

NOTICE

R94-1-19

Request for 4123.522 and 4123.52 Relief

November 23, 1994

WHEREAS, R.C. 4121.36(H)(2)(c)(v) provides that Hearing Administrators appointed by the Industrial Commission are to issue compliance letters upon a finding of good cause and without a formal hearing on matters involving R.C. 4123.522; and

WHEREAS, R.C. 4123.522 provides that if any person to whom a notice is mailed fails to receive the notice and the Industrial Commission determines that the failure was due to a cause beyond the control and without the fault or neglect of such person or his representative, such person shall take the action afforded to such person within twenty-one (21) days after receipt of the notice of such determination of the Commission; and

WHEREAS, R.C. 4121.03(E) provides that the Commission is responsible for the establishment of the overall adjudicatory policy and management of the Industrial Commission under R.C. Chapters 4121, 4123, 4127, and 4131; and

WHEREAS, pursuant to Ohio Adm.Code 4121-3-16(E) , the applicant filing a motion shall mail a copy of the motion to the opposite party and the copy of the motion filed with the Commission shall indicate that a copy had been so mailed; and

WHEREAS, the Industrial Commission desires to establish a uniform policy for the adjudication of requests for relief under R.C. 4123.522; and

WHEREAS, pursuant to R.C. 4123.52, the Industrial Commission may vacate a prior order that resulted from a hearing where only one party was represented upon a determination that a hearing had been held, which, in fact, had been canceled. State ex rel. Sears, Roebuck & Co. v. Indus. Comm., 2 Ohio App.3d 255, 441 N.E. 2d 636 (10th Dist.1982); and

WHEREAS, it has come to the attention of the Industrial Commission that in certain cases, applicants for relief under R.C. 4123.522 are seeking relief under R.C. 4123.52 for the reason that the Industrial Commission failed to send notice of hearing to the appropriate address of a party or a party's representative of record.

THEREFORE BE IT RESOLVED that effective December 1, 1994, all requests filed on or after December 1, 1994, and all pending requests for relief under R.C. 4123.522 that have not been scheduled for hearing, will be referred to a Hearing Administrator for initial adjudication pursuant to the provisions of R.C. 4121.36(H)(2)(c)(v).

BE IT FURTHER RESOLVED that unless the Hearing Administrator determines that (1) the party requesting relief under R.C. 4123.522 has requested a formal hearing on the issue, (2) the opposing party has objected to the issuance of a compliance letter granting relief under R.C. 4123.522, or (3) the Hearing Administrator determines that there is not good cause for the issuance of a compliance letter granting relief under R.C. 4123.522, the Hearing Administrator shall issue a compliance letter granting relief pursuant to R.C. 4121.36(H)(2)(c)(v) without a hearing.

BE IT FURTHER RESOLVED that if the Hearing Administrator determines that (1) the party requesting relief under R.C. 4123.522 has requested a formal hearing on the issue, (2) the opposing party has objected to the issuance of a compliance letter granting relief under R.C. 4123.522, or (3) the Hearing Administrator determines that there is not good cause for the issuance of a compliance letter granting relief under R.C. 4123.522, the request for relief under R.C. 4123.522 shall be referred to a Staff Hearing Officer for hearing and adjudication pursuant to R.C. 4121.35(D) and R.C. 4123.522. The decision of the Staff Hearing Officer issued under R.C. 4121.35(D) and R.C. 4123.522 is a final determination of the Industrial Commission and there is no administrative appeal.

BE IT FURTHER RESOLVED that should the Hearing Administrator or the Staff Hearing Officer, as described in the preceding paragraphs, determine that the party requesting relief under R.C. 4123.522, in fact, is requesting relief under R.C. 4123.52 for the reason that the Industrial Commission either failed to send notice of any hearing to the party or the party's representative of record or the Commission sent a copy of the notice of hearing to an incorrect address of the party or the party's representative of record, the Hearing Administrator or the Staff Hearing Officer, upon a finding of good cause, may grant relief under R.C. 4123.52 to provide that the underlying order be vacated and the hearing be reheard.

Modification

This resolution was modified to correct citations and is effective on September 26, 2018.