

SUPREME COURT OF OHIO

State ex rel. Lampkins v. Dayton Malleable, Inc.

45 Ohio St. 3d 14 (Ohio 1989) · Decided August 16, 1989

SUMMARY

The Ohio Supreme Court held that medical reports from non-examining physicians did not constitute "some evidence" supporting the Industrial Commission's denial of temporary total disability compensation. The court affirmed the directive to vacate the denial order but reversed the directive requiring an award, remanding for the commission to determine eligibility and identify supporting evidence.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Sweeney, J.; Holmes, J.; Wright, J.; H. Brown, J.; Resnick, J.; Douglas, J.
JURISDICTION	Ohio
DECIDED	August 16, 1989
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Mandamus review of an Industrial Commission order denying temporary total disability compensation. The Supreme Court of Ohio reviewed an appellate court judgment that directed the Commission to vacate its denial and to award compensation.
STANDARD OF REVIEW	In mandamus, the court asks whether the Industrial Commission abused its discretion; where the record contains some evidence supporting the Commission's findings, mandamus will not lie. The court reviewed whether the Commission's order was supported by some evidence.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential.
PARTIES	Dayton Malleable, Inc. v. State ex rel. Lampkins

TOPICS

- judicial review of agency action
- agency adjudication
- administrative law
- workers compensation
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Walker and Walsh reports constituted some evidence supporting the Industrial Commission's denial of temporary total disability compensation.
2. Whether the appellate court could order the Commission to award temporary total disability compensation merely because the evidence supporting the denial was insufficient.

HOLDINGS

1. The Walker report was not some evidence because it contained no express or implied indication that Walker considered or accepted the findings of the examining physicians.
2. The Walsh report was not some evidence because it did not show that the medical reports were reviewed and considered and did not address the claimant's ability to return to his former position of employment.
3. A lack of evidence supporting the denial of temporary total disability benefits cannot automatically be treated as some evidence supporting an award of those benefits.

KEY QUOTATIONS

"Where the record contains "some evidence" to support the commission's findings, there has been no abuse of discretion and mandamus will not lie." (14)

"Therefore, a lack of evidence supporting a denial of temporary total disability benefits cannot automatically translate into some evidence supporting an award of such benefits." (17)

FACTUAL BACKGROUND

The Commission relied expressly on reports from non-examining physicians Walker and Walsh in denying temporary total disability compensation. Walker stated that he saw no reason related to the allowed injury why the claimant could not return to usual and customary duties, but did not indicate that he considered or accepted the examining physicians' findings. Walsh referred to information from only three physicians despite reports from six physicians being on file, and did not address whether the claimant could return to his former position of employment.

PROCEDURAL HISTORY

The Industrial Commission denied compensation in a June 27, 1986 order. An appellate court directed the Commission to vacate that order and ordered an award of temporary total disability compensation for the period from September 1, 1981 through February 1984. The Supreme Court affirmed the directive to vacate the denial, reversed the mandatory award, and remanded to the Commission for a new determination supported by identified evidence.

DISPOSITION

REMAND INSTRUCTIONS

The Industrial Commission was directed to determine whether the appellee qualifies for temporary total disability compensation and to identify the evidence supporting its finding.

CASES CITED

- State ex rel. Burley v. Coil Packing, Inc., 31 Ohio St. 3d 18, 508 N.E. 2d 936 (1987)
- State ex rel. Wallace v. Industrial Commission, 57 Ohio St. 2d 55, 386 N.E. 2d 1109 (1979)
- State ex rel. Hughes v. Goodyear Tire & Rubber Co., 26 Ohio St. 3d 71, 498 N.E. 2d 459 (1986)
- State ex rel. Ramirez v. Industrial Commission, 69 Ohio St. 2d 630, 433 N.E. 2d 586 (1982)

OPINION

PER CURIAM.

Per Curiam. Where the record contains “some evidence” to support the commission’s findings, there has been no abuse of discretion and mandamus will not lie. State, ex rel. Burley, v. Coil Packing, Inc. (1987), 31 Ohio St. 3d 18, 31 OBR 70, 508 N.E. 2d 936.

We are asked to determine whether the commission order at bar is supported by “some evidence.” We hold that it is not. The parties concentrate on the sufficiency of the Walker and Walsh *16 reports under State, ex rel. Wallace, v. Indus. Comm.

(1979), 57 Ohio St. 2d 55, 11 O.O. 3d 216, 386 N.E. 2d 1109. That decision held that a non-examining physician’s report that did not indicate express acceptance of the findings of examining doctors was not “some evidence” on which the commission could rely. Appellant challenges the continued vitality of Wallace, contending that the requirement of express acceptance was relaxed by the subsequent plurality decision in State, ex rel.

Hughes, v. Goodyear Tire & Rubber Co. (1986), 26 Ohio St. 3d 71, 26 OBR 61, 498 N.E. 2d 459. We agree. The Hughes plurality sustained as “some evidence” the reports of several non-examining physicians including one which merely indicated that all medical reports had been reviewed (without naming the doctors) and which cited numerous findings from those reports (without attributing them to any specific examiner).

The Hughes decision stated: “* * * [0]ur opinions should not provide the basis for usurping the role of the commission in determining disability by creating arbitrary exclusionary rules that eliminate evidence the commission might find credible because such evidence fails to include ‘magic words’ to conform with hyper-technical evidentiary rules, e.g., T expressly adopt the findings but not the opinion of Dr. “X.” ’ * * *” Id. at 74, 26 OBR at 64, 498 N.E.

2d at 462. However, even under an implicit acceptance analysis, we hold that the Walker and Walsh reports are deficient. Dr. Walker's report states in full that "I see no reason related to his allowed injury why cl[aimant]t can't return to his usual & customary duties." There is no indication, express or implied, that Dr. Walker even considered, let alone accepted, the findings of the examining physicians.

It is thus not "some evidence." Dr. Walsh's report also fails under Hughes. There is nothing in that report to indicate that all medical reports were reviewed and considered. The report actually implies the contrary.

Although reports from six physicians were on file, Walsh's report only refers to "the information on file from three physicians." Apart from the Hughes problem, the report also fails in another respect, i.e., it does not address the key issue of appellee's ability to return to his former position of employment. It merely notes in a general way that appellee's medications are not incompatible "with employment," conceding that "[information as to his job responsibilities is not on file for a definitive answer." Thus, on an alternative basis, Dr. Walsh's report fails to constitute "some evidence." The removal of the Walker and Walsh reports from evidentiary consideration leaves the commission order unsupported by "some evidence," as these were the sole reports upon which the commission expressly relied.

Accordingly, we affirm that portion of the appellate court judgment directing the commission to vacate its June 27, 1986 order denying compensation. However, we reverse that portion of the judgment which orders the commission to award appellee temporary total disability compensation from September 1, 1981 through February 1984. Any award of temporary total disability compensation must be supported by some evidence establishing that a temporary condition precludes the return to the former position of employment.

See *State, ex rel. Ramirez, v. Indus. Comm.* (1982), 69 Ohio St. 2d 630, 23 O.O. 3d 518, 433 N.E. 2d 586. Therefore, a lack of evidence supporting a denial of temporary total disability benefits cannot automatically translate into some evidence supporting an award of such benefits. Recognizing that the determination of disability is a commission function, we thus remand the cause to the commission to determine whether appellee qualifies for temporary total disability compensation and to identify the evidence supporting its finding.

Judgment affirmed in part, reversed in part and cause remanded. Moyer, C.J., Sweeney, Holmes, Wright, H. Brown and Resnick, JJ., concur. Douglas, J., dissents.