

THE ADJUDICATOR

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A Move Down Helps Cleveland Move Up

Relocation to lower floor
elevates security & service

FRANK J. LAL
STATE OFFICE BU



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The Cleveland Regional Office Remodel: Better Security. Better Service.

Executive Director Tim Adams, Cleveland Regional Manager Debra Lynch, Chairman Tim Bainbridge, Commissioner Jodie Taylor and Director of Operations Mike Feeney attend the ribbon-cutting ceremony in Cleveland on June 3, 2015.

Adam Gibbs, *Director of Communications*

With the grand opening of the fifth floor in the Frank J. Lausche Building in Cleveland on June 3, 2015, the Ohio Industrial Commission (IC) added an exclamation point to an extensive renovation project that lasted over two years.

“The Cleveland office conducts more than 27,000 workers’ compensation hearings per year; when the opportunity arose to move to a new and improved floor, it made sense to pursue it,” Chairman Tim Bainbridge said. “The new location will greatly enhance security while increasing agency efficiency, which means a better experience for our customers.”

Commissioner Jodie Taylor said the completion of the Cleveland remodel is a culmination of years of hard work and unwavering dedication by many employees in multiple departments.

“When developing the plans and design for this remodel, many employees were consulted and many of their ideas and suggestions were incorporated into the final product,” Commissioner Taylor said. “This project reflects a commitment by the IC to the employers and injured workers in the Cleveland area to provide a first-class hearing environment.”

Discussions to renovate the original workspace on the seventh floor began in March 2013.

After the IC learned there was a floor available for renovation in the building, the discussion turned to renovating the fifth floor in August 2013.

On December 8, 2014, the M. Downing Construction Company Inc., from Warrensville, Ohio, began the wide-ranging renovation.

"We knew that renovation on the fifth floor would mean a complete demolition of 70 percent of the floor, which included the walls and carpets," Director of Operations Support Mike Feeney said. "After everything was torn down, we began rebuilding the structure with hearing rooms, new hearing officer offices, and administrative offices."

By revamping a different floor, the IC would not have to work through a multi-phase renovation, which would include relocating the security doors and the front counter multiple times.

In addition, the impact on Cleveland IC employees would be minimized until the renovation was complete, allowing operations to continue uninterrupted on the seventh floor.

"One of the main benefits of the new floor plan is a more logical use of space."

Facilities Planning Project Manager Tim Soards designed the floor layout and developed a plan to better utilize the space for both the public and employees.

"The previous space on the seventh floor was very cramped, outdated and in need of new paint and carpet," Feeney said. "Now we have multiple colors, fresh

carpet, natural light and a more open floor plan."

Cleveland Regional Manager Debra Lynch said the new location offers benefits to both the public and IC employees.

"I feel like we have been brought into the modern world because the office is beautiful and an extremely efficient use of space," Lynch said. "Our new surroundings have boosted the morale



To minimize disruption to the Cleveland office which was previously located on the seventh floor, the IC was given the opportunity to renovate the vacant fifth floor and then moved the office staff after completion.

here and our customers are quite pleased with the outcome."

The benefits of the new public space include: bigger hearing rooms and lobby space with a larger seating area, additional workspace in the lobby for workers' compensation attorneys, direct access to the emergency exits, enhanced lobby and hearing room security with greater guard visibility, and ADA-compliant restrooms on the same floor.

The Cleveland office renovation was the biggest remodeling project the IC has ever undertaken.

"The sheer size of the project was the biggest challenge," Feeney said. "We moved 44 employees over a weekend from one floor to the other without disrupting hearings or the flow of the work."



The new fifth floor office lobby is a modern workspace with greater security and more natural light.

After the Information Technology Department implemented the networking, moved all IT equipment, created a Cleveland renovation page on the IC's intranet website, and made other technological changes, hearings began on the new floor on May 19, 2015.

The fifth floor location increased square footage available for public use by 5,900 square feet.

"Employees at the Ohio Department of Administrative Services brought their bosses to the floor to see it and told me that this is the standard that they are going to have for the entire building," Feeney said. "We have received a ton of compliments from attorneys who said the work area has really improved."

One of the main benefits of the new floor plan is a more logical use of space, especially for IC employees.

"On the old floor, support staff members were separated on opposite sides of the floor," Feeney said. "The new floor plan allows support staff to be grouped into one space, which improves communication and efficiency."

In addition, hearing officer and administration offices were updated and the staff has direct access to emergency exits now.

"The employee space is separated from the public with secure and monitored entranceways," Feeney said. "Overall, it's a better utilization of space for staff members especially because the front counter has more space."

Chairman Bainbridge said the finished renovation on the fifth floor was a result of tremendous teamwork.

"Members of the Operations Support Department, Information Technology Department, Fiscal Department, Security Services Department, and the Communications Department really did a phenomenal job in making this project happen," Chairman Bainbridge said. "This project proves that the IC really can accomplish anything when we work together and implement creative solutions to complex projects."

Commissioner Taylor Sees Great Things Ahead for the IC in Her Second Term



Adam Gibbs, *Director of Communications*

Governor John Kasich looked at Commissioner Jodie Taylor's accomplishments over the last six years and liked what he saw.

Taylor said the IC has achieved so much in the past six years that it is difficult to list all of the agency's accomplishments.

"Looking back, I am especially proud that we passed a new wage loss rule that better reflects the realities of job searches in this age of technology," she said.

It's the reason Governor Kasich appointed Commissioner Taylor to a second term as an IC Commissioner, which began on July 1, 2015.

"A second appointment shows the Governor's faith in how well this agency is being managed and the accomplishments we have achieved," Commissioner Taylor said. "I am excited to continue working with all of our employees because they are dedicated and loyal professionals and I am happy to be spending another six years with them."

Commissioner Taylor was appointed the employer member of the Commission in July 2009. Her first term was a homecoming to the IC because she previously served as an assistant to an IC Commissioner from 1997 until 2000.

Two years into her first term, Governor Kasich appointed her as Chairperson of the Commission on January 14, 2011. She served in this capacity until July 2011. On February 13, 2013, Governor Kasich again appointed her as Chairperson of the Commission. She served in this position until July 2013. Taylor's final term with the IC ends on June 30, 2021.

Commissioner Taylor said other Commission highlights from her first term include: Reviewing and revising the Medical Examination Manual, updating the Toledo, Cincinnati and Cleveland Regional Offices, improving security throughout the state by providing security training to IC employees and installing metal detectors in each IC office.

"The IC has also made great strides in our information technology area," she said. "I am delighted that we offer wireless Internet access in each office and the new mobile website and the digital signage are wonderful accomplishments."

Over the next six years, Commissioner Taylor plans to help the agency build on its past success. She hopes to revise and update the permanent total disability application and all of the policies contained in the Hearing Officer Manual.

"I would like to continue providing first class, efficient hearings for the employers and injured workers in Ohio," she said. "To achieve this, we need to continue our education and training efforts so our employees can continue to provide exemplary service to our customers."

FY 2016/2017 Budget Cuts Costs

While Improving Service

Ohio | Industrial Commission



Adam Gibbs, *Director of Communications*

During a time when just about everything costs more money, how did the Ohio Industrial Commission (IC) cut its budget by \$21.2 million dollars over a span of seven years?

“The savings in the 2016/2017 biennium budget is the result of our agency’s process innovation and commitment to fiscal prudence and quality,” Chairman Tim Bainbridge. “In fact, our budget for Fiscal Year (FY) 2016-2017 is 6.9 percent less than the budget for FY 2014-2015.”

In January, the IC submitted its FY 2016-2017 budget to the Ohio General Assembly. House Bill 51, which made appropriations for the IC for the biennium that began on July 1, 2015 and ends June 30, 2017, passed the Ohio House of Representatives and the Ohio Senate unanimously. Governor John Kasich signed House Bill 51 on June 30, 2015.

Over the next two years, the agency’s budget will be \$50,687,479 for FY 2016 and \$51,753,389 for FY 2017.

The IC has a long history of being good stewards of public funds by finding inventive ways to spend less. In FY 2008-2009, the biennium budget was \$123.6 million. In FY 2016/2017, the IC’s budget will be \$102.5 million—a massive 17.1 percent decrease.

“As a result of sensible financial planning, Administrative Cost Rates for three of

four Ohio employer groups were reduced for 2015 and the fourth group’s rate remained stable,” Chairman Bainbridge said. “We intend to maintain the lowest possible rate structure through the end of the next biennial budget period.”

Despite spending less money, the IC continues to meet the statutory mandates of providing a hearing within 45 days of an appeal filing and seven days to issue an order after that hearing, for a 52-day period maximum.

For FY 2014 at the district level, 62,032 claims were heard that qualified under the mandate. These claims were heard and issued an order, on average, at 33 days with 90.4 percent meeting the 52-day combined time frame. At the staff level, 29,548 claims were heard that qualified under the mandate.

These claims were heard and issued an order, on average, at 36 days with 95.2 percent receiving a hearing within the 52-day time frame.

The quality of the IC’s hearing process is represented through the high court affirmation rate.

“Our 88 hearing officers adjudicated more than 131,000 claims in 2014, of which only 88 were advanced through a writ of mandamus to the Tenth District Court of

“The IC has a long history of being good stewards of public funds by finding inventive ways to spend less.”

Appeals,” Chairman Bainbridge said. “The appellate court decided 55 cases in 2014, of which only 12 were decided against the Commission, representing an affirmation rate of 78 percent.”

In addition, the previous biennium included numerous enhancements to the hearing and medical examination process. Those improvements include:

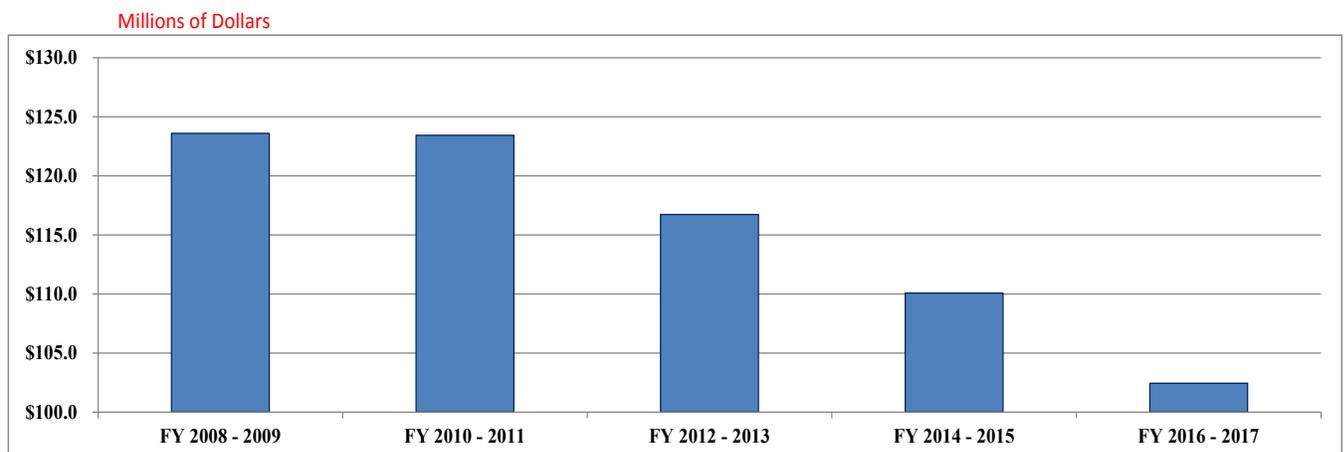
- Implementing the 1-877-ICFAXIN phone line where representatives can directly fax or e-mail documents to the Teleform platform to be indexed directly for the hearing and reducing labor efforts directed towards batching and scanning;
- Expanding public Internet access in the hearing lobby from ICON to the general Web so representatives can complete tasks while waiting for their hearing;
- Launching the electronic delivery of hearing notices, hearing orders and other correspondence in lieu of U.S. Postal delivery, saving an approximate \$5,000 per month by the end of FY 2014;
- Starting the SMS notification program where text messages are auto-distributed to representatives in the

event of an emergency, such as severe weather;

- Installed digital signage in each office’s lobby to centralize and improve the display of hearing schedules, relevant IC rules, statutory notification, emergency notification and traffic and weather information;
- Hearing administrators have instituted local quality review programs to provide timely feedback on published orders which has reduced errors;
- Medical Services minimized the cost of testing for examinations through automatic authorization for specific diagnostic testing and using prior authorization for non-specific testing, yielding \$7,000 in savings annually; and
- Remodeled the Columbus Hearing Room Lobby and Customer Service area for better traffic flow.

“During the next biennium, the IC intends to maintain our momentum by continuing to upgrade our technological systems and focusing on the assurance of quality decisions rendered in a timely manner, while building on our history of fiscal accountability through realized savings,” Chairman Bainbridge said.

Biennium Appropriations Fiscal Year 2008/2009 – Fiscal Year 2016/2017



New Hearing Officer Trainer Brings a Passion for New Ideas to the Role



Adam Gibbs, Director of Communications

Being an accessible and knowledgeable resource to Ohio Industrial Commission (IC) hearing officers while providing outstanding service to help them do their jobs better.

Those are the two goals that Genevieve Hoffman has as she begins her position as the IC's new hearing officer trainer.

"I am dedicated to becoming as helpful to the hearing officers as I can be," she said. "I want to be a valuable resource for them and I look forward to receiving feedback that shapes my role into something that helps them excel at their jobs."

Hoffman started her new position on August 24 and recently moved into her new office on the seventh floor of the William Green Building.

"I'm looking forward to building my training program from the ground up and instituting new ideas to increase its value," she said.

"I'm working with our Training Department to improve the training process for incoming hearing officers and specifically enhance the regional and statewide trainings provided to current hearing officers."

Hoffman joined the IC in September 2013 when she became a legal assistant/staff attorney to Chairman Tim Bainbridge shortly after he was appointed to his first term.

"As an assistant to Chairman Bainbridge, I was uniquely exposed to what makes a good hearing order, what makes a bad hearing order, and how to create a well-written order," she said.

Before coming to the IC, Hoffman was a litigation attorney at Freund, Freeze, & Arnold, a law firm with offices in Dayton, Cincinnati, Columbus and Northern Kentucky.

"I practiced primarily in the areas of employment law, general insurance defense, premises liability, workers' compensation, and negligence," she said. "When I first started, I was assigned all the workers' compensation cases for the Columbus office and found that I really enjoyed that area of the law."

Hoffman's love of teaching took her back to Capital University Law School, where she earned her law degree and currently serves as an adjunct professor. She also serves as a member of the Board of Zoning Appeals for Orange Township in Delaware County.

"I am always looking for ways to improve the lives of others, be involved in local government, and have an impact on my community," she said.

Hoffman graduated magna cum laude from Capital University Law School after earning her bachelor's degree in psychology from the Ohio State University. While in law school, she was an editor of the Capital University Law Review and volunteered for an income tax assistance group. She currently serves as a board member of the Capital University Law School Alumni Association.

A native of Worthington, Ohio, Hoffman resides in Lewis Center with her husband, Jared, a certified financial planner, and their six-month-old daughter, Claire.

From Patrolling Ohio's Highways to Protecting the IC's Customers



Adam Gibbs, Director of Communications

As a sergeant in the Ohio State Highway Patrol, Toby Smith has spent the last 25 years protecting Ohioans on the roadways of the Buckeye State.

On August 10, Smith's career took a new path when he began protecting the staff and customers in each Ohio Industrial Commission (IC) office as the new assistant director of security services.

"In this role, my main job is to keep everyone safe and also use my teaching skills to educate IC staff on the safety aspects of physical and personal security," Smith said.

In his new position, he will assist Director of Security Services Mike Tanner in attending high-risk workers' compensation hearings in the Mansfield, Lima, Toledo, Cleveland, Akron and Youngstown IC offices.

Smith will work out of the Mansfield District Office.

"One of the things that appealed to me about this position is that I will have the ability to teach others through classes like the agency's workplace violence training," he said.

Smith brings years of law enforcement experience to his position. He joined the

Mansfield post of the Ohio State Highway Patrol in November 1990.

Over two and a half decades, he held positions in various departments of the patrol. Most recently, he worked as an officer safety instructor where he taught courses on firearms, self-defense, leadership and officer safety.

"I've taught at our training academy for the past seven years," he said. "I've lectured on everything from the psyche of survival to crucial conversations to emotional intelligence."

Smith earned his bachelor's degree in technical management from DeVry University in Columbus and later earned a master of project management degree from DeVry's Keller School of Business in February 2015.

Toby Smith brings over two decades of experience to his new position.

"Earning my master's degree is my biggest professional accomplishment," he said. "I graduated with a 3.6 GPA."

A native of Magnolia, Ohio, a small village south of Canton, Smith now resides in Fredericktown, Ohio, in Knox County. He has been married to his wife, Tami, for 23 years. The couple has three sons.

2014 Employee of the Year

Makes History in Toledo



Director of Operations Jacob Bell, Commissioner Jodie Taylor, EOY Winner Myleene Labiche, Chairman Tim Bainbridge and Toledo Regional Manager Scott Hines

Adam Gibbs, Director of Communications

Myleene Labiche found her career straight out of high school when she joined the agency as a temporary employee in November 1993.

More than two decades later, she is now an administrative professional in the Toledo Regional Office.

And, on May 14, she updated her resume with a new title: Ohio Industrial Commission 2014 Employee of the Year.

She won the award in history-making fashion.

“Winning the IC’s Employee of the Year award feels great,” Labiche said. “Being the first Employee of the Year winner from the Toledo Regional Office is amazing.”

Labiche was awarded the Employee of the Year award during a surprise office visit from Chairman Tim Bainbridge, Commissioner Jodie Taylor and Director of Operations Jacob Bell.

In November 2014, Labiche was named Employee of the Month, which made her eligible to win the 2014 Employee of Year award. The Employee of the Month Award is part of the Ohio Industrial Commission’s Employee Recognition Program.

To win the award, Labiche was selected from a group of outstanding Employee of the Month winners.

The 2014 EOM winners were:

- Claims Support Deputy Director Jill Bell
- Claims Support Deputy Director Roseanne Randazzo
- Claims Support Manager Ben Sapp
- Cleveland District Hearing Officer Lisa Davidson
- Facilities Planning Project Manager Tim Soards
- Information Technologist Matt Sansone
- Legal Services Claims Examiner Shawanda McIntosh
- Lima Claims Examiners Larry Caprella, Doug Lang and Nicole Van Scoy
- Network Administration Supervisor Dan Bresson
- Software Development Specialist Mark Russo
- Toledo Staff Hearing Officer Laura Schank

For winning the Employee of the Year award, Labiche was rewarded with an engraved plaque, personalized notepads and a certificate for two days off.



Customer Feedback is Vital to Improving Our Services

Nilima Sinha, *Director of Information Technology*

At the Ohio Industrial Commission (IC), we pride ourselves in listening to the ideas of our customers. As part of this endeavor, the Information Technology Department created an online comment card in January 2015. The “Leave a Comment” link is available on the contact page of the IC website. We monitor for new comments each day and look forward to implementing many of our customer’s suggestions.

Whether the idea comes from an online comment card or a phone call to the IT Helpdesk, many of our recent ICON improvements came from our customers.

A few of those enhancements are:

In April 2015, the IC implemented a change to allow representatives to enter temporary concurrent hearing values to accommodate their staff vacation schedules. (The concurrent hearing value for each representative characterizes how many hearings a representative can attend concurrently in all IC offices.) The IC attempts to not schedule representatives for more hearings than they can handle based on these concurrent hearing values. This change allows representatives to go to their concurrent hearing value section on ICON and provide temporary values. Since the implementation in April, we have received 21 requests from 10 different law firms.

Also, in April, we began notifying opposing counsel of appeals and objections that are filed through ICON. We do this by emailing opposing counsel a copy of the confirmation email that is received by the filing party. The IC provides this service because representatives asked for it and the feedback has been very positive. Please note this service does not discharge the notification responsibilities that the filing parties have under Ohio Administrative Code 4121-3-09.

Another initiative that was launched from a customer’s suggestion is that we added the injured worker’s daytime and evening phone numbers to the claim data page on ICON. This is a secure page and attorneys must be authorized users with a password to view the claims on this page.

Additionally, we enhanced our mobile website by allowing representatives to display their hearing calendars on their smartphones. We also provided representatives with a tool that can be used to add scheduled hearings to their personal calendars on their smartphones or desktops via the mobile or full website.

As the Director of Information Technology, I look forward to hearing from our customers. Visit <http://www.ic.ohio.gov/service/service.html> and click on “Leave a Comment” if you have a suggestion that would improve our services.



HEARING OFFICER MANUAL UPDATE

Processing Compensation and Medical Benefits Issues in Claims When an Original Allowance or Additional Allowance Issue is in Court Memo I5, June 18, 2014

The chart below and on the next page delineates how compensation and medical benefits issues should be handled and processed when an appeal is pending in court. Column one identifies the compensation or medical benefit issue. Column two indicates whether or not the compensation or medical benefit issue can be considered for adjudication when the original allowance issue is on appeal to court pursuant to O.R.C. 4123.512. Column three indicates whether or not the compensation or medical benefit issue can be considered for adjudication when an additional allowance issue is on appeal to court pursuant to O.R.C. 4123.512.

Note: Hearing Officer Manual policy E7 also addresses related issues.

Yes indicates – Process or adjudicate the request for compensation or benefits

No indicates – Do not process or adjudicate the request for compensation or benefits

Issue in Question	Original Allowance and R.C. 4123.512 Appeals to Court	Additional Allowance and R.C. 4123.512 Appeals to Court
Temporary Total Disability	Yes	Yes
Permanent Total Disability	Yes	Yes
Medical Expenses	Yes	Yes
Permanent Partial Disability	No, except when it is the employer's appeal and the complaint is dismissed with the consent of the employer under Civil Rule 41(A), or it is the injured worker's appeal and the request is based on conditions that have been allowed by final administrative order.	No, except if the request is based on the original allowance, or it is the employer's appeal to court and the complaint is dismissed with the consent of the employer under Civil Rule 41(A), or it is the injured worker's appeal and the request is based on conditions that have been allowed by final administrative order.
Scheduled Loss	No, except when it is the employer's appeal and the complaint is dismissed with the consent of the employer under Civil Rule 41(A), or it is the injured worker's appeal and the request is based on conditions that have been allowed by final administrative order.	No, except if the request is based on the original allowance, or it is the employer's appeal to court and the complaint is dismissed with the consent of the employer under Civil Rule 41(A), or it is the injured worker's appeal and the request is based on conditions that have been allowed by final administrative order.
Impairment of Earning Capacity	No, except when it is the employer's appeal and the complaint is dismissed with the consent of the employer under Civil Rule 41(A), or it is the injured worker's appeal and the request is based on conditions that have been allowed by final administrative order.	No, except if the request is based on the original allowance, or it is the employer's appeal to court and the complaint is dismissed with the consent of the employer under Civil Rule 41(A), or it is the injured worker's appeal and the request is based on conditions that have been allowed by final administrative order.
Wage Loss Compensation	Yes	Yes
Motion for additional Condition	Yes	Yes
Living Maintenance	Yes	Yes
Living Maintenance Wage Loss	Yes	Yes
Handicap Reimbursement (CHP-4)	Yes	Yes
Violation of a Specific Safety Requirement	Yes	Yes



SUPREME COURT CASE UPDATES

State ex rel. Parraz v. Diamond Crystal Brands, Inc., 141 Ohio St.3d 31, 2014-Ohio-4260.
October 2, 2014

The Industrial Commission did not abuse its discretion when it found an Injured Worker voluntarily abandoned her former position of employment by violating a written work rule where the Injured Worker exceeded a set number of attendance points.

Issue: Whether the Industrial Commission abused its discretion when it found that an Injured Worker voluntarily abandoned her former position of employment where the Injured Worker's violation of a point-based attendance policy was not willful.

Holding: The Supreme Court of Ohio affirmed the decision of the Tenth District Court of Appeals. The Ohio Supreme Court rejected the Injured Worker's contention that Louisiana-Pacific was not satisfied in this matter because the employer did not establish that her absences from work were willful or intentional. The Ohio Supreme Court held that the injured worker's accumulation of points for tardiness and absences from work constituted a voluntary abandonment because she was aware that such voluntary action on her part could lead to termination of her employment.

Case Summary: Injured Worker worked for the named employer under a union contract, which included a point-based attendance policy. Under the policy, employees accumulated points for being tardy and absent from work. Employees were subject to discipline once they accumulated eight points. At eight points, employees would receive a verbal warning. Thereafter, employees would receive a written warning at ten points, a final warning at twelve points and termination at fourteen points.

Employees could reduce their attendance points by working forty consecutive scheduled work days without being late or absent and, at the end of the program year, all employees with less than eight points would have their point total reduced to zero for the following year. However, employees with eight points or more would carry their point total into the next program year. Injured Worker accumulated 10.5 absence points prior to sustaining an industrial injury on July 20, 2010. Following her injury, she returned to work light duty and missed a full day on September 1, 2010 and a half-day on September 3, 2010, accumulating an additional 1.5 attendance points.

At the time of these absences, Injured Worker did not provide medical evidence linking her absences to her industrial injury. On November 22, 2010, the employer presented an acknowledgement form to Injured Worker, informing her that she had 12.5 points as of the end of the program year and that these points would carry-over to the next program year pursuant to the attendance policy in the union contract.

Injured Worker signed the acknowledgement form without contesting any of the points attributed to her absences. Subsequently, Injured Worker was absent from work on February 3, 2011 and tardy on February 4, 2011. Because of these incidences, Injured Worker accumulated an additional 1.5 points for a total of fourteen points and the employer terminated in accordance with the attendance policy. Following her termination, Injured Worker's attending physician completed a form, recommending that Injured Worker be excused from work beginning on February 3, 2011 secondary to an exacerbation of her allowed conditions.

Thereafter, Injured Worker filed a request for temporary total compensation. The Bureau of Workers' Compensation (BWC) granted temporary total compensation beginning on February 17, 2011. On appeal, a District Hearing Officer (DHO) vacated the BWC and denied temporary total compensation, reasoning that Injured Worker had voluntarily abandoned her employment. The DHO specifically rejected Injured Worker's argument that her industrial injury was the cause of her termination, noting that Injured Worker testified



SUPREME COURT CASE UPDATES

State ex rel. Parraz v. Diamond Crystal Brands, Inc. Continued

at hearing that she was sick on February 3, 2011 and was late to work on February 4, 2011 due to a flat tire. Injured Worker appealed the DHO order and filed an affidavit in which she averred that she was absent from work on September 1, 2010 due to increased pain from her allowed conditions and that she was forced to leave work early on September 3, 2010 due to those same symptoms. Injured Worker further averred that she again suffered an exacerbation of her allowed conditions on February 3, 2011, causing her to miss work that day. Finally, Injured Worker asserted that her multiple absences did not rise to the level of willful conduct necessary to establish a voluntary abandonment.

A Staff Hearing Officer (SHO) subsequently affirmed the DHO decision, finding that Injured Worker's termination was voluntary. The SHO pointed out that Injured Worker had accumulated 10.5 points prior to sustaining her industrial injury. Citing to Louisiana-Pacific, the SHO determined that the Injured Worker's termination satisfied the criteria listed therein and that, therefore, the termination constituted a voluntary abandonment of the former position of employment.

The Injured Worker then filed an action in mandamus, arguing that the Commission abused its discretion in finding a voluntary abandonment where there was no evidence that her absences from work were the result of willful or intentional misconduct. Alternatively, Injured Worker argued that her absences were related to the allowed conditions in her claim and that, therefore, she did not voluntarily abandon her employment. The Court of Appeals rejected the Injured Worker's argument.

The court noted that Injured Worker was aware of the attendance policy, routinely violated it as evidenced by the number of points she accumulated before her injury and was aware that such conduct was a terminable offense. The court found Injured Worker's repeated absences demonstrated indifference or disregard for the attendance policy of such magnitude that it constituted a voluntary abandonment. Moreover, the court determined that Injured Worker did not present any contemporaneous medical evidence supportive of her assertion that she was absent from work due to the allowances in her claim.

The Supreme Court affirmed this judgment, specifically holding that a violation of a work rule need not be willful or intentional to constitute a voluntary abandonment of employment. The Court noted that negligent or careless actions could rise to such a level of indifference or disregard for workplace rules to support a finding of voluntary abandonment.

Therefore, the Court held the Industrial Commission did not abuse its discretion when it found that Injured Worker had voluntarily abandoned her employment and was ineligible for temporary total compensation.



SUPREME COURT CASE UPDATES

State ex rel. Oldaker v. Indus. Comm., Slip Opinion No. 2015-Ohio-2569
June 30, 2015

The Industrial Commission did not abuse its discretion when it denied working wage loss compensation where Injured Worker stopped searching for comparably-paying suitable employment after obtaining alternative employment.

Issue: Whether the Industrial Commission abused its discretion when it determined the Injured Worker failed to make a good faith effort to search for comparably paying suitable employment where there was vocational evidence on file that indicated the industrial injury significantly reduced Injured Worker's earning capacity? Whether the Industrial Commission abused its discretion when it declined to excuse the Injured Worker from conducting such a search?

Holding: The Supreme Court held the Commission was not required to rely on the vocational evidence on file since it is the exclusive evaluator of disability and employability. The Court further held that the Commission did not abuse its discretion when it determined that there was no evidence Injured Worker reasonably expected his new job to develop into comparably paying work. Based on these findings, the Court concluded the Commission's decision to deny working wage loss compensation was supported by some evidence and should, therefore, not be disturbed.

Case Summary: On April 20, 2009, Injured Worker sustained an injury while working as a lieutenant for the employer's division of fire. The claim was allowed for the conditions of right knee sprain, right knee medial meniscus tear and substantial aggravation of pre-existing right knee degenerative joint disease. He received temporary total disability compensation (TTDC) until he applied for a partial disability retirement with the employer. In support of that application, Injured Worker filed the December 2, 2011 report of Al Walker, a vocational expert. In his vocational report, Mr. Walker noted that the injured worker had previously worked as a steelworker, EMT, firefighter and fire lieutenant. Mr. Walker further reported that the injured worker's transferable skills included effective communication, identifying and solving problems, maintaining equipment, and looking for ways to assist people. Mr. Walker additionally noted that the injured worker reported that he had no interest in beginning a new career and that he only planned to work part-time, if at all. Mr. Walker pointed out that people looking for entry-level work in Franklin County could expect to earn \$10.88 an hour. In light of the fact that Injured Worker's average weekly wage was set at \$1677.85, Mr. Walker concluded that Injured Worker's earning capacity had been significantly reduced by this industrial injury from his position as a fire lieutenant to \$435.20 a week (\$10.88/hour multiplied by 40). Relying upon Mr. Walker's report, the employer awarded Injured Worker a partial disability retirement in January of 2012, finding he could not return to work as a firefighter. In March 2012, Injured Worker created an account with OhioMeansJobs, an online job search engine, and looked for work, contacting forty employers in one month via the internet, email, in-person contact and by telephone. On April 30, 2012, Injured Worker accepted a position as a deer herd manager for a company owned by his wife. The position paid \$9.50 an hour and required only thirty-five hours of work per week. Upon accepting the position with his wife, Injured Worker ceased his job search. On June 18, 2012, Injured Worker filed an application for working wage loss compensation supported by Mr. Walker's vocational report as well as a report from his attending physician that indicated the injured worker's current position was within his functional restrictions. On November 8, 2012, a District Hearing Officer (DHO) granted wage loss compensation, relying upon Mr. Walker's vocational report. The Employer appealed this order and, on January 4, 2013, a Staff Hearing Officer (SHO) vacated the DHO order, denying the requested compensation. The SHO determined that Injured Worker's current position was suitable employment, but that it was not comparably paying work, given that the Injured Worker was earning \$1345.36 less per week in the new position. The SHO noted that Injured Worker had not continued his job search despite accepting a position that was not comparably paying work, pointing out that Injured Worker inquired why he would bother to



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continue to search for work when the SHO questioned him as to his current job search. The SHO further found that Injured Worker did not fall into an exception from a job search because he was not a work relief employee nor did he reasonably expect his position to develop into comparably paying work. Based on these findings, the SHO concluded that Injured Worker was not eligible for wage loss compensation because he had failed to make a consistent effort to obtain suitable employment that would eliminate his wage loss. The Commission refused Injured Worker's further appeal, filed January 29, 2013. Injured Worker then filed an action in mandamus, arguing that the Commission abused its discretion when it found that he had not made his best effort to obtain suitable employment that would eventually eliminate his wage loss. Specifically, Injured Worker claimed that the deer management field was growing and that his current position afforded him the opportunity to earn more money in the future. Alternatively, Injured Worker asserted that, per Mr. Walker's vocational report, there are no other suitable jobs with comparable pay available to him. In this regard, Injured Worker contended that the Commission abused its discretion by failing to rely upon Mr. Walker's vocational opinion. The Court of Appeals rejected Injured Worker's arguments. The court found the Commission did not abuse its discretion when it declined to excuse Injured Worker from continuing his job search. The court noted that Injured Worker did not present any evidence that he had the opportunity for advancement in his wife's company or that he actually had the potential to earn a higher salary in the future. Moreover, the court pointed out that the Commission is a vocational expert and, therefore, was not required to accept Mr. Walker's vocational evidence. The Supreme Court affirmed the appellate court's decision. The Court reiterated that the Commission is the exclusive evaluator of disability and employability. The Court further pointed out that the Commission is not required to rely on any vocational evidence, even if that evidence is uncontroverted in the claim file. The Court also rejected Injured Worker's assertion that his new job was full-time work with the potential for future growth in pay and benefits, noting that there was no evidence supporting this contention on file.

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