

Percentage of Permanent Partial

R96-1-04

Removal from Consideration of Non-Medical Disability Factors

July 3, 1996

WHEREAS, Section 4123.57(A) of the Revised Code provides that a District Hearing Officer, upon the application, shall determine the percentage of the employee's permanent disability, except as is subject to division (B) of this section, based upon that condition of the employee resulting from the injury or occupational disease and causing permanent impairment evidenced by medical or clinical findings reasonably demonstrable; and

WHEREAS, in State ex rel. Holman v. Longfellow Restaurant (1996), 76 Ohio St.3d 44, decided on July 3, 1996, the Ohio Supreme Court determined that the Industrial Commission did not abuse its discretion in basing a percentage of permanent partial disability award solely on medical or clinical findings reasonably demonstrable; and

WHEREAS, in Holman, the Supreme Court determined the conspicuous omission of nonmedical language from the final version of Section 4123.57 of the Revised Code implies that the legislature intended to remove nonmedical factors from the percentage of permanent partial disability equation; and

WHEREAS, in Holman, the Supreme Court overruled the cases of State, ex rel. Bouchonville v. Indus. Comm. (1988), 36 Ohio St.3d 50, State, ex rel. Johnson v. Indus. Comm. (1988), 40 Ohio St.3d 384, and State, ex rel. Dickey-Grabler Co. v. Indus. Comm. (1992), 63 Ohio St.3d 465 to the extent that they were inconsistent with the Holman decision; and

WHEREAS, on November 15, 1993, the Commission adopted Resolution No. R93-1-12 based upon the case of State, ex rel. Dickey-Grabler Co. v. Indus. Comm.; and

WHEREAS, the Industrial Commission, pursuant to Section 4121.03(E) of the Revised Code, is responsible for the establishment of the overall adjudicatory policy and management of the Commission under Chapters 4121., 4123., 4127., and 4131. of the Revised Code; and

WHEREAS, the Industrial Commission desires to provide direction to Hearing Officers in conformity with the Holman decision.

THEREFORE BE IT RESOLVED in the determination of percentage of permanent partial disability under Section 4123.57(A) of the Revised Code, Hearing Officers are to base a percentage of permanent partial disability award solely on medical or clinical findings reasonably demonstrable.

BE IT FURTHER RESOLVED that in determining a percentage of permanent partial disability award under Section 4123.57(A) of the Revised Code, Hearing Officers shall not consider nonmedical disability factors.

BE IT FURTHER RESOLVED that the Industrial Commission hereby rescinds Resolution No. R93-1-12.

BE IT FURTHER RESOLVED that Resolution No. R81-7-30 dated January 3, 1981 is modified consistent with Resolution No. R96-1-04.