight percent vision impairment because of this injury. Based on that physician's report, the Commission denied the request, finding that the claimant's "loss of uncorrected vision" did not exceed 25 percent prior to surgery as required by R.C. 4123.57(B).

The Court affirmed the Commission's decision, specifically finding that the proper measure for an award based on loss of sight is the percentage of vision actually lost prior to any corrective treatment. Citing to R.C. 4123.57(B), the Court noted that the plain language of the statute requires that a claimant suffer at least a 25 percent loss of "uncorrected vision" to be eligible for a loss of sight award. The Court declined to adopt a rule that a claimant is entitled to an award for a total loss of vision under R.C. 4123.57(B) any time the natural lens or cornea of the eye is surgically removed because of a workplace injury.

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### ***Voluntary Retirement without Contemporaneous Medical Proof of a Causal Relationship between the Retirement and the Injury Precludes the Reinstatement of Temporary Total Compensation***

In *State ex rel. Lackey v. Indus. Comm.*, 129 Ohio St.3d 119, 2011-Ohio-3089 (Decided June 29, 2011), the claimant suffered a knee injury for which he underwent knee surgery in 2003. Following the surgery, the claimant returned to his former position of employment and performed that job until October 2004 when his retirement, for which he had applied in July of 2004, became effective. At the time of the retirement, there was no medical evidence indicating that the claimant's ability to perform his regular duties was adversely affected by his industrial injury. However, there was a letter from his attorney indicating that the retirement was injury-induced. One year later, in November of 2005, the claimant underwent a second, claim-related knee surgery and requested that TTDC be reinstated. Both a DHO and SHO denied TTDC, finding that the claimant had retired from his former position of employment for reasons unrelated to his claim and that his retirement also constituted a voluntary abandonment of the work force since the claimant had not worked since the retirement. The claimant appealed these denials, submitting an affidavit in which he claimed that he had retired because of his industrial injury. However, the Commission refused further appeal.

The Court found that the Commission did not abuse its discretion in finding that the claimant's retirement was unrelated to his injury. The Court observed that there was no medical evidence contemporaneous to the retirement, which documented that the allowances in the claim precluded the claimant from performing his former position of employment. The Court further noted that the claimant continued to perform his former position of employment for three months after filing his retirement notice. The Court concluded that this evidence supported the Commission's finding that the claimant's retirement was unrelated to his claim.

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### ***A Request for an Aggravation of a Preexisting Condition Involves a Theory of Causation and is not a Request for a Separate Condition as Defined in R.C. 4123.01***

In *Starkey v. Builders FirstSource Ohio Valley, L.L.C.*, 130 Ohio St.3d 114, 2011-Ohio-3278 (Decided July 7, 2011), the claimant sustained an injury while installing a window which resulted in injuries to his low back and left hip. After the claim was allowed, the claimant moved for the additional allowance of left hip degenerative osteoarthritis. The Commission granted the additional allowance request, finding that the osteoarthritis was causally related to the injury of record.

Thereafter, the employer appealed to the Hamilton County Common Pleas Court, challenging the claimant's right to participate in the workers' compensation fund for the condition of left hip degenerative osteoarthritis. During the trial, both the claimant's physician and the employer's independent medical examiner opined that this injury had aggravated the claimant's preexisting left hip osteoarthritis. Based on this evidence, the employer moved for dismissal of the case, asserting that the trial court lacked jurisdiction to consider whether the claimant could participate in the fund for the condition of aggravation of left hip degenerative osteoarthritis since the allowance of this condition had not been adjudicated administratively. The common pleas court agreed and dismissed the case. Subsequently, the First District Court of Appeals reversed the order of the common pleas court, noting that the claimant had presented claims for the same medical

condition, degenerative osteoarthritis, to both the Commission and the common pleas court and that the claimant had merely changed his theory of causation.

The Supreme Court affirmed the decision of the appellate court, observing that R.C. 4123.01 only requires proof of an injury causally related to a work place incident. Noting that Ohio law recognizes four types of causation, direct causation, aggravation of a preexisting condition, repetitive and flow-through, the Court held that an claimant can pursue any of these theories of causation before the trial court regardless of the theory pursued administratively. In so doing, the Court established that a claim for a specific condition by way of direct causation includes a claim for the aggravation of that condition.

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***Amendment of an Application for Additional Award of Compensation is Permissible Outside the Time Limits When Merely Clarifying the Prior Charges***

In *State ex rel. Angelo Benedetti, Inc. v. Indus. Comm.*, 129 Ohio St.3d 470, 2011-Ohio-4131(Decided August 24, 2011), the claimant suffered an injury when his foot slipped down onto an auger inside the hopper in which he was working. In August 2000, the claimant filed a VSSR application, providing this description of injury and alleging violations of 4121:1-3-06, 4121:1-3-03(E), and 4121:1-3-03(J). Concurrent with the VSSR filing, the claimant filed an intentional tort action against the employer, which was processed prior to the VSSR application. Five years later, the claimant requested to amend his VSSR application to include 4121:1-3-05(D) and (G). The Commission granted the request for amendment, finding that the amendment merely clarified the prior charges. The Commission then found that the employer had violated 4121:1-3-05(D)(1)(b) since the augers were operating without a protective cover and had violated 4121:1-3-05(G)(1) since the claimant was an "operator" as defined in that rule and there was not an emergency shutoff accessible to an operator while working inside the hopper. The Commission concluded that these violations were the proximate cause of the claimant's injuries.

In a per curiam decision, the Court affirmed the Commission's decision. Specifically, the Court held that the Commission did not abuse its discretion in allowing the claimant to amend his VSSR application five years after the initial filing. The Court noted that the amendment was permissible in this case because it merely clarified the previously alleged charges and did not raise any new charges. The Court further held that the Commission did not abuse its discretion in finding violations of 4121:1-3-05(D) and (G) because there was evidence on file that supported the Commission's decision.

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