

SUPREME COURT OF OHIO

State ex rel. ABF Freight System, Inc. v. Industrial Commission

96 Ohio St. 3d 80 (Ohio 2002) · Decided July 31, 2002

SUMMARY

The Ohio Supreme Court reviewed an Industrial Commission award of workers' compensation benefits for total loss of use of a thumb following surgical fusion. The court held that R.C. 4123.57(B) requires evidence of ankylosis, meaning total stiffness, and that the medical evidence showed some remaining movement rather than total stiffness. The court affirmed the court of appeals' judgment vacating the award.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Douglas, J.; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Cook, J.; Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	July 31, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal as of right from a judgment of the Court of Appeals for Franklin County granting a writ of mandamus against the Industrial Commission's award of workers' compensation for total loss of use of the claimant's thumb.
STANDARD OF REVIEW	Whether some evidence supported the Industrial Commission's order; the court reviewed the commission's award for an abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Ohio
PARTIES	Charles E. Anders v. ABF Freight System, Inc., Industrial Commission of Ohio

TOPICS

workers compensation judicial review of agency action administrative law statutory interpretation

PRACTICE AREAS

workers compensation administrative law employment law

QUESTIONS PRESENTED

1. Whether some evidence supported the Industrial Commission's award of compensation for total loss of use under R.C. 4123.57(B).
2. Whether the medical evidence established ankylosis, defined by the statute as total stiffness, as a prerequisite to compensation for loss of use.

HOLDINGS

1. The Industrial Commission's award for total loss of use was unsupported by some evidence because none of the medical reports established the statutory prerequisite of ankylosis.

KEY QUOTATIONS

*“For ankylosis (total stiffness of) * * * which makes any of the fingers, thumb, or parts of either useless.”* (§ 14)

“Thus, while the evidence established that claimant suffered a serious thumb injury, it does not demonstrate the total stiffness required for a finding of ankylosis finding.” (§ 15)

FACTUAL BACKGROUND

Charles E. Anders's workers' compensation claim was allowed for a left-hand sprain and osteoarthritis. He underwent surgical arthrodesis of the left thumb's carpometacarpal joint in 1990, and his permanent partial disability award was later increased from 11 percent to 14 percent. Medical evidence described the joint as essentially or nearly fused but acknowledged some movement, and one physician specifically stated that Anders did not have ankylosis. Despite that evidence, the Industrial Commission awarded compensation for total loss of use of the thumb and carpometacarpal joint.

PROCEDURAL HISTORY

The Industrial Commission initially denied the claimant's request for a loss-of-use award under R.C. 4123.57(B). A staff hearing officer vacated that decision and awarded compensation for total loss of use of the left thumb and the carpometacarpal joint; reconsideration was denied. ABF Freight System, Inc. sought a writ of mandamus in the Franklin County Court of Appeals, which found no medical evidence supporting ankylosis or total loss of use and granted relief. The Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

OPINION

PER CURIAM.

Per Curiam. {¶ 1} Appellant-claimant Charles E. Anders's workers' compensation claim has been allowed for sprain and osteoarthritis of the left hand. In 1990, claimant underwent surgical

arthrodesis of the left thumb with internal fixation, using two Steinman pins and bone grafting for fusion of the carpometacarpal joint. A 1993 award of 11 percent permanent partial disability was increased to 14 percent in 1999. {¶ 2} On October 12, 1999, claimant moved appellee Industrial Commission of Ohio for a loss-of-use award pursuant to R.C.

4123.57(B). Three medical reports were before the district hearing officer (“DHO”). Dr. M.E. Gibson observed: {¶ 3} “The CMC joint has been surgically fused, with a near ankylosis (but not complete), moving slightly from the position of function * * *. {¶ 4} “ * * * These latter deficits reflect the lack of motion of the carpal-metacarpal joint of the left thumb that it is essentially fused, but not entirely ankylosed.” {¶ 5} Dr. Charles L. Walters noted that claimant’s thumb had been surgically fused, but did not comment on the presence or absence of ankylosis, nor did he address the issue of loss of use.

Dr. Ron M. Koppenhoefer, however, specifically denied the existence of ankylosis: {¶ 6} “In reviewing my examination, Mr. Anders does not have ankylosis of the thumb. Ankylosis of the thumb would indicate that there is no movement of the thumb, which is not the case. {¶ 7} “* * * He has movement, though it is impaired.” {¶ 8} The DHO denied compensation, citing the thumb’s capacity for some movement.

A staff hearing officer vacated the order and awarded compensation for total loss of use: Reminger & Reminger Co., L.P.A., Ronald A. Fresco and Joshua R. Bills, for appellee ABF Freight System, Inc. Betty D. Montgomery, Attorney General, and William J. McDonald, Assistant Attorney General, for appellee Industrial Commission of Ohio. {¶ 9} “The claimant did undergo an arthrodesis, or surgical fusion, of the carpometacarpal joint on 3/19/1990.

Per the report of Dr. Gibson, there is some limited voluntary movement of the IP and MP joints of the thumb, and the CMC joint is essentially fused, if not totally ankylosed. However, per the reports on file and claimant’s demonstration at hearing, it is found that he retains no active motion of the CMC joint, and that he does qualify for an award for loss of use of the left thumb plus the additional ten weeks for the loss of use of the CMC joint.” {¶ 10} Reconsideration was denied. {¶ 11} Claimant’s employer, appellee ABF Freight System, Inc., sought a writ of mandamus in the Court of Appeals for Franklin County, alleging that the award was an abuse of discretion.

The court of appeals agreed, after finding that none of the cited medical evidence demonstrated ankylosis of the thumb and a total loss of use. {¶ 12} This cause is now before this court upon an appeal as of right. {¶ 13} We are asked to review the commission’s order for the presence of “some evidence” supporting its award of compensation under R.C. 4123.57(B).'

For the reasons to follow, we agree with the court of appeals that there is no evidence in support. {¶ 14} In addition to compensation for amputated digits, R.C. 4123.57(B) awards compensation

“[f]or ankylosis (total stiffness of) * * * which makes any of the fingers, thumb, or parts of either useless.” {¶ 15} Here the commission made an award for total loss of use.

None of the examining doctors, however, found the statutory prerequisite for a finding of ankylosis — total stiffness of the affected area. Dr. Walters did not address the issue. Dr. Gibson conceded an incomplete ankylosis and the presence of movement, albeit slight in the thumb. Dr. Koppenhoefer concurred.

Thus, while the evidence established that claimant suffered a serious thumb injury, it does not demonstrate the total stiffness required for a finding of ankylosis finding. {¶ 16} Accordingly, the judgment of the court of appeals is affirmed. Judgment affirmed. Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur. Hochman & Roach Co., L.P.A., and Gary D. Plunkett, for appellant.