

OHIO COURT OF APPEALS, TENTH APPELLATE DISTRICT

State ex rel. Huntington Bancshares Inc. v. Berry

2022-Ohio-531 (Ohio Ct. App. 2022) · No. 20AP-161 · Decided February 24, 2022

SUMMARY

The Tenth District Court of Appeals of Ohio denied Huntington Bancshares' request for a writ of mandamus challenging the Industrial Commission's calculation of Laura Berry's average weekly wage for workers' compensation benefits. The court held that the commission had some evidence supporting application of the special-circumstances exception under Ohio Revised Code section 4123.61, including Berry's recent reentry into the workforce after caring for an ill family member. The court overruled Huntington's objection to the magistrate's decision, with a modification correcting the number of excluded weeks from 42 to 46.

CASE DETAILS

COURT	Ohio Court of Appeals, Tenth Appellate District
WRITING FOR THE COURT	Dorrian, J.; Klatt, J.; Mentel, J.
JURISDICTION	Ohio
DECIDED	February 24, 2022
DOCKET	20AP-161
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Huntington sought an original writ of mandamus directing the Industrial Commission of Ohio to vacate its order calculating Laura Berry's average weekly wage and to issue a lower calculation. After a magistrate recommended denial of the writ, Huntington objected. The appellate court overruled the objection, modified the magistrate's decision to correct the number of excluded weeks, adopted the modified decision, and denied the writ.
STANDARD OF REVIEW	In a mandamus action reviewing an Industrial Commission determination, the court determines whether the Commission abused its discretion by issuing an order unsupported by some evidence. The Commission is the exclusive fact-finder and has sole responsibility to evaluate the weight and credibility of evidence; the reviewing court may not second-guess those determinations.

PRECEDENTIAL VALUE	Published Ohio Court of Appeals decision; precedential under the court's published-opinion status.
PARTIES	State ex rel. Huntington Bancshares Incorporated v. Laura Berry, Industrial Commission of Ohio

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Industrial Commission abused its discretion by applying the special-circumstances exception in Ohio Revised Code section 4123.61 and excluding 46 weeks from the average weekly wage divisor.
2. Whether some evidence supported the Commission's characterization of Berry's pre-Huntington period as unemployment while she cared for an ill family member and sought employment.
3. Whether Huntington established a clear legal right to mandamus relief based on the Commission's average weekly wage calculation.

HOLDINGS

1. The Commission did not abuse its discretion by finding that Berry's injury six weeks after re-entering the workforce, following a 46-week absence while caring for an ill family member, constituted a special circumstance under Ohio Revised Code section 4123.61 and by dividing her Huntington earnings by six weeks rather than 52.
2. Some evidence supported the Commission's finding that Berry was unemployed while caring for an ill family member and seeking work after the Commission rejected her unsupported evidence of caregiving wages.
3. Huntington failed to establish a clear legal right to relief or a clear legal duty by the Commission, and the requested writ of mandamus was properly denied.

KEY QUOTATIONS

"The commission is the exclusive fact-finder with sole responsibility to evaluate the weight and credibility of the evidence." (§ 17)

"When special circumstances are established by the claimant, the commission has broad discretion to choose a method for calculating the average weekly wage." (§ 21)

"We therefore overrule Huntington's objection to the magistrate's decision and adopt the magistrate's modified decision as our own, including the findings of fact and conclusions of law contained therein."

Accordingly, the requested writ of mandamus is hereby denied.” (§ 26)

FACTUAL BACKGROUND

Berry began working for Huntington on May 7, 2018, and sustained a work-related right humeral shaft fracture on June 12, 2018, after six weeks of employment. Huntington calculated her average weekly wage at \$68.94 based on a 52-week divisor, while Berry sought inclusion of alleged caregiving income and craft-sale proceeds earned before she began working for Huntington. The staff hearing officer rejected the caregiving income for lack of documentary support, but treated Berry's 46-week absence from the workforce while caring for an ill family member and seeking employment as a special circumstance and divided her Huntington earnings by six weeks, producing an average weekly wage of \$597.48.

PROCEDURAL HISTORY

Berry's workers' compensation claim was allowed for a right humeral shaft fracture. The Industrial Commission's staff hearing officer excluded 46 weeks from the average weekly wage divisor under the special-circumstances provision of Ohio Revised Code section 4123.61 and calculated an average weekly wage of \$597.48; the Commission refused Huntington's appeal. Huntington filed a mandamus action in the Tenth District, whose magistrate recommended denial of relief. The appellate court independently reviewed the record, overruled Huntington's objection, adopted the modified magistrate's decision, and denied mandamus.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Wireman v. Indus. Comm., 49 Ohio St. 3d 286, 287 (1990)
- State ex rel. Riley v. Indus. Comm., 9 Ohio App. 3d 71, 73 (10th Dist. 1983)
- State ex rel. Erhard v. Indus. Comm., 55 Ohio App. 3d 186, 188 (10th Dist. 1988)
- State ex rel. Clark v. Indus. Comm., 69 Ohio St. 3d 563, 565 (1994)
- State ex rel. Mattscheck v. Indus. Comm., 2013-Ohio-285, ¶ 4 (Ohio Ct. App.)
- State ex rel. Baker Concrete Constr., Inc. v. Indus. Comm., 102 Ohio St. 3d 149, 2004-Ohio-2114, ¶ 23
- State ex rel. Sutherland v. Indus. Comm., 10th Dist. No. 85AP-866 (Sept. 25, 1986)
- State ex rel. Pressley v. Indus. Comm., 11 Ohio St. 2d 141 (1967)
- State ex rel. Elliott v. Indus. Comm., 26 Ohio St. 3d 76, 78-79 (1986)
- State ex rel. Hutton v. Indus. Comm., 29 Ohio St. 2d 9, 13 (1972)
- State ex rel. Perez v. Indus. Comm., 147 Ohio St. 3d 383, 2016-Ohio-5084, ¶ 20
- State ex rel. Burley v. Coil Packing, Inc., 31 Ohio St. 3d 18, 20-21 (1987)
- State ex rel. Welsh Ents., Inc. v. Indus. Comm., 2020-Ohio-2801, ¶ 26 (Ohio Ct. App.)
- State ex rel. Singleton v. Indus. Comm., 71 Ohio St. 3d 117, 118 (1994)
- State ex rel. Hord v. Combs, 2005-Ohio-1532, ¶ 14 (Ohio Ct. App.)

- Rini v. Unemp. Comp. Bd. of Rev., 9 Ohio App. 3d 214, 215 n.1 (8th Dist. 1983)
- State ex rel. Valley Pontiac Co., Inc. v. Indus. Comm., 71 Ohio App. 3d 388, 393 (10th Dist. 1991)
- State ex rel. Huff v. Group Mgt. Servs., 2008-Ohio-6221, ¶¶ 10, 12, 16 (Ohio Ct. App.)
- Smith v. Indus. Comm., 25 Ohio St. 3d 25, 27 (1986)
- State ex rel. Ohio State Univ. Hosp. v. Indus. Comm., 118 Ohio St. 3d 170, 2008-Ohio-1969, ¶ 17
- State ex rel. Howard v. Indus. Comm., 2008-Ohio-5616, ¶ 7 (Ohio Ct. App.)
- State ex rel. Baker v. Indus. Comm., 86 Ohio St. 3d 575 (1999)
- State ex rel. Tyler v. Indus. Comm., 2004-Ohio-2818 (Ohio Ct. App.)
- State ex rel. Kidwell v. Indus. Comm., 2003-Ohio-4509 (Ohio Ct. App.)
- State ex rel. Lewis v. Diamond Foundry Co., 29 Ohio St. 3d 56 (1987)
- State ex rel. Teece v. Indus. Comm., 68 Ohio St. 2d 165 (1981)