

Ohio | Industrial Commission
ANNUAL REPORT

FISCAL YEAR 2012

John R. Kasich
Governor

Mary Taylor
Lt. Governor

Karen L. Gillmor
Chairman/CEO

Gary M. DiCeglio
Member

Jodie M. Taylor
Member

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LETTER FROM THE CHAIRMAN AND CEO



Governor John Kasich is dedicated to moving Ohio's agencies forward in a manner where service and accountability are not sacrificed by economic challenges. When I became Chairman and CEO of the Industrial Commission of Ohio last year, I knew that I would play a key role in helping our agency keep promises that were made long ago.

In the second decade of the 1900s, 45 states first enacted general laws governing the conduct of workers' compensation. A promise was made that a no-fault system of compensating a worker or his family for his injury, occupational disease or death causally related to his job would be paid by his industry. In exchange, employees would forgo their right to sue their employers for work-related injuries by pursuing statutorily prescribed compensation as an exclusive remedy. The resulting workers' compensation system provides the workers with a faster and less expensive procedure for receiving benefits while the employer received immunity from a full-liability tort action in court.

Ohio was one of only seven states to opt for a fully public system of workers' compensation, and today is one of only four public state systems, although by far the largest. We can report that after 101 years, the workers' compensation system is keeping the promise in an impartial and timely way.

The Industrial Commission of Ohio, founded in 1911, adjudicates workers' compensation disputes in a fair and impartial manner. Our 94 hearing officers, licensed attorneys all, adjudicated 150,000 claims in 2011, of which only 122 were pursued in mandamus to court. The 2011 Industrial Commission decisions were upheld 73% of the time in court. Appeals to court are at an all-time low. Legislated timelines measuring the speed with which hearings are held and resulting orders are sent to the parties are on track thanks to increased efficiencies from a new claims processing method and sweeping IT innovations.

Over time, the Industrial Commission staff has been reduced through attrition from 643 employees in 1997 to 400 by the end of Fiscal Year (FY) 2012. More recently, the Industrial Commission's budget has been reduced from a ten-year high of \$62.6 million in FY 2011 to \$59.5 million in FY 2012. Looking ahead, the annual budgets are projected to decrease to \$55.3 million in FY 2015.

Administrative rates for three of four Ohio employer groups were cut for FY 2013. The fourth group, while not realizing a reduction, remains stable with no rate increase.

In the 1990s, then-Governor George V. Voinovich called Ohio's workers' compensation system "the silent killer of jobs" because of its costs, slow response in adjudicating complaints, and moribund hearing process. But in April 2012, Mark Kvamme, President and Interim Chief Investment Officer of Jobs Ohio, opined that "when we are attracting new business to Ohio, workers' compensation never comes up. It's not mentioned. It's not a problem."

As we face the challenges in the next fiscal year and beyond, our mission will remain the same: Provide superb customer service in an environment of professionalism and fairness while adhering to a philosophy of fiscal accountability with unwavering conviction.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Gillmor".

Karen L. Gillmor, Ph.D., Chairman and CEO

ABOUT THE IC

The IC conducted more than 147,569 hearings in FY 2012, the majority of which take place within 45 days of the original claim appeal. That means you may expect first-class customer service as the IC provides a forum for appealing BWC and self-insured employer decisions. Since 1912, the IC has resolved issues between parties who have a dispute in a workers' compensation claim. With each claim, the agency is dedicated to offering information and resources to help customers navigate through the appeals process.

The IC conducts hearings on disputed claims at three levels: the District level, the Staff level and the Commission level. The governor appoints the three-member Commission, and the Ohio Senate confirms these appointments. By previous vocation, employment or affiliation, one member must represent employees, one must represent employers and one must represent the public.

During this fiscal year, Karen L. Gillmor represented the public; Jodie M. Taylor represented employers; and Gary M. DiCeglio represented the interests of injured workers.

Karen L. Gillmor is the chairman and chief executive officer of the agency.

IC COMMISSIONERS



**Karen L. Gillmor, Ph.D., Chairman/CEO
Public Member
Dates of Service: July 2011 - June 2017**

With over three decades of dedicated public service, Karen brings a tremendous knowledge of workers' compensation issues to the Industrial Commission of Ohio.

A native of Ohio, she 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.

Her career shows a passionate interest in the fields of health care, labor relations and workers' compensation. From 1983 to 1986, Karen 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.

Before coming to the IC, Karen 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 chairman of the State Employment Relations Board from 1997 to 2007, and was a consultant to the United States Secretary of Labor.

Nationally, Karen 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.

Karen 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.



**Gary M. DiCeglio
Employee Member
Dates of Service: July 2007 - June 2013**

Through a lifelong dedication to worker safety issues, Gary brings a wealth of workers' compensation experience to his role as Employee Member of the IC.

Originally from Akron, Ohio, Gary earned a Bachelor of Science degree in economics from the University of Akron in 1988. In 1992, he received his law degree after graduating cum laude from the University of Akron School of Law.

After law school, Gary began a private law practice, focusing on workers' compensation matters.

IC COMMISSIONERS

As an employee of the Goodyear Tire and Rubber Company, Gary became a Division Chairman with the United Rubber Workers, a labor union for workers employed by rubber manufacturers. When the United Rubber Workers merged with the United Steelworkers in the 1990s, Gary worked to improve its members' wages and benefits as a lobbyist in Washington D.C.

In 1998, Gary joined the Ohio AFL-CIO, the largest federation of unions in the United States, as the Director of Compensation and Safety. In this position, Gary focused on worker safety issues, establishing Ohio's prescription drug discount card program and raising the state minimum wage. Gary also played an important role in crafting Senate Bill 7, which made numerous changes to the Workers' Compensation law in Ohio.

Gary is a member of the Ohio State Bar Association and resides in Blacklick, Ohio.



Jodie M. Taylor

Employer Member

Dates of Service: July 2009 - June 2015

Jodie brings years of workers' compensation experience to her role as Commissioner of the Industrial Commission of Ohio.

Her first day on the job was a homecoming for this Industrial Commissioner. From 1997 to 2000, Jodie served as an assistant to an IC Commissioner. In this role, she performed legal and legislative research, assisted during hearings, and gained an extensive understanding of the agency.

After leaving the IC, Jodie served as an attorney for two Columbus law firms, where she represented state-fund and self-insured employers at all levels of IC hearings and in court actions throughout Ohio. She is also a frequent lecturer on workers' compensation issues with extensive legal knowledge in both the private and public sectors.

Jodie earned her bachelor's degree in diplomacy and foreign affairs from Miami University in 1991. While at Miami, Jodie studied overseas in Luxembourg. In 1995, she received her law degree from the University of Akron School of Law. She is an Ohio State Bar Association member and is a board-certified specialist in workers' compensation.

Jodie lives in Dublin with her husband, Michael. In October 2009, they welcomed twins, a boy and a girl, Evan and Elizabeth.

FISCAL YEAR HIGHLIGHTS

In addition to the Commissioners, there are 97 hearing officers — all attorneys — in five regional and seven district offices throughout the state.

In FY 2012, the IC heard 147,574 claims. District hearing officers heard 103,194 claims. Staff hearing officers heard 43,928 claims and the Commission heard 327 claims.

The IC consistently achieved a high success rate in adjudicating claims well within the periods mandated by law throughout this fiscal year. From filing date to hearing date, district level (first level) hearings averaged 39 days. Staff level (second level) hearing appeals averaged 35 days. Both averages are well below the 45 days mandated by law.

The statistics of filing date to mailing date were just as positive. For the district level, filing date to mailing date was 41 days on average. For the staff level, it averaged 38 days.

The Industrial Commission Online Network (ICON) is the primary reason for our continued success because it has simplified filing appeals online. There were 65,050 first-level motions and appeals filed on ICON this fiscal year. There were also 63,722 second-level (or above) appeals filed on ICON during the fiscal year.

Ask IC is another tool that has helped accelerate our response to customer inquiries. Ask IC is an email feature of our website, www.ohioic.com. The feature gives injured workers, employers and their representatives the opportunity to submit questions to our Customer Service Department.

Customer Service received and responded to 908 Ask IC submissions during this fiscal year. The department also scheduled 1,366 interpreters for injured worker hearings. In addition, our toll-free customer service line received 6,261 calls this fiscal year. Staff personally assisted 6,572 people at our Columbus office.

CUSTOMER SERVICE INITIATIVES

Ohio Industrial Commission Reduced Workers' Compensation Rates

In June 2012, The Ohio Industrial Commission proposed new, lower administrative rates for three of four Ohio employer groups. The fourth employer group, while not realizing a reduction, remained stable with no rate increase.

Ohio employers pay assessments that are used to fund the administrative operations of the Ohio Industrial Commission. Employers are divided into four distinct groups: private state insurance fund participating employers, state government agencies, other public taxing districts, and self-insuring employers. Periodically, the Commission examines rates for each of these groups and related operational costs.

The current Administrative Cost Fund Rates for calendar year 2012 and proposed rates for calendar year 2013 are as follows:

EMPLOYER GROUP	2012	2013 (Proposed)
Private	2.10%	2.03%
Public State	3.31%	3.26%
Public Taxing Districts	1.81%	1.81%
Self-Insuring	7.50%	7.25%

Industrial Commission of Ohio Launches Facebook Page

In an effort to reach out to its customers and open the lines of communication in an efficient and cost-effective manner, the Ohio Industrial Commission launched its own Facebook page on October 18, 2011.

On the IC's Facebook page, injured workers and employers now have quick access to vast amounts of information about the agency. Followers of the IC Facebook page are the first to receive IC news releases, office closure announcements, IC job postings, IC rules and resolution changes, Hearing Officer Manual updates, new publication announcements and ICON-related announcements.

A link to the IC Facebook page is available on the IC website at www.ohioic.com. Customers may also search for the Industrial Commission's page on Facebook. If an injured worker or employer does not have a Facebook account, then they will still be able to receive agency news via traditional means, such as press releases and website announcements.

New Customer Comment Tracking System Allows IC to Hear From You

As part of the IC's Marketing Plan, the IC revamped the customer comment cards.

Subsequent marketing initiatives quickly led to an overwhelming number of cards being completed, yet the agency decided to go a step further in our quest for customer feedback.

CUSTOMER SERVICE INITIATIVES

As part of this initiative, the IC developed a comment card tracking system. Now, when a customer fills out a comment card at any IC office, they can place it into a new locked comment card box.

Once the IC receives the cards, staff members enter information into a database. Then, a manager is assigned to find a resolution to the issue within 30 days of the date that the comment card was entered into the database. Resolution can mean implementation, denial or partial implementation.

After a resolution is achieved, if the customer left their contact information, a staff member will contact the customer and let them know the results of their submission.

IC Commissioners Can Now Sign Orders Electronically

The Ohio Industrial Commission announced on December 16, 2011, that IC Commissioners can sign hearing orders electronically.

With the implementation of electronic signatures for discretionary appeals, Commissioners will now have the option to sign the orders remotely, which will lead to faster orders. The Industrial Commission Online Network (ICON) allows Commissioners to access and sign orders from a personal computer, MacBook, iPad or Android Tablet.

Each electronic signature is password protected to ensure maximum security. Electronic signatures were not the only improvement that the IC has developed for its customers.

In November 2011, discretionary appeals at the Commission-level were added to Workflow. In Workflow, orders are created and promptly routed to the appropriate staff members for review. In addition to this advancement, a new search feature was added that allows Commissioners to search for orders by claim number, party last name, or party first name.

Video Evidence Now Available for Viewing on ICON

The Ohio Industrial Commission started adding video evidence into our document management system on February 27, 2012.

This video evidence is available for viewing in ICON and during hearings.

Submitted video evidence can be uploaded by some offices now, and soon all offices will be able to upload video evidence.

Submitted video evidence will show in the list of claim documents, and is identified with a document type of "HCE" and a document description that contains "Video."

If submitted video evidence is not seen in the list of claim documents, be prepared to bring the video and the necessary equipment to play the video at the hearing.

CUSTOMER SERVICE INITIATIVES

New Mail Pickup Location in the William Green Building

Picking up flat mail in the William Green Building became more convenient for workers' compensation representatives in March 2012.

Workers' compensation attorneys and representatives began retrieving their flat mail from the Customer Service Department on the first floor earlier this year.

Previously, representatives had to go to Level B-2 to retrieve their flat mail.

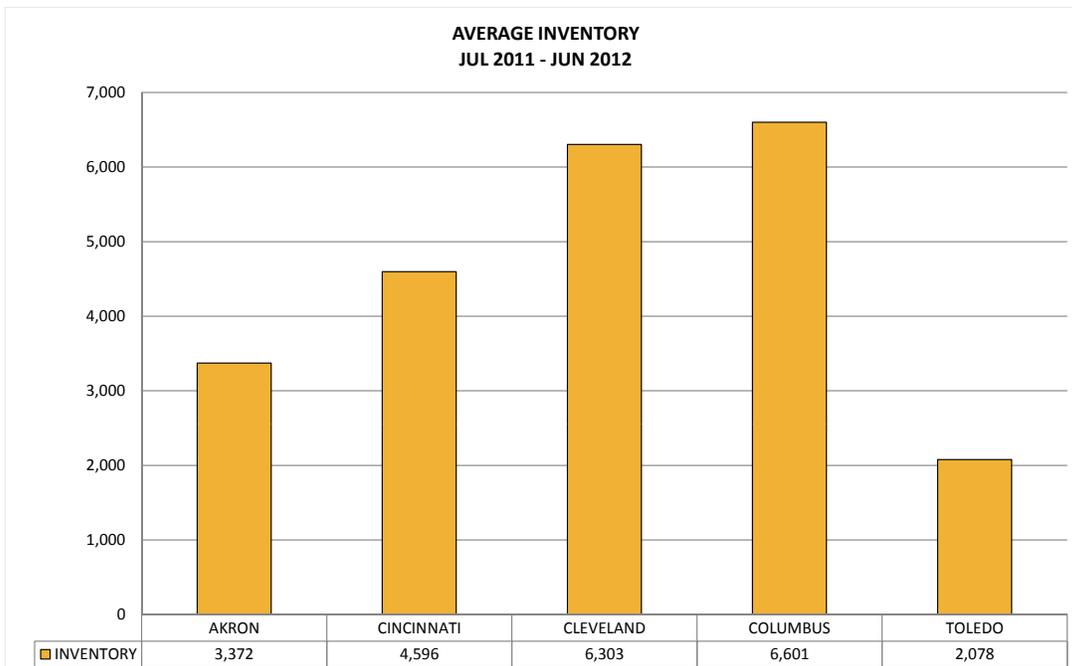
The previous mail pickup location did not offer the same convenience as the new location. In the past, attorneys and representatives would have to obtain a visitor badge at the security desk before going to Level B-2.

INVENTORY

Hearing Inventory

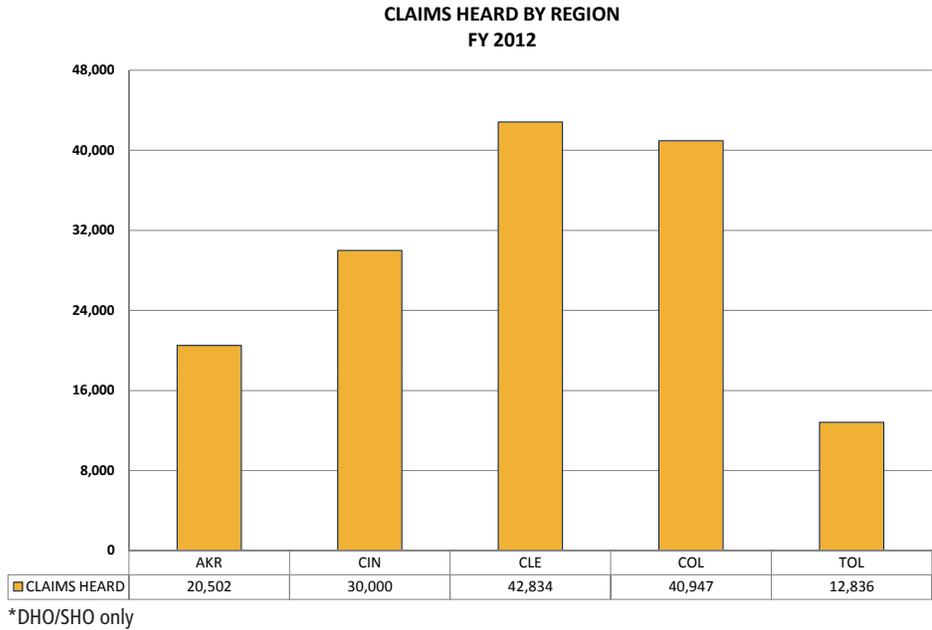
Industrial Commission workloads and performance are initiated by and heavily dependent upon the volume of new claims filed with the Bureau of Workers' Compensation along with new motion and appeal filings. IC inventory volume is subject to volatile daily swings dependent on appeal filings, claim flows from the BWC, docketing loads, and other factors.

Statewide average monthly DHO/SHO inventory was 22,950 claims for FY 2012. Regional breakdown of average inventories for FY 2012 is as follows: Columbus – 29 percent; Cleveland – 27 percent; Cincinnati – 20 percent; Akron – 15 percent; Toledo – 9 percent.

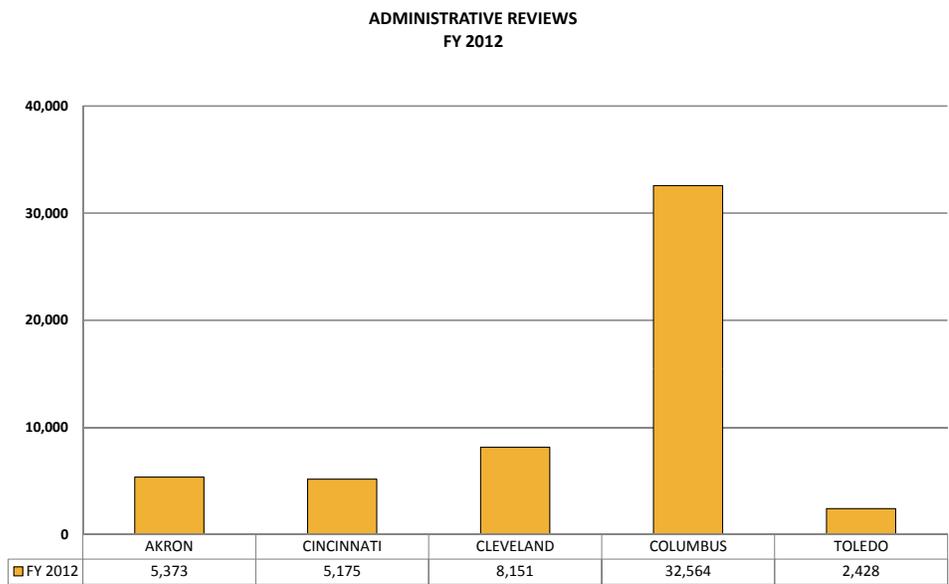


HEARING ACTIVITY

The Industrial Commission heard approximately 147,574 claims during FY 2012 at all adjudicatory levels. The total DHO volume accounts for 70 percent of overall hearings at 103,194 claims heard. Total SHO claims heard are recorded at 43,928 claims. Deputy venue claims heard totaled 125 in FY 2012 while the Commission venue recorded 327 claims heard.



Approximately 53,691 issues were captured that do not initially require formal adjudication via hearing (lump sum settlements, lump sum advancements, Hearing Administrator issues, PT adjustments, etc.). These issues receive administrative review and processing at the clerical, claims examining, word processing, and hearing officer levels but are not typically reflected in routine production reports under DHO or SHO dockets. These issues may subsequently result in a hearing under the normal adjudicatory process and are reflected accordingly under respective hearing venues.

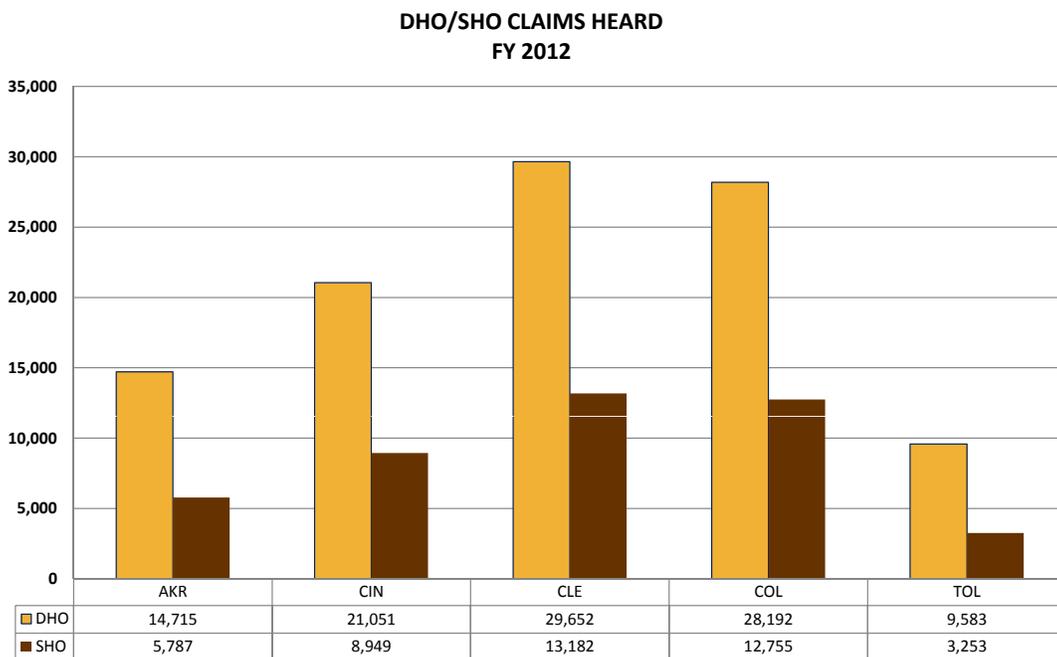


HEARING ACTIVITY

Regionally, the distribution of FY 2012 claims heard at DHO and SHO hearing levels is as follows: Cleveland – 29 percent; Columbus – 28 percent; Cincinnati – 20 percent; Akron – 14 percent; Toledo – 9 percent.

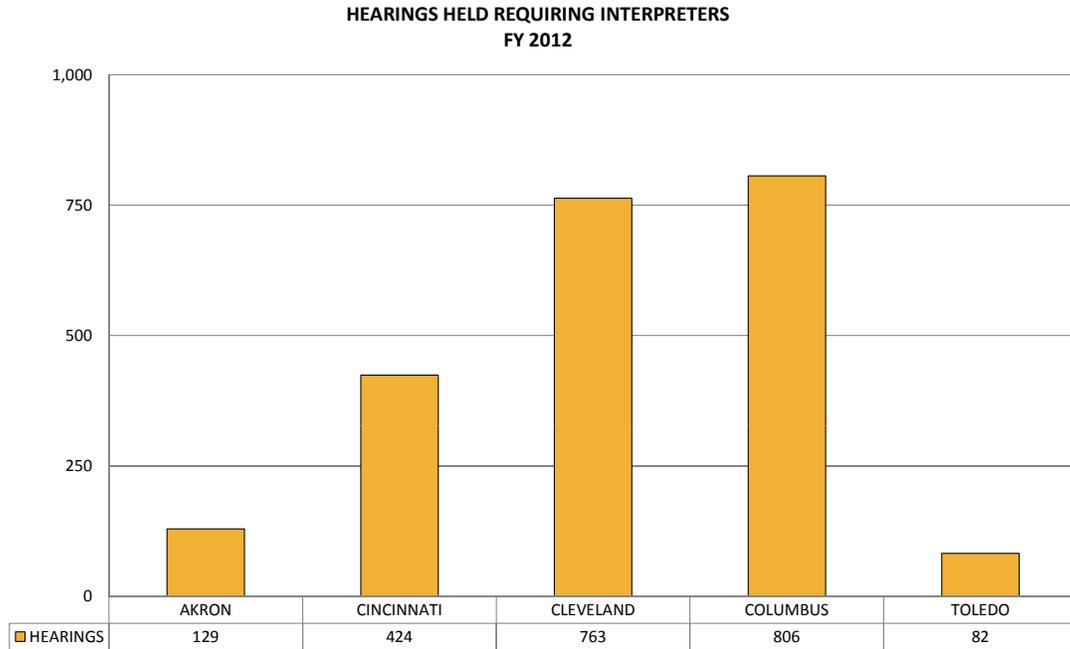
The total claims heard figure is inclusive of continuances, referrals, dismissals, and other final determinations made as a result of a hearing.

DHO and SHO hearings were conducted on 248 days during FY 2012. An average of 593 claims were heard per day at the DHO/SHO hearing levels. District Hearing Officers averaged 416 claims heard per day while Staff Hearing Officers averaged 177 claims heard per day.



HEARING ACTIVITY

A total of 2,204 hearing records were flagged as requiring interpreter services during FY 2012, marking a decrease of three hearing records from FY 2011.



Note: An interpreter may not have been present at each hearing.

Hearings Held by Employer Group

Hearings were conducted for approximately 38,011 different employers in FY 2012. Hearings for claims of private state funded employers accounted for 56 percent of all hearings while self-insuring employers accounted for 26 percent; public county employers accounted for 13 percent; and public state employers' claims accounted for 5 percent.

The volume of claims heard reflects actual employee workload production as each claim must be reviewed and processed at multiple levels to perfect the adjudication process. Given that multiple claims may be scheduled for presentation at one hearing, the hearings held figure will be slightly lower. For example, one PTD hearing may consist of three claims filed by an Injured Worker. Reporting would reflect these totals accordingly.

Employer Type	State Fund	Self-Insured	Pol. Sub (County)*	State*	Total
Hearings Held	82,698	38,453	19,031	6,653	146,835
Claims Heard*	83,110	38,640	19,144	6,680	147,574

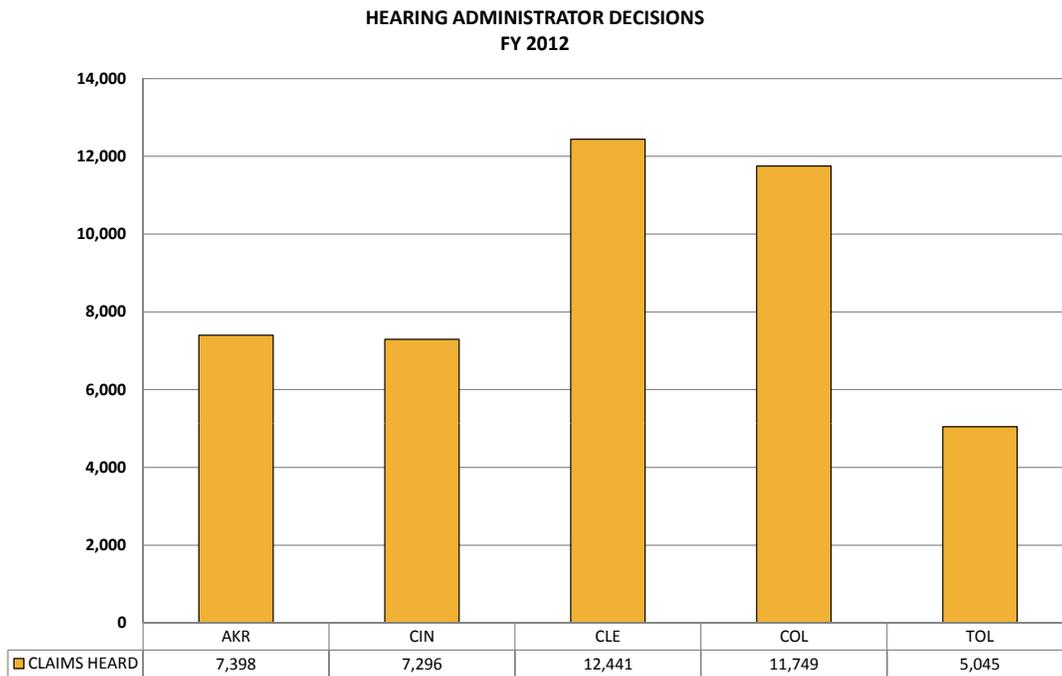
*Estimated

HEARING ACTIVITY

Hearing Administrator

Hearing Administrators perform a variety of functions that facilitate the adjudication process. In addition to processing approximately 25,758 continuance requests during FY 2012, they also processed 12,525 requests to withdraw motions or appeals and cancel scheduled hearings. Additionally, Hearing Administrators processed requests for extensions related to PTD filings and requests regarding other miscellaneous issues.

Statewide, Hearing Administrators made decisions on, or referred to hearing, approximately 43,929 issues during FY 2012. Regional volumes of Hearing Administrator activity are presented in the graph below.

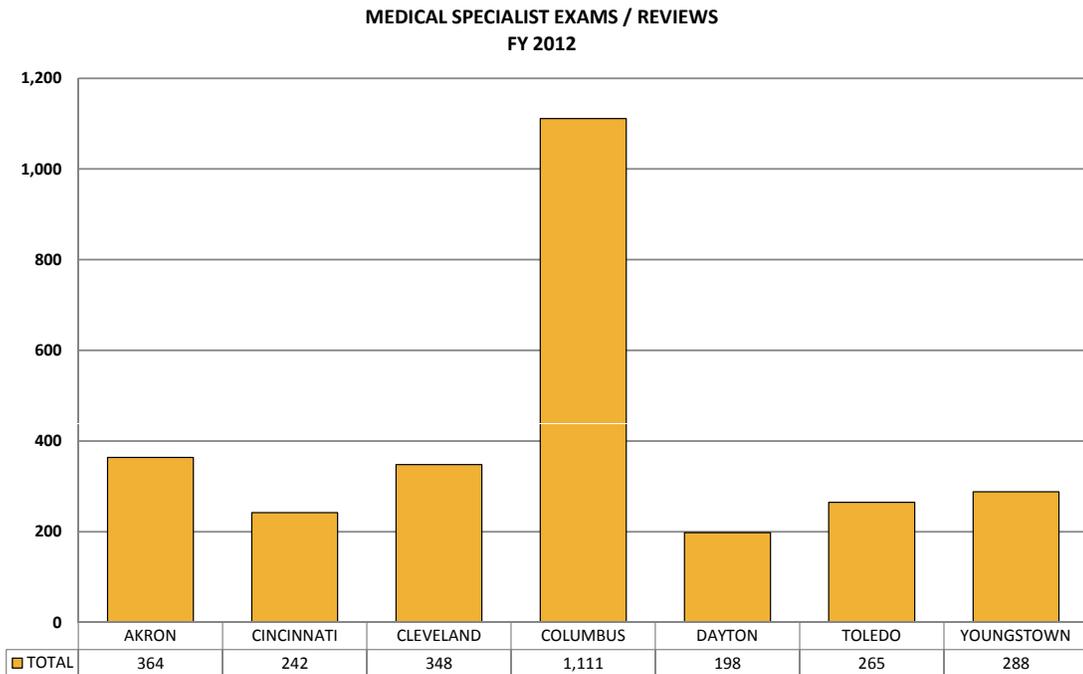


HEARING ACTIVITY

Medical Activity

The Industrial Commission schedules medical exams for injured workers who have filed for permanent total disability benefits related to work injuries. Most of these claims will result in a subsequent hearing. The volume of claims within the IC medical section as of June 30, 2012, was 546 claims.

A total of 2,816 specialist exams and medical reviews were performed on behalf of the IC during FY 2012.



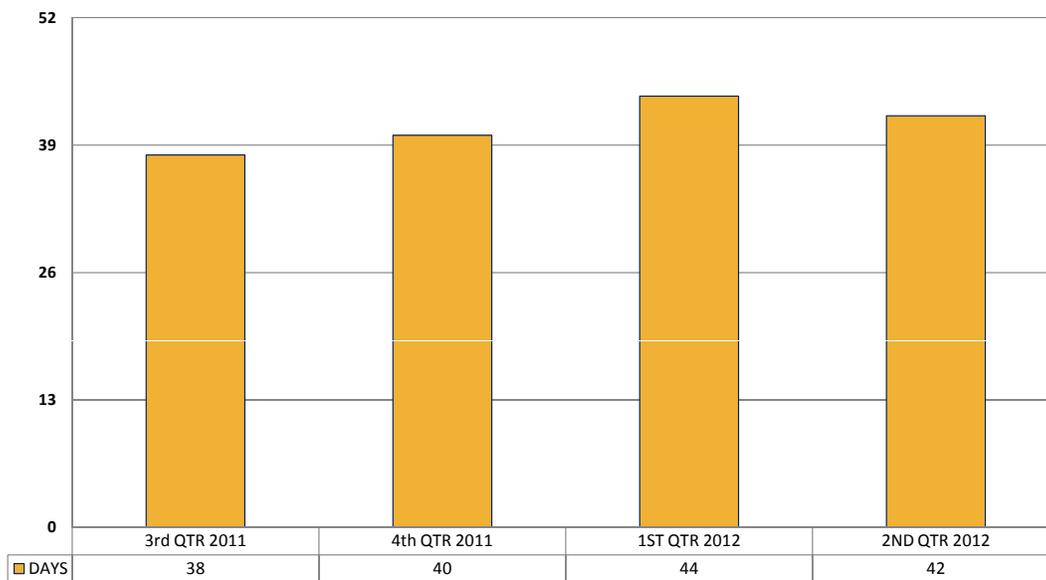
COMMISSION PERFORMANCE

Hearing timeframe performance mandates and benchmarks have been set forth in HB 107 and HB 413 for the DHO, SHO, and Commission hearing venues. On average, all IC offices and venues performed within the statutory limits set forth that require a claim to be heard within 45 days of a motion or appeal filing. The overall IC performance benchmarks for Filing to Mailing are set at 52 days for each hearing venue. This performance measure is based on the combination of the two statutory periods Filing to Hearing and Hearing to Mailing (45 + 7).

DHO Performance

District hearing officers (DHO) conduct hearings on two formal docket types – Allowance (primarily injury allowance, compensation, and treatment issues) and C-92 (permanent partial disability issues). Only allowance dockets fall under time frame requirements outlined in HB107. DHOs heard a total of 79,895 allowance docket claims during FY 2012. Of those, 65,670 qualified for inclusion in time studies. On average, the DHO process was completed within 41 days during FY 2012.

**DHO FILING TO MAILING PERFORMANCE
FY 2012**

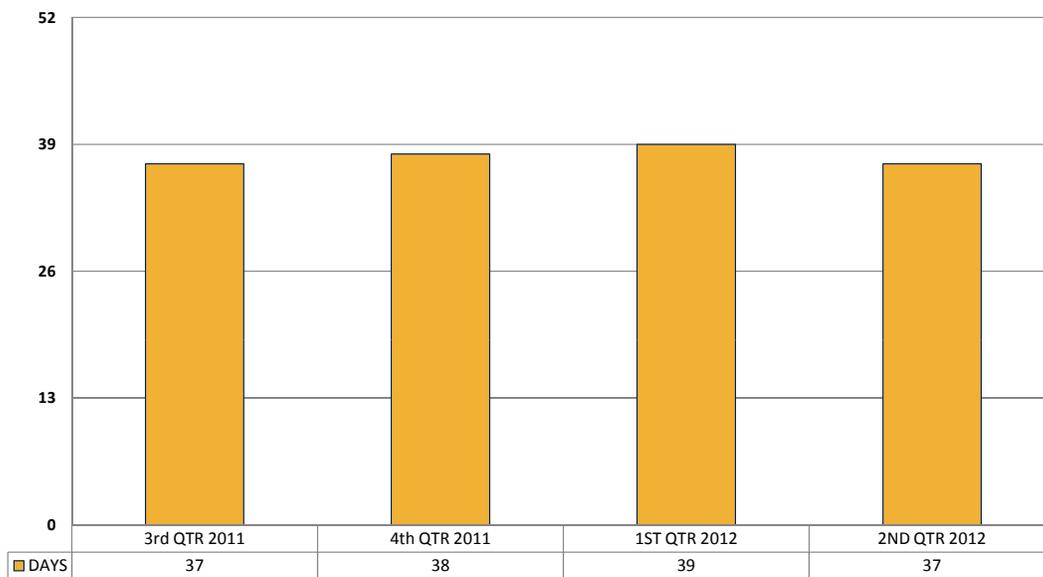


COMMISSION PERFORMANCE

SHO Performance

Staff hearing officers (SHO) conduct hearings on five formal docket types – Appeal (primarily injury allowance, compensation, and treatment issues), PTD (permanent total disability), Reconsideration (permanent partial disability issues), VSSR (Violations of Specific Safety Requirements), MISC (other issues not designated to a pre-defined docket type). Only appeal dockets fall under time frame requirements outlined in HB107. SHOs heard a total of 37,111 appeal claims during FY 2012. Of those, 31,767 qualified for inclusion in time studies. On average, the SHO process was completed within 38 days during FY 2012.

**SHO FILING TO MAILING PERFORMANCE
FY 2012**

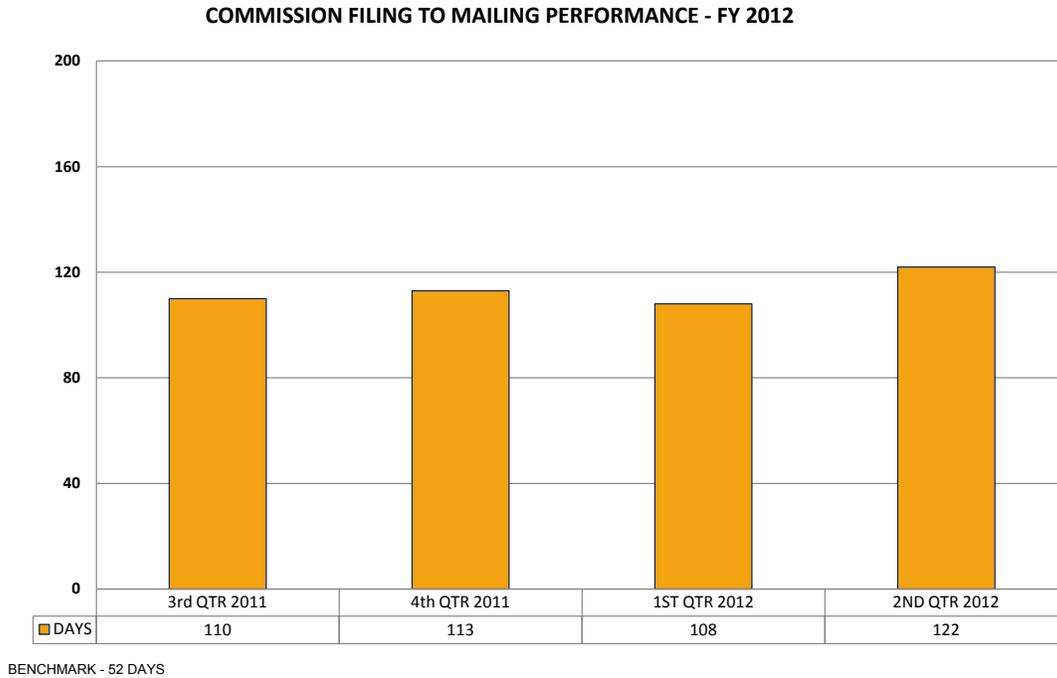


COMMISSION PERFORMANCE

Commission Performance

For hearings conducted during FY 2012, the Commission venue average for the period Filing of Appeal to Hearing Date (F-H) is 43 days.

The Commission venue average for the Filing of Appeal to Mailing of Order time frame is 113 days.

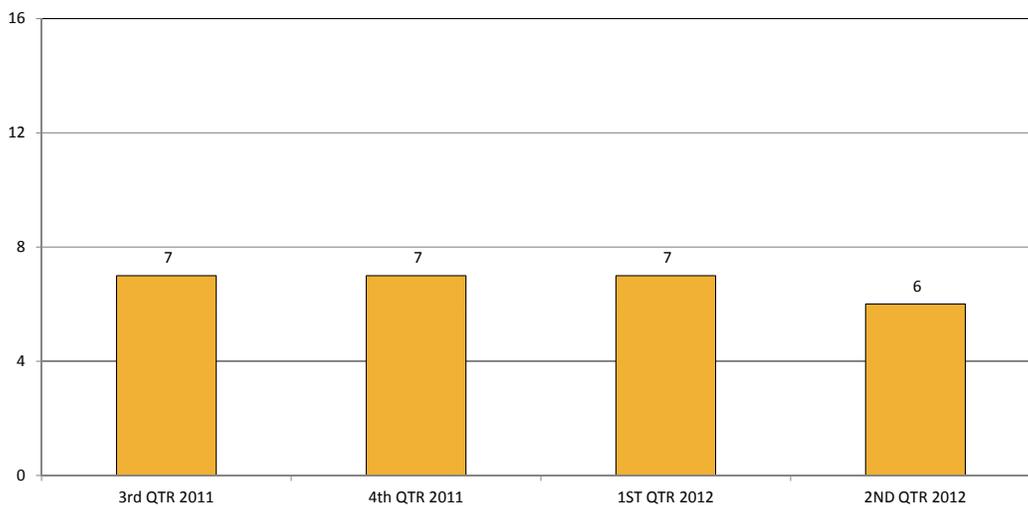


COMMISSION PERFORMANCE

SHO Refusal Order Performance

Appeals to SHO orders are discretionary in nature and processed centrally by the Commission Level Hearing Section in Columbus. Per mandate, if an appeal is refused, it is to receive a refusal order within 14 days of the expiration period in which an appeal may be filed to an SHO order.

SHO APPEAL ORDER EXPIRATION DATE TO REFUSAL ORDER MAILING DATE
FY 2012



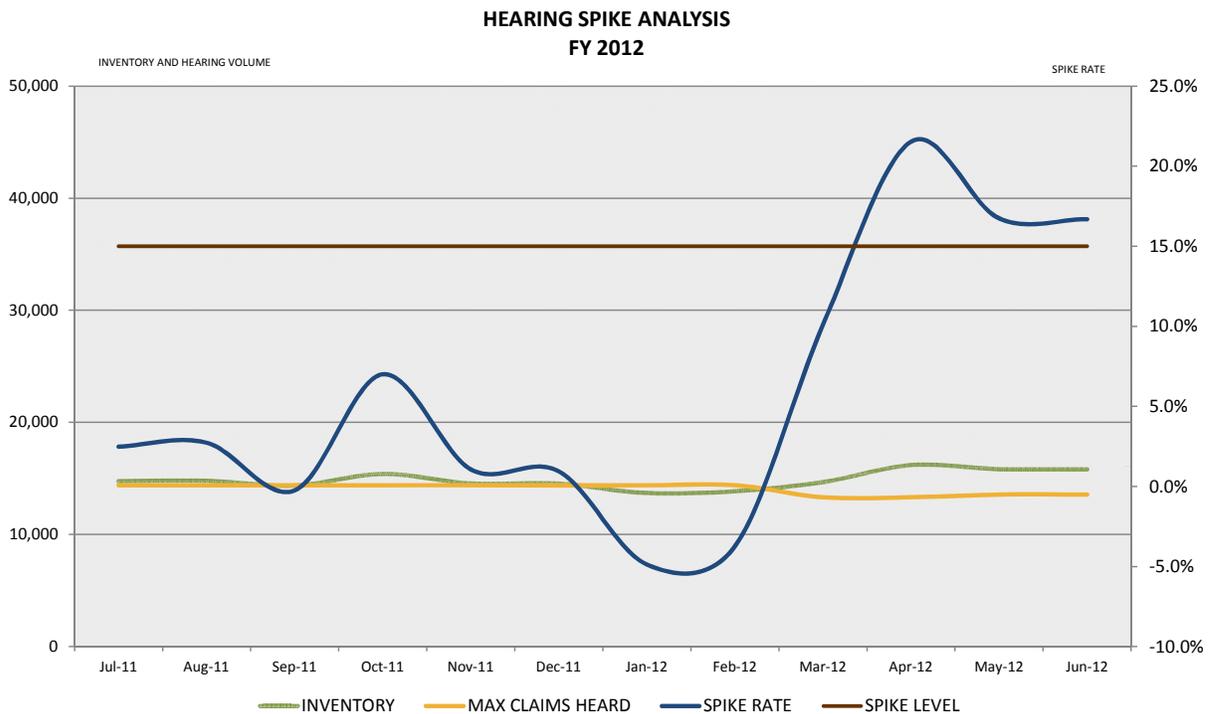
COMMISSION PERFORMANCE

Hearing Spike Analysis

The Hearing Spike Analysis is compiled in conformance with the directives set forth in House Bill 413 and IC Resolution 96-1-05. Per this directive, a hearing spike occurs when the volume of claims ready for hearing at the end of any given month exceeds the maximum number of DHO/SHO claims heard in any of the preceding twelve calendar months by fifteen percent.

A hearing spike did occur during the fourth quarter of FY 2012.

In late 2011, the Industrial Commission implemented a new method to examine claims more effectively and to prepare them for hearing more efficiently. Internally, the Commission promoted and trained eleven new claims examiners to handle and process claims, which resulted in a much larger number of claims ready for hearing. In order to move those claims through the hearing process, the Commission altered the current docketing policy and continuance guidelines until the hearing spike was alleviated.



OHIO SUPREME COURT RULINGS - FY 2012

An Injured Worker Who Voluntarily Retires from Employment Is Not Entitled to Temporary Total Disability Compensation Without Contemporaneous Evidence of a Medical Inability to Perform Other Work During the Post-Retirement Years

State ex rel. Corman v. Allied Holdings, Inc., 2012-Ohio-2579 (June 14, 2012)

Issue: Whether the Industrial Commission (“IC”) abused its discretion by (1) finding that the injured worker (“IW”) had voluntarily retired from the workforce; and (2) finding that the IW’s retirement, at a time when he was unable to return to his former position of employment (“FPE”), precluded the reinstatement of temporary total disability compensation (“TTDC”).

Holding: In a per curiam decision, the Ohio Supreme Court affirmed the decision of the Tenth District Court of Appeals, denying the IW’s request for a writ of mandamus. The Court specifically held that TTDC is to compensate for the loss of earnings while an IW heals and that there can be no loss of earnings where an IW has abandoned the active work force, relying upon the holding in *State ex rel. Pierron v. Indus. Comm.*, 120 Ohio St.3d 40, 2009-Ohio-5245 (“*Pierron*”). The Court rejected the IW’s argument that *Pierron* was inapplicable since his retirement was injury-induced. The Court noted that this fact did not affect its decision since there was no contemporaneous evidence of a medical inability to perform other work during the years since his retirement.

Case Summary: The IW suffered an injury on 1/30/2002 while working as a car hauler and truck driver. The claim was allowed for a right knee strain and right medial meniscus tear. The IW underwent three surgeries in April 2002 and then began an aggressive regime of physical therapy. In January 2003, the IW’s attending physician indicated that the IW could return to work with restrictions but did not provide a specific return to work date. Later that same month, the Employer had the IW examined by Dr. Randolph, who opined that the IW’s allowed conditions had reached maximum medical improvement (“MMI”) and that the IW was capable of returning to work with permanent restrictions of no prolonged sitting or standing, no squatting, no walking on uneven surfaces, and no climbing of stair and ladders.

On 4/03/2003, the Employer filed a motion requesting that TTDC be terminated based upon Dr. Randolph’s report. Thereafter, on 4/07/2003, the IW sent a letter to his retirement fund, indicating that he would like to start his retirement on April 1, 2003. On 7/14/2003, a District Hearing Officer (“DHO”) granted the Employer’s motion, finding the IW had attained MMI and terminating TTDC.

Two days later, the IW filed a motion, requesting the additional allowance of aggravation of pre-existing osteoarthritis right knee based upon Dr. Lawhon’s 6/03/2003 office note wherein the physician had indicated that he agreed with Dr. Randolph’s MMI opinion. The IW later submitted the 12/09/03 and 12/23/2003 reports of Dr. Bender as further support for this motion. Dr. Bender opined that the requested condition was related to this claim and that it had not yet attained MMI since the IW was a candidate for a total right knee replacement. In the later report, Dr. Bender noted that if the IW did not proceed with the right total knee replacement surgery, then his allowed conditions were at MMI. The IC granted this motion in January 2004.

OHIO SUPREME COURT RULINGS

Despite the recommendation for surgery, the IW did not undergo surgery until 3/30/2009. Thereafter, the IW filed a motion requesting TTDC from the date of surgery and continuing. On 6/10/2009, a DHO denied the request for TTDC, finding that the IW's voluntary retirement on 4/01/2003 precluded the reinstatement of TTDC. The DHO relied upon the IW's hearing room testimony regarding the higher payment a regular retirement afforded him, the IW's 4/07/2003 letter and the fact that the IW had not worked since the date of his retirement. The DHO additionally rejected the IW's argument that he was entitled to TTDC since he was receiving the same on the date of his retirement. The DHO specifically distinguished the decisions in *State ex rel. OmniSource Corp. v. Indus. Comm.*, 113 Ohio St.3d 303, 2007-Ohio-1951, and *State ex rel. Reitter Stucco, Inc. v. Indus. Comm.*, 117 Ohio St.3d 71, 2008-Ohio-499; both decisions involved terminations for violation of a written work rule. The IW appealed and filed an affidavit in which he alleged that he retired secondary to his allowed conditions. On 9/01/2009, a Staff Hearing Officer ("SHO") affirmed the DHO's order, finding that the IW's retirement was voluntary and an abandonment of the workforce. The SHO relied on the IW's 4/07/2003 letter, the IW's testimony, and the Pierron decision.

The IC refused the IW's appeal, and the IW filed a complaint in mandamus in the Tenth District Court of Appeals. In 2010, the court of appeals denied the requested writ, finding that the IC had not abused its discretion in finding that the IW had voluntarily abandoned the entire work force upon his retirement in April 2003 and in finding that this abandonment precluded the reinstatement of TTDC. The court of appeals held that a departure from the entire workforce for reasons unrelated to an industrial injury precludes an award of TTDC since any loss of earnings was not causally related to that injury. The IW's appeal to the Supreme Court followed.

Injured Worker Was Ineligible to Receive Temporary Total Disability Compensation If the Injury Was Not the Reason that Injured Worker Could Not Return to Former Position of Employment

State ex rel. Akron Paint & Varnish, Inc. v. Gullotta, 2012-Ohio-542 (February 15, 2012)

Issue: Whether the Industrial Commission ("IC") abused its discretion when it found that the allowance of an additional condition was evidence of new and changed circumstances sufficient to justify its exercise of continuing jurisdiction to award a new period of temporary total disability compensation ("TTDC") following the injured worker's ("IW") refusal of suitable light-duty work.

Case Summary: In January 2007, the IW sustained a lumbar sprain while at work and received TTDC for a few weeks, returning to work in February in a light-duty position. Subsequently, in March, the IW's attending physician reduced the IW's work restrictions, and the Employer responded by increasing the IW's job duties. On April 11, 2007, the IW complained to his attending physician that his increased job duties were causing him pain. Despite his complaints, the physician recommended the same work restrictions. Thereafter, the IW complained to the Employer that he could not perform his light-duty job secondary to his increased pain. In response, the Employer offered him another position within his physical capacity; however, the IW refused that position and resigned his employment. Four months later, the IW requested TTDC from April 24 through November 4, 2007. A Staff Hearing Officer ("SHO") ultimately denied the request, finding that the requested period of disability was unrelated to the industrial injury and was, rather, the result of his refusal of suitable alternative employment.

OHIO SUPREME COURT RULINGS

In March 2008, the claim was amended to include the condition of aggravation of preexisting hypertrophy, and the IW requested TTDC from November 2007 and continuing based upon the additional allowance. A District Hearing Officer (“DHO”) denied the request based on the IW’s refusal of a good-faith light-duty job offer and upon the lack of proof that the newly allowed condition resulted in different work restrictions that prevented the IW from performing the light-duty job. On appeal, an SHO vacated the DHO’s order and granted the IW’s request. The SHO specifically found that the newly allowed condition in combination with new, more restrictive functional restrictions was evidence of new and changed circumstances and that this change justified the award of TTD. Thereafter, the IC refused the Employer’s appeal, and the Employer filed a complaint in mandamus.

A magistrate recommended that the court grant the requested writ, finding an abuse of discretion in the IC’s conclusion that there was sufficient evidence of new and changed circumstances since its prior finding that the IW had refused a valid light-duty job offer. The magistrate found that there was no evidence that the IW’s condition had worsened since his refusal of the Employer’s light-duty offer. The Tenth District Court of Appeals agreed that evidence supportive of new and changed circumstances was lacking. The court of appeals noted that the increase in treatment and restrictions following the additional allowance did not demonstrate an inability to perform the offered light-duty work where that evidence did not explicitly reference the requirement of the light duty job. The IW’s appeal to the Supreme Court followed.

Injured Worker’s Request to Authorize Further Surgery Was Properly Denied When the Procedure Was Unrelated to the Allowed Conditions in the Claim

State ex rel. George v. Indus. Comm., 2011-Ohio-6036 (November 30, 2011)

Issue: Whether the medical report upon which the Industrial Commission (“IC”) relied to deny authorization of treatment contained internal inconsistencies rendering the report unreliable such that it was not “some evidence” upon which the IC could rely.

Holding: In a per curiam decision, the Ohio Supreme Court vacated the appellate court’s decision and denied the writ of mandamus. The Court held that only inconsistencies that contradict a physician’s opinion on a critical question are inherently unreliable and require that the report be excluded from evidentiary consideration. In the instant case, Dr. Hauser’s inconsistent statements did not affect his opinion on the critical issue of whether additional surgery was necessary. The medical opinion was based solely upon the injured worker’s (“IW”) normal shoulder examination and, as such, any alleged inconsistencies were irrelevant.

Case Summary: The IW sustained a right shoulder injury that was initially allowed for the conditions of right shoulder labral tear and right shoulder partial thickness tear of rotator cuff. The IW underwent surgery to treat these conditions in 2004 and then returned to work without medical restriction. The IW did not have any additional treatment to his right shoulder until 2008, when he returned to his surgeon, Dr. Watson, complaining of increased pain in his right shoulder with no known new injury. Dr. Watson performed an MRI on the shoulder and interpreted it as showing deterioration in the IW’s condition. As a result, Dr. Watson filed a C9 report, requesting additional conditions in the claim.

OHIO SUPREME COURT RULINGS

The Employer had the IW examined by Dr. Holzaepfel, who concurred that the IW suffered from the requested conditions but found the conditions to be unrelated to the claim. Subsequently, Dr. Watson provided an addendum report wherein he reiterated his opinion that the requested conditions were causally related to this claim and that video surveillance of the IW performing repetitive heavy lifting did not change that opinion. In response, Dr. Holzaepfel authored an addendum report again opining that the requested conditions were unrelated to the claim. The IC granted the IW's motion for the requested additional allowances.

Thereafter, Dr. Watson submitted a C-9 requesting right shoulder arthroscopy and postoperative physical therapy for the newly allowed conditions. In response, the Employer had an independent examination conducted by Dr. Hauser. Dr. Hauser indicated that the IW had no objective findings on his physical examination other than the rupture of the biceps tendon; a condition that the physician opined was unrelated to the claim but related to working out at the gym. Dr. Hauser then concluded that additional shoulder surgery was not needed because the injured worker's physical examination revealed nothing wrong with his shoulder. A District Hearing Officer authorized the surgery; however, on appeal, a Staff Hearing Officer denied authorization of the surgery, relying upon Dr. Hauser's report. The IC denied further appeal and the IW filed a mandamus action with the Tenth District Court of Appeals.

The appellate court held that the IC abused its discretion when it relied upon Dr. Hauser's report, finding that the report contained internal inconsistencies that disqualified the report from evidentiary consideration. The court cited to Dr. Hauser's notation that the IW first treated with Dr. Watson in 2008 when treatment actually began in 2003. The court additionally noted that Dr. Hauser indicated there was a lack of available medical evidence and then discussed in detail the multiple medical reports on file. The court also indicated that, while Dr. Hauser noted all of the allowed conditions, the physician did not accept them as allowances in reaching his conclusions. Finally, the court cited to Dr. Hauser's opinion that the newly allowed conditions had resolved in 2004, long before being recognized in the claim. Both the Employer and the IC appealed the decision to the Supreme Court.

OHIO SUPREME COURT RULINGS

Industrial Commission Can Invoke Continuing Jurisdiction under R.C. 4123.52 to Correct Clear Mistake of Law, Including Reopening of Permanent Total Disability Eligibility Issue, to Consider Effect of Injured Worker's Retirement upon Eligibility

State ex rel. Mackey v. Ohio Dept. of Edn., 2011-Ohio-4910 (September 29, 2011)

Issue: Whether the Industrial Commission ("IC") abused its discretion (1) by exercising its continuing jurisdiction; and (2) by finding that the injured worker ("IW") had voluntarily retired from the workforce.

Holding: In a per curiam decision, the Ohio Supreme Court affirmed the appellate court decision denying the IW's request for a writ of mandamus. The Court specifically held that it was a clear mistake of law for the Staff Hearing Officer ("SHO") to fail to determine whether the IW's retirement was voluntary or involuntary because it was key to her eligibility for a permanent total disability ("PTD") award. Moreover, the Court found that the IC did not abuse its discretion in denying PTD since, at the time the IW retired, there was no evidence on file that the allowances in the claim interfered with IW's ability to work.

Case Summary: The IW suffered an injury in 1985 that was allowed for "herniated disc, spinal stenosis L4-5." The claim was subsequently amended to include the conditions of "anxiety state" and "L4 over L5 degenerative anterolisthesis; L5 radiculopathy, left." The IW underwent low-back surgery following this injury, returning to work for the Employer in 1986. The IW then worked without restriction from that time until 2005 when she retired at the age of 65.

In 2008, the IW filed an application for PTD accompanied by a report from Dr. Lundeen, who opined that the allowed physical conditions rendered the IW permanently and totally disabled. At the hearing on her application, the Employer argued that the IW had voluntarily abandoned the work force by retiring from her position. The SHO granted the IW's PTD application based upon Dr. Lundeen's report and did not address the Employer's argument within the order.

Thereafter, the Employer requested reconsideration by the IC, arguing that the SHO failed to consider whether the IW had voluntarily removed herself from the work force. The IC granted the request and set the matter for hearing before the IC Members. After the hearing, the IC issued an order finding that it was a mistake of law for the SHO to fail to address the Employer's voluntary retirement argument; the IC also denied the IW's requested PTD based on her voluntary abandonment of the workforce and, alternatively, on a finding that the IW retained the medical and vocational ability to engage in sustained remunerative employment.

In response to this decision, the IW filed a complaint in mandamus in the Tenth District Court of Appeals. The court of appeals denied the requested writ, finding that the IC had not abused its discretion in exercising its continuing jurisdiction and in denying PTD. The court held that the SHO committed a mistake of law by not ruling on the issue of voluntary retirement since the resolution of this issue may have led to the conclusion that the IW was precluded from receiving PTD. The court further held that, given the lack of medical evidence contemporaneous to the retirement, it was not an abuse for the IC to determine that the IW's retirement at the age of 65 had been voluntary. The IW appealed the denial of the mandamus writ to the Supreme Court.

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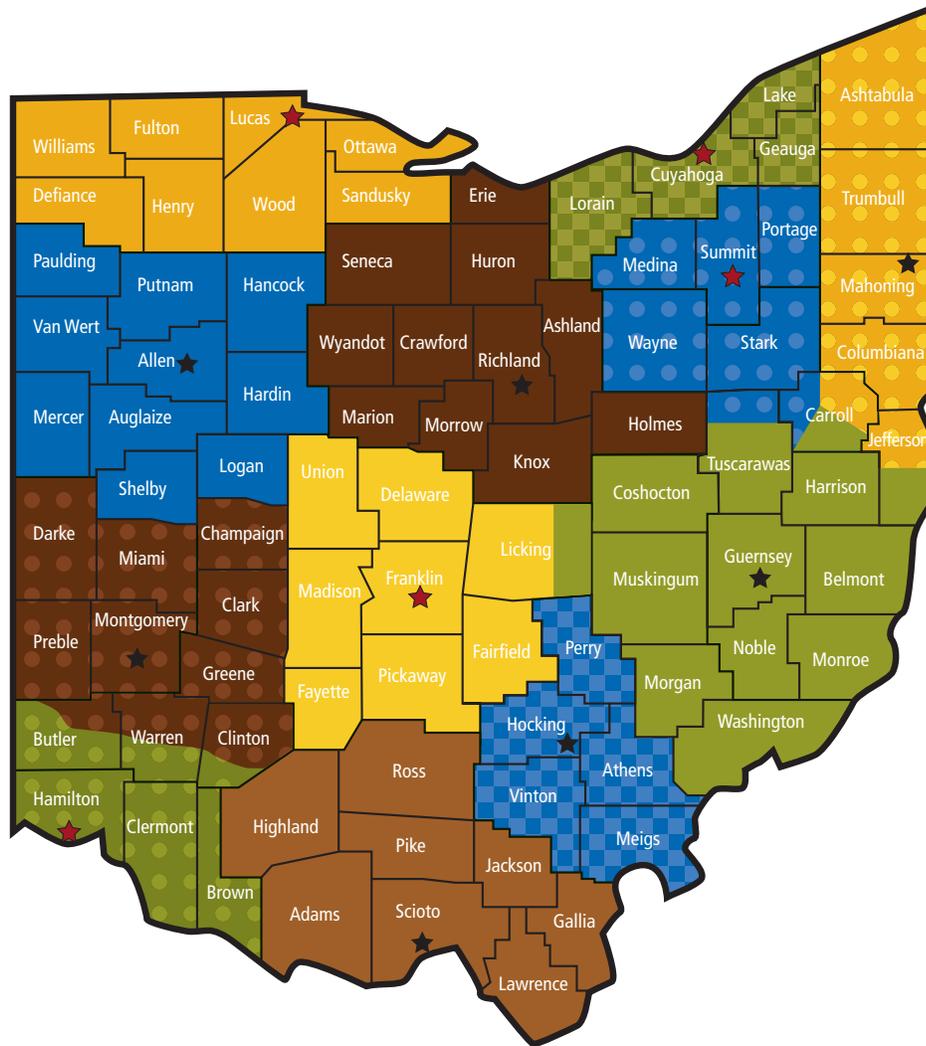
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*Medical Examination Locations

DISTRICT OFFICES ASSIGNMENTS MAP

Our 12 offices in 5 regions blanket the state. IC office locations are carefully chosen so that most injured workers do not have to drive more than 45 minutes from their home to get to their hearing.



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|-------------------|-----------------|-------------------|
| Akron | Columbus | Mansfield |
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