

# THE ADJUDICATOR

Issue 1 • Volume 16

Industrial Commission  
30 West Spring Street  
Columbus, Ohio 43215

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**Saying Goodbye**  
to Snail Mail  
Leads to Faster Service

Three Years After its  
Launch, the IC's Electronic  
Correspondence Program  
is Proving its Worth





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# No More Snail Mail Means Quicker Service

## Adam Gibbs, *Director of Communications*

More than three years ago, the Ohio Industrial Commission (IC) launched a new program that allowed workers' compensation representatives and employers to avoid waiting for the mail carrier to deliver IC hearing orders and notices.

So far, nearly 200 representatives and employers have signed up for the program to receive hearing-related correspondence electronically through the Industrial Commission Online Network (ICON). Now, after just a few clicks of the mouse, they are witnessing the benefits firsthand.

"Employers and representatives who

signed up for this service when it was made available a few years ago are really seeing the value now," Chairman Tim Bainbridge said. "It's an innovative, easy-to-use system that saves time and money."

Tracy Harvey is the director of hearing services at CareWorksComp, a workers' compensation risk consulting and claims management service provider in Dublin, Ohio. She said obtaining claim documents via ICON has increased her department's performance.

"For us, it is about timeliness for the receipt of documents," Harvey said.

"It makes sense to receive the documents

electronically and sweep them into our electronic system immediately instead of using U.S. Mail which has a 2-3 day lag time.”

The new procedure has had a positive effect on Harvey’s staff.

“We have a team that works in our hearing services department and they are responsible for pulling the documents from the system,” Harvey said. “My associates appreciate the convenience of being able to do that at their own pace as opposed to waiting until the mail arrives, gets date stamped, and then transferred to us before they can do the next steps in their jobs.”

Harvey’s biggest concern was what would happen if there were a failure in the system.

“The IC has been very receptive to assisting us,” she said. “If there is an electronic failure, the IC has been very quick to resend the documents to us.”

CareWorksComp has been receiving IC hearing orders and notices electronically since May 2015.

“I think it has really changed our workflow internally for the better,” Harvey said. “The timeliness of documents that we receive from the IC really ensures that our clients have the best service because we are looking at the documents in a quicker manner.”

Signing up for the program is easy. Representatives and employers choose the service by logging into their ICON profile page and revising their personal mail preference.

If a representative or employer opts for the service, the IC will no longer print and mail paper copies of hearing notices, orders and letters. After signing up, representatives and employers may view their electronic notices, orders, and letters by using the daily correspondence link available on ICON. The correspondence can be accessed

as individual PDFs or as a complete zip file that may be saved to a computer desktop. If a

representative or employer does not like the new service, he or she may opt out at any time.

Grace Szubski, an attorney at Garson Johnson LLC, a law firm based in Cleveland, Ohio, said signing up for the program was part of an overall effort for the firm to go paperless.

“Earlier this year, our office made a point to go as paperless as possible so this is a part of that,” she said. “I really like that we get the hearing orders quicker as opposed to the U.S. Mail.”

Szubski said the attorneys at the law firm attend an average of 20 hearings at the Ohio Industrial Commission per week.

“I was really happy and surprised with the whole process because it’s easier for our staff to scan the documents electronically whereas the U.S. Mail requires additional steps,” she said. “I should have signed up sooner because the transition to the new procedure was very easy.”

**“It’s an innovative, easy-to-use system that saves time and money.”**

# Re-Branding Project

## Brings Modern Workspaces to the IC

Adam Gibbs, *Director of Communications*



*The IC administrative lobby was given a makeover with new furniture, paint and a wall wrap of the Columbus skyline.*

It all started with the newly remodeled Cleveland Regional Office last year, but now the Ohio Industrial Commission's (IC) re-branding project is spreading to each IC office in the state.

"I am just so pleased with how everything is turning out," Chairman Tim Bainbridge said. "From the contemporary logos to the legible signage, the re-branding project is really adding a modern flair to each office."

Eight of the twelve IC offices were rebranded in the past year. The IC Warehouse in Columbus was repainted and re-carpeted in October 2015. IC offices in Dayton, Toledo, Lima and Mansfield are scheduled for re-branding during the coming fiscal year. Operations Support and Communications plan to work together to determine the best colors and signage for each of the remaining offices. The goal is to have all the offices completed by the end of 2016.

The re-branding project started a year ago when Director of Operations Support Mike Feeney approached Communications about the Cleveland remodeling project.

"We had picked great colors for the walls, but were looking to somehow brand the office with new signage and our IC logo," Feeney said.

Feeney and Electronic Design Specialist Lindsay Boyd brainstormed and decided to add the IC logo on the walls by using vinyl decals.

"I thought we should go with the more modern approach by creating an oversized wall decal of the IC icon which we had used on other marketing materials in the Communications Department," Boyd said.

After the overwhelmingly positive response from the branding that Communications and Operations Support added to the Cleveland Regional Office in May 2015, Feeney decided the branding should be added to other IC offices.

Communications and Operations Support discussed new paint colors, mainly an accent color for the offices that would allow painting. From there, Boyd began designing special decals for each office. Some offices received large IC decals and other offices received smaller decals on the front counter windows.

"Along the way, we came across offices, like Akron, which we couldn't put up the wall decals," Boyd said. "Mike and I decided we would make a smaller version of the new entry logo sign that I had created in Columbus for those offices."

After Feeney and Boyd chose a color pallet and design that would complement any of the IC offices, delivery workers installed new nameplates and hearing room signs. Larger offices received larger welcome signs.

## “The re-branding project creates consistency and adds a contemporary look to each IC office.”

“Many of the offices required new painting and carpet, which required moving cubicles and office furniture in the hearing rooms,” Feeney said. “The

warehouse staff did a great job in doing this quickly and efficiently.”

Chairman Tim Bainbridge said he likes how the re-branding project incorporates

the same look in each Industrial Commission office.

“The re-branding project creates consistency and adds a contemporary look to each IC office,” Chairman Bainbridge said. “The new signage, wall decals, and paint colors really freshen up the lobbies and employee workspaces by giving us a place to be proud to work.”

Another part of the re-branding project was the renovation of the 30th floor lobby in the William Green Building in Columbus, Ohio. The previous lobby area was bland, rarely used, and outdated with furniture that needed replaced. After weeks of brainstorming by Feeney and Boyd, a Columbus skyline design was chosen because it was the most professional, clean and timeless option.

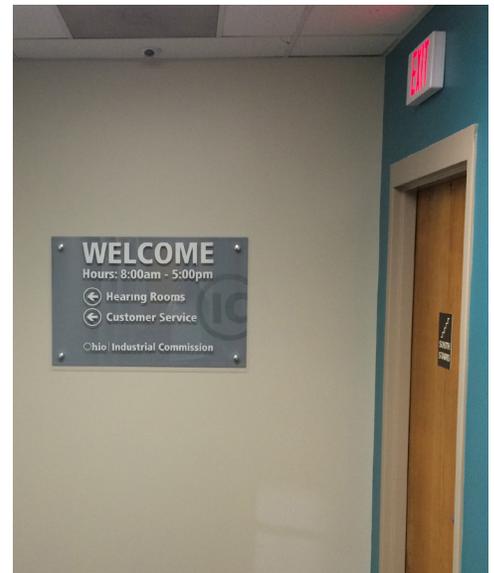
“Wall wraps, a vinyl material that is printed with anything from a logo to an image, are a popular trend in office design,” Boyd said. “I wanted to highlight not only the William Green Building, but the entire Columbus cityscape.”

Boyd took multiple photos of the city and then aligned the photos together to create the oversized image for the wall. She designed another logo sign that was installed over the wall wrap, making sure to line up the “O” of Ohio to encircle the William Green Building.

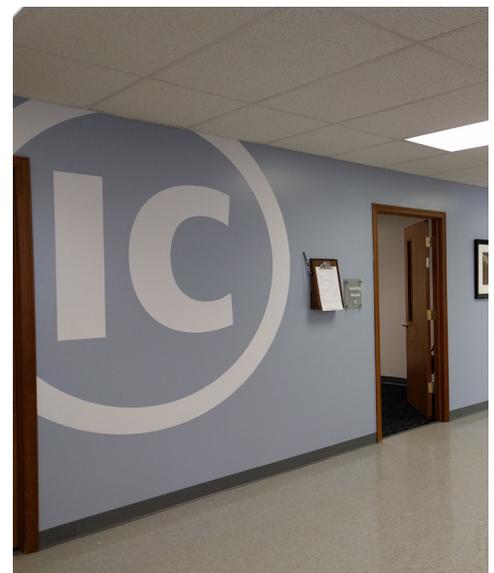
After colors and design ideas were complete, Feeney and Boyd selected furniture, fabric and lamps.

“When selecting the furniture, we wanted clean, simple lines and shapes that were repetitive in each piece,” Feeney said.

“The rounded tables matched the curves of the armchairs and the curved metal bars under the tables reflected the curved metal of the lamps. Even the fabric that was picked for the chairs have arcs that mimic the other pieces of furniture.”



*IC offices are getting new directional signage installed, such as this “Welcome” sign.*



*Many offices are getting large wall decals of the IC’s logo or the IC icon shown above.*

# From Intern to Manager:

## New Cambridge Supervisor Focused on Customer Service

Adam Gibbs, *Director of Communications*



Kristin Dickerson officially worked her way from the bottom to the top when she became the manager of the Ohio Industrial Commission's (IC) Cambridge District Office on

office that the IC performs now," she said. "We scheduled the hearings and had a traveling district hearing officer come to Zanesville for them."

Dickerson joined the IC as a word processor after the Zanesville IC office opened its doors in 1995. When that office consolidated with the Bridgeport IC office in Cambridge in 2009, Kristin began her one-hour commute to the new Cambridge office.

Now she plans to take her workers' compensation experience and talents—she won the IC's Employee of the Month award in January 2007—into her new management position.

"I have worked in typing and claims-examining at the IC and coming from the BWC allows me to know their procedures and forms," she said.

A native of Dresden, Ohio, Dickerson received her associate's degree at Muskingum Area Technical College in 1990. She still lives outside of the small Muskingum County town with her two daughters.

**"My primary goal is that I want to keep the office running as smoothly as possible and continue to provide the best customer service that we can."**

June 11, 2016.

Twenty-six years ago, she started her career as a college intern in 1990 at the Ohio Bureau of Workers' Compensation (BWC) office in Zanesville.

"I worked at the BWC as an intern during college and I liked what I was doing and wanted to stay," Dickerson said. "I started in the file room as a clerk and then went to their typing section and then I moved into the hearing section as a word processor and claims examiner."

As the manager of the Cambridge District Office, Kristin said her main goal is providing excellent service to IC customers.

"My primary goal is that I want to keep the office running as smoothly as possible, keep all of our staff up-to-date on training, and continue to provide the best customer service that we can," Dickerson said.

Dickerson is familiar with both the IC and BWC. She worked at the BWC from 1990 until 1995.

"Back then, we basically performed the same functions at the BWC Zanesville

# Chief Medical Advisor Delivers Decades of Medical Knowledge to the IC

Adam Gibbs, *Director of Communications*



If experience was the only prerequisite to become the chief medical advisor of the Ohio Industrial Commission (IC), Dr. John McGrail more than meets the requirement.

This summer, he celebrated 50 years of practicing medicine.

In addition to five decades of medical knowledge, Dr. McGrail said he has been enjoying offering his leadership and dedication to fairness to Ohio's employers and injured workers since joining the agency in September 2015.

"Since I began this position, my goal has been to follow the mission statement of the IC by enhancing the quality of care that injured workers experience when interacting with our agency," McGrail said. "I am also working towards advancing the goals established by the previous medical advisors who did excellent work for the IC."

Dr. McGrail is currently the chief of surgery at Grady Memorial Hospital in Delaware, Ohio, and a member of the Ohio Health Sports Medicine Institute.

"As an orthopedic surgeon, I strive to direct my attention to the whole person, not just the injury or ailment," he said.

Dr. McGrail maintains a private practice with Orthopedic ONE, Ohio's largest

physician-owned company that provides a range of orthopedic and rehabilitation services throughout central Ohio. He is certified by the American Board of Orthopedic Surgeons, and is a Fellow of the American Academy of Orthopedic Surgeons.

Previously, he was active in orthopedic education and served as a faculty member at the Ohio State University and the University of Virginia. He has also published several scholarly articles in various orthopedic journals. In addition, he has served as a consultant to the Ohio Bureau of Workers' Compensation since 1997 and began conducting medical exams for the IC in 2014.

"I have extensive experience in leadership, medical administration and workers' compensation consultation," he said. "I believe this position allows me to apply those talents in a different area of medicine, which I find very exciting."

A United States Navy veteran, Dr. McGrail earned his bachelor's degree in history from Marquette University in 1962. He attended the Medical College of Wisconsin where he earned his medical degree, and later completed his residency in orthopedic surgery at the Henry Ford Hospital in Detroit, Michigan.

Born and raised on the west side of Chicago, he now resides in Delaware, Ohio with his wife, Susan. The couple has six children and three grandchildren.

# New Director of Security Services

## Sees Great Opportunity at the IC

Adam Gibbs, *Director of Communications*



When opportunity knocks, you answer it.

That is the rule that Chris Minter has followed his entire life. Adherence to that rule has led to new personal and professional opportunities.

"I always tell people that when an opportunity presents itself, you have to take advantage of it," Minter said.

Minter followed his own advice when he agreed to join the Ohio Industrial Commission (IC) as the new director of security services. His first day was May 16, 2016.

"I'm very thankful for the opportunity to work at the IC," he said. "I embrace change because while changing positions is stressful, it also sharpens your pencil and provides you with new energy."

Minter is a familiar face in the William Green Building in Columbus, Ohio. He has spent the past four years as the threat assessment and security awareness manager at the Ohio Bureau of Workers' Compensation (BWC).

During his time at the BWC, Minter implemented the bureau's security awareness policy and worked closely with former IC Security Director Mike Tanner and Ohio Homeland Security.

Before working at the BWC, he spent 32 years with the Ohio State Highway Patrol. As a commander of field operations and a major, he managed the daily operations and oversaw 1,150 uniformed personnel. He retired from the

patrol in 2011. As the new director of security services, one of his first initiatives will be to enhance the quality of the agency's threat assessment program.

Minter believes that studying the data that the IC collects on an individual will allow him to be proactive when looking at people who are potential security risks.

"When we flag an injured worker or an employer, I think we can go a little more in-depth," he said. "What is the trigger or the issue? You can discover that by mining the data, which can ultimately lead to a solution."

The youngest of eight children, Minter, grew up in Windham, Ohio, in Portage County. He graduated from Windham High School in 1974 and later graduated from the School of Police Staff and Administration at the Northwestern University

Traffic Institute in Evanston, Illinois. (The institute was renamed the Northwestern University Center for Public Safety in 2000.)

He also completed the strategic leadership administration program at the United States Army War College in Carlisle, Pennsylvania.

Minter now resides in Columbus with his wife, Cheryl. The couple has three grown daughters.

**"When an opportunity presents itself, you have to take advantage of it."**

# A Celebration of Excellence at the IC: The 2015 Employee of the Year

Adam Gibbs, *Director of Communications*



*Pictured: Chairman Tim Bainbridge, Employee of the Year Mary Seltzer, Commissioner Karen Gillmor and Commissioner Jodie Taylor*

Three years ago, she won the Ohio Industrial Commission's (IC) 2012 Employee of the Year award.

On May 11, she joined an

elite group of IC employees by winning the agency's highest honor a second time: HCM Senior Analyst Mary Seltzer is the Ohio Industrial Commission's 2015 Employee of the Year.

Seltzer was awarded the 2015 Employee of the Year (EOY) award during the Longevity Ceremony in Columbus.

"There are so many people deserving of this," Seltzer said after she received the award. "Thank you very much, everyone."

Chairman Tim Bainbridge, Commissioner Jodie Taylor and Commissioner Karen Gillmor presented the 2015 Employee of the Year award to Seltzer.

Last winter, she was named the December 2015 Employee of the Month.

At that time, Seltzer's nominator said: "Mary goes above and beyond what any of us expect of her. Over the few years that Mary has been here, I have asked her numerous questions. Mary always replies within minutes. She is probably the nicest and most helpful person in this agency, and possibly that I've ever met."

To win the award, Seltzer was selected from a group of exceptional Employee of the Month (EOM) winners.

Those 2015 EOM winners were:

- Jonathan Grimm – Claims Examiner in Medical Services
- Ashley Coleman – Claims Examiner in Claims Support
- Shawn Hunnicutt – Dayton Word Processing Specialist
- Karen Garmon – Dayton Claims Examiner
- Kevin Palicki – A former IC employee
- Meg Ritter – Toledo Claims Examiner
- Derrick DeVore – Software Development Specialist
- Patrick Jacob – Toledo Claims Examiner
- Penny Vance – Claims Examiner in the Columbus Regional Office
- Mary Seltzer – HCM Senior Analyst
- Scott Greene – Director of Management Planning
- Tim Cashin – Infrastructure Specialist

For winning the EOY award, Seltzer was rewarded with an engraved EOY plaque, personalized notepads and a certificate for two days off.

Prior to joining the IC, Seltzer worked as a human resources coordinator for the Ohio Consumers' Council, a project manager at Lucent Technologies, and a systems analyst for General Mills. A resident of Pickerington, Ohio, Seltzer's academic degrees include an associate's degree in computer science, a bachelor's degree in business management, and a master's degree in marketing and communications.

# Newly Named Hearing Officer Manual Remains A Valuable Reference

Adam Gibbs, *Director of Communications*



Word by word—18,127 words to be exact—the Ohio Industrial Commission began reviewing the Hearing Officer Manual nearly two years ago.

All of that difficult work came to fruition on August 15, 2016 when the renamed and completely revised manual was rolled out to the public.

“The last Hearing Officer Manual revision took place in 2011, so it was time to take a good look at it and see what changes needed to be made,” Chairman Tim Bainbridge said. “I’d especially like to thank Commissioners Jodie Taylor and Karen Gillmor, Commission staffers, Chief Legal Counsel Rachael Black and her staff, Director of Adjudicatory Services Tom Connor, Hearing Officer Trainer Genevieve Hoffman, and countless hearing officers for their instrumental contributions to this project.”

## The Hearing Officer Manual is now called “Adjudications Before the Ohio Industrial Commission.”

The manual review began in October 2014 and resulted in eight extensive Commission meetings over that period.

“The Office of Legal Counsel and the Director of Adjudicatory Services worked closely in reviewing each policy memo to ensure each policy was still relevant while making recommendations when new policies were needed,” Chief Legal Counsel Rachael Black said.

A few of the major changes to the new manual are listed below:

- Changed the title from “Hearing Officer Manual” to “Adjudications before the Ohio Industrial Commission” in order to more appropriately include IC commissioners and hearing administrators;
- Revised multiple sections of the manual in their entirety;
- Split “Injury-Employer” section into two different sections;
- Removed the “Impairment of Earning Capacity” section;
- Added 14 new policies;
- Removed 13 obsolete or unnecessary policies; and
- Substantively changed several current policies.

The new “Adjudications before the Ohio Industrial Commission” Quick Link is located at <https://www.ic.ohio.gov>.



## Enhancements to ICON Means A Better and More Secure Service

Nilima Sinha, *Director of Information Technology*

The Ohio Industrial Commission's (IC) Information Technology Department never stops looking for new ways to improve our customer's experience when using ICON or our website. We strive to make our technological systems user-friendly while always remembering that security is our top priority.

Below are a few of our latest improvements:

- Implemented changes to allow providers to send and receive medical exam reports through our secure website.
  - Created a data warehouse that holds a copy of all relevant hearing data from our systems. The data allows us to create and run reports on-demand without negatively affecting the hearing process during regular business hours.
  - Worked with the Ohio Department of Administrative Services Office of Information Technology to implement email encryption through ZixMail, which allows IC employees to send encrypted emails outside the agency if the email contains confidential personal information.
  - Enhanced the digital signage in the hearing room lobbies in all IC offices by moving the hearing information to a new monitor. The redesigned signage has three times more information than the previous signage and is easier to read.
- Improved the hearing calendar on ICON with a new tool that can be used by representatives to add scheduled hearings to their personal calendars on smartphones or their desktops via the mobile or the full website. After receiving requests from representatives, my department made changes to add the injured worker's name to the subject line and the issue to the content of the calendar item.
  - Completed work to use a new tool to convert images from TIFF to PDF, which greatly improves the response time for document viewing through ICON.
  - Developed a method to notify opposing counsel when an appeal/objection to a BWC order, .52 relief, .522 relief or a request for Commission reconsideration is filed using a paper form.

In numerous cases, our customers have been the ones to submit their ideas for improvements, which we later implemented. I am always happy to hear suggestions from the representatives and employers who use ICON every day. 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.



# Wanted: Talented Medical Professionals to Perform Independent Medical Exams

John McGrail, M.D. *Chief Medical Advisor*

As the Chief Medical Advisor to the Ohio Industrial Commission (IC), I believe that it is imperative to provide injured workers with accurate and compassionate medical exams. This is the reason I have dedicated myself to recruiting experienced and talented medical examiners to conduct independent medical exams.

Ohio's health care organizations, universities and medical schools have the opportunity to perform a respected public service while taking advantage of a new revenue stream by performing independent medical examinations for the IC.

We are currently recruiting AMA Guide 5th Edition trained physicians throughout Ohio to perform independent medical exams on injured workers.

Because the IC only recruits the best medical examiners, Ohio's injured workers are guaranteed to receive outstanding medical exams from experienced doctors. As a result, medical providers generate new revenue.

There are many reasons that permanent total disability examinations would be a wonderful addition to any clinical practice.

We offer:

- Competitive, tiered compensation based on the complexity of the examination;
- Specialty-specific claim assignment;
- Flexible, physician-direct examination scheduling;
- Electronic files are accessible at all of your practice locations or from your home;

- Draft reports, completed reports, fee bills and forms are uploaded through a secure ICON location;
- Comprehensive training and constructive feedback are provided by Medical Services;
- The Director of Medical Services and I are always available for consultation on complex medical/legal issues or questions.

<b>Ohio Industrial Commission Fee Schedule for PTD Independent Medical Evaluations Services Fees</b>	
Evaluation, one body part or organ system	\$500
Evaluation, two or three body parts or organ systems	\$600
Evaluation, mental and behavioral health	\$600
Evaluation, four or more body parts or organ systems	\$700

Evaluation fees include: examination, document review and the report.

When an injured worker fails to keep an appointment scheduled in the examiner's office, a \$100 "no show" fee may be billed. A \$100 fee may also be billed if an injured worker cancels an appointment for an examination in an IC office and no substitute examination is scheduled.

For further details, go to our website at [IC.Ohio.gov](http://IC.Ohio.gov). Click "Medical Specialist Resources."

If you are interested, please forward your CV directly to me at: [John.McGrail@ic.ohio.gov](mailto:John.McGrail@ic.ohio.gov).

Also, feel free to contact me with any questions.



## SUPREME COURT CASE UPDATES

### State ex rel. Ritzie v. Reece-Campbell, Inc., Slip Opinion No. 2015-Ohio-5224

**The Industrial Commission did not abuse its discretion when it rejected uncontroverted medical evidence on file as well as orders granting additional conditions in the claim since the last payment of compensation and determined that there was no persuasive medical evidence that the Injured Worker's 1994 industrial injury rendered him temporarily and totally disabled.**

**Issue:** Whether the Industrial Commission abused its discretion when it found that the Injured Worker had not presented persuasive medical evidence establishing that he was temporarily and totally disabled as of December 8, 2011.

**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 the Commission cannot unilaterally reject uncontroverted medical evidence. The Ohio Supreme Court held that the Commission can reject uncontroverted medical evidence if it articulates a reasonable basis based on evidence in the record for the rejection. Regarding the Injured Worker's argument that the amendment of his claim for additional conditions justified a new period of compensation, the Court noted the addition of new conditions does not guarantee an award of a new period of compensation.

**Case Summary:** The Injured Worker sustained a low back injury in November of 1994 that prevented him from returning to his former position of employment as a construction superintendent due to the heavy lifting required in that position. The Injured Worker was able to return to work light duty in September of 1995 as a construction supervisor with the named employer. Despite returning to work, the Injured Worker continued to treat with Dr. Brian Nobbs, his chiropractor, and his claim was amended for significant lumbar disc conditions in July of 1998. Subsequently, in November of 1998, a District Hearing Officer granted a closed period of temporary total disability compensation from August 7, 2007 to April 6, 2008, noting that the Injured Worker had returned to work with a different employer on April 7, 2008. Throughout the years that followed, Dr. Nobbs continued treating the injured worker and characterized his condition as chronic with a tendency to have exacerbations and flare-ups. In December of 2008, the Injured Worker again became temporarily and totally disabled. A Staff Hearing Officer granted temporary total compensation from December 4, 2008 through July 10, 2009, specifically noting that the allowed conditions precluded the Injured Worker from performing his former position of employment and noting that the Injured Worker returned to work as a truck driver on July 11, 2009. On January 24, 2010, the Injured Worker was involved in a motor vehicle accident while working for his new employer. He sustained injuries to his cervical and thoracic spines and both shoulders. He began treating with Dr. Nobbs for this new injury while he continued treating with the chiropractor for his low back conditions. At that time, Dr. Nobbs certified the Injured Worker as temporarily and totally disabled due to the cervical and thoracic conditions. On December 7, 2011, the Injured Worker settled the 2010 claim for \$99,999.00. Thereafter, on August 1, 2012, the Injured Worker filed a C84, requesting temporary total disability compensation in his low back claim



## SUPREME COURT CASE UPDATES

### State ex rel. Ritzie v. Reece-Campbell, Inc. Continued

from December 8, 2011 and continuing. A District Hearing Officer granted the C84, relying upon Dr. Nobb's office records. The Bureau Of Workers' Compensation appealed the order, arguing that the Injured Worker's 2010 injury was a significant injury that had been rendering him temporarily and totally disabled until the day he settled that claim. A Staff Hearing Officer rejected the Bureau of Workers' Compensation's arguments, specifically pointing out that the 2010 claim was allowed for different conditions and, therefore, could not be an intervening injury, and that the Bureau of Workers' Compensation had not obtained medical evidence to refute the Injured Worker's evidence. Eventually, the Commission Members heard the matter on reconsideration and denied the requested compensation. The Commission specifically found that the opinion of Dr. Nobbs was unpersuasive because his contemporaneous office notes were devoid of any indication that the allowed low back conditions were exacerbated or preventing him from working. The Commission also found Dr. Nobbs' failure to provide an explanation as to why he suddenly opined that the low back conditions were disabling the day after the settlement of the 2010 claim that he had previously opined was the reason the Injured Worker was unable to work rendered his opinion unpersuasive. The Injured Worker then filed an action in mandamus, arguing that the Commission abused its discretion by rejecting the uncontroverted opinion of Dr. Nobbs. The appellate court denied the requested writ, finding that the Commission provided a reasonable explanation for its rejection of his evidence. The Injured Worker appealed to the Ohio Supreme Court, asserting that the Commission cannot reject uncontroverted medical evidence and orders allowing medical conditions in a claim. Either of the Injured Worker's arguments did not persuade the Court. The Court explained that the Commission has discretion to reject uncontroverted medical evidence so long as it provides a reasonable basis for finding the evidence unpersuasive. In the case at hand, the Court pointed out that the Commission provided a reasonable explanation for finding Dr. Nobbs' report was not persuasive. Turning to the issue of the impact of new conditions on a request for temporary total compensation, the Court stated that the addition of new conditions does not guarantee an award of a new period of compensation. An injured worker still bears the burden of proving that the newly allowed conditions preclude a return to work.



## SUPREME COURT CASE UPDATES

### State ex rel. Old Dominion Freight Line, Inc., v. Indus. Comm., 146 Ohio St.3d 13, 2016-Ohio-343

**In processing an application for Permanent Total Disability compensation, the Industrial Commission did not abuse its discretion when it sent employer's medical reports to its independent examining physicians after their examination of the Injured Worker, requesting reconsideration of their examination opinions in light of the employer's evidence. The Commission did not abuse its discretion in refusing employer's request to depose the independent examining physicians because the Commission's failure to send the employer's medical reports to its independent examining physicians before their examinations of the Injured Worker was not prejudicial to the employer.**

**Issue:** Whether the Industrial Commission's failure to comply with Ohio Adm.Code 4121-3-34(C)(2) by failing to provide the employer's medical evidence to its independent examining physicians before their examinations prejudiced the employer's ability to defend against the Application for Permanent Total Disability. Whether the Commission abused its discretion in denying Employer's request to depose the independent examining physicians in light of their post-examination receipt of the employer's medical evidence.

**Holding:** The Supreme Court of Ohio affirmed the decision of the Tenth District Court of Appeals. The Court held that the Commission's submission of the employer's medical evidence to the independent examining physicians after their examinations did not prejudice the employer's ability to defend against the Application for Permanent Total Disability compensation. The Court further held that the Commission did not abuse its discretion in denying Employer's request to depose its independent examining physicians because the request was not reasonable.

**Case Summary:** The Injured Worker filed an Application for Permanent Total Disability compensation accompanied by reports from Drs. Ward, May and Howard. The self-insuring employer notified the Commission that it intended to submit medical evidence in response to the application. In spite of this notification, the Commission scheduled examinations with Drs. Fitz and Malinky and failed to send copies of the employer's medical records to the physicians. When the self-insuring employer realized the Commission's mistake, it requested to depose Drs. Fitz and Malinky. Subsequently, a Staff Hearing Officer denied the request, finding the request unreasonable. Thereafter, the self-insuring employer requested a pre-hearing conference with the Columbus Hearing Administrator. Following the conference, the Hearing Administrator issued a compliance letter, ordering that the employer's medical reports be provided to Drs. Fitz and Malinky to determine whether the reports changed their original opinions. Both physicians responded that the reports do not change their original opinions.

The matter was set for hearing and a Staff Hearing Officer later granted Permanent Total Disability compensation beginning on September 25, 2007, the date of Dr. May's report. The Staff Hearing Officer determined that the medical impairment resulting from the allowed conditions rendered the Injured Worker permanently and totally disabled. The Staff Hearing Officer explicitly relied upon the reports of Drs. Fitz and Malinky in granting the award. The Staff Hearing Officer also stated that, in evaluating the credibility of these physicians' reports, he had noted the reports of Drs. Ward, May, and Howard. In response to this order, the self-insuring employer filed a mandamus action, alleging that the Commission's failure to send the employer's medical records to its examining physicians before their examinations was an abuse of discretion and that the Commission improperly relied upon the reports of Drs. Ward, May and Howard in evaluating the credibility



## SUPREME COURT CASE UPDATES

### State ex rel. Old Dominion Freight Line, Inc., v. Indus. Comm. Continued

of the reports of Drs. Fitz and Malinky because these reports were inconsistent. A magistrate recommended that the appellate court issue a writ of mandamus, finding that the Commission's failure to follow its rule was prejudicial to the employer's right to challenge the Permanent Total Disability application. The magistrate specifically determined that the Commission's delayed sending of the reports to Drs. Fitz and Malinky did not cure this problem and that, therefore, the court should vacate the Commission order and remand the matter for a new hearing without consideration of the reports of Drs. Fitz and Malinky. The appellate court rejected the magistrate's recommendation, finding that it is not prejudicial for the Commission to ask a doctor to consider additional medical records after the doctor has conducted their examination. Noting that the magistrate did not address the employer's argument that the Commission improperly relied upon the reports of Drs. Ward, May and Howard in evaluating the credibility of the reports of Drs. Fitz and Malinky and that the denial for the requests for depositions was improper, the appellate court remanded the matter to the magistrate to determine that issue. On remand, the magistrate determined that it was reasonable for the Commission to deny the motions to depose and that the Staff Hearing Officer did not err by noting the reports of Drs. Ward, May and Howard in evaluating the credibility of the reports of Drs. Fitz and Malinky. The magistrate noted the self-insuring employer claimed that the denial of the depositions was unreasonable since the Commission failed to provide its medical records to its physicians. The magistrate noted, however, that the appellate court's decision that the employer did not suffer any prejudice by this failure negated the employer's argument. Turning to the alleged error of relying upon the reports of Drs. Ward, May and Howard, the magistrate pointed out that the Commission merely considered those reports but did not rely upon them in awarding Permanent Total Disability. Based on these findings, the magistrate recommended denial of the requested writ. The appellate court agreed that the writ should be denied. The court reasoned that the motions for depositions were unreasonable because the problem raised by the Commission's failure to provide its physicians the employer's medical evidence did not require a deposition for resolution. Rather, the most reasonable way to resolve the problem was for the Commission to provide Drs. Fitz and Malinky the records. The court also determined that the Commission did not rely upon the reports of Drs. Ward, May and Howard but, merely, used the reports to evaluate the credibility of the reports of Drs. Fitz and Malinky. The employer subsequently appealed to the Supreme Court of Ohio. The Court, affirming the court of appeals, found that the Commission did not abuse its discretion. The Court first noted that the Commission conceded that it erred by failing to send the defense reports to its examining physicians. However, the Court found that because the Commission's physicians actually examined claimant and then later reviewed the defense reports, the processing error was cured. The Court further noted that addendum reports are regularly requested during the administrative process and there is nothing prohibiting such reports. See *State ex rel. Kish v. Kroger Co.*, 135 Ohio St.3d 451, 2013-Ohio-1931, 989 N.E.2d 45. The Court also determined that the Commission was within its discretion to deny the employer's request to depose the Commission's examiners. Specifically, Ohio Adm. Code 4121-3-09(A)(8) sets forth the criteria for administrative depositions and establishes what is essentially a "reasonableness standard." In general, most, if not all issues, can be addressed at hearing and therefore the Commission's determination on deposition requests is almost always upheld. Finally, the Court stated that the Commission relied on some evidence to support its decision and it would not re-weigh that determination.



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