

SUPREME COURT OF OHIO

State ex rel. Carder v. Industrial Commission

94 Ohio St. 3d 165 (Ohio 2002) · Decided January 30, 2002

SUMMARY

The Ohio Supreme Court affirmed the denial of a workers’ compensation claimant’s application for additional compensation based on an alleged violation of a specific safety requirement. The court held that the Industrial Commission did not abuse its discretion in determining that a closed skylight was not a “roof opening” under the applicable Ohio safety rule, resolving reasonable doubts about the rule’s applicability in the employer’s favor.

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	January 30, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Carder sought a writ of mandamus in the Court of Appeals for Franklin County after the Industrial Commission denied his application for additional workers' compensation benefits based on an alleged violation of a specific safety requirement. The court of appeals denied relief, and Carder appealed as of right to the Supreme Court of Ohio.
STANDARD OF REVIEW	Whether the Industrial Commission abused its discretion in denying the VSSR application; the commission's interpretation and application of the safety requirement were reviewed under the abuse-of-discretion standard.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential.
PARTIES	Gregory A. Carder v. Industrial Commission of Ohio

TOPICS

- workers compensation
- judicial review of agency action
- administrative law
- statutory interpretation

PRACTICE AREAS

workers' compensation

administrative law

employment law

statutory interpretation

QUESTIONS PRESENTED

1. Whether a closed skylight constituted a "roof opening" under former Ohio Adm.Code 4121:1-3-04(D) (3).
2. Whether the Industrial Commission abused its discretion by denying Carder's application for additional workers' compensation benefits based on its interpretation of that safety requirement.

HOLDINGS

1. The Industrial Commission did not abuse its discretion in determining that a closed skylight did not constitute a roof opening for purposes of former Ohio Adm.Code 4121:1-3-04(D)(3).

KEY QUOTATIONS

"There simply was no 'opening' for the employer to consider." (167)

"The magistrate agrees that the plain meaning of 'openings' would not suggest to employers that they need to test coverings already in place and provide stronger ones where the existing coverings would not hold a certain amount of weight." (167)

FACTUAL BACKGROUND

On April 22, 1997, Gregory A. Carder was working as a roofer for Colonial Builders, Inc., when he fell through a skylight and was injured. Carder alleged that his employer violated former Ohio Adm.Code 4121:1-3-04(D) (3), which required guardrails, toeboards, or qualifying covers where there was a danger of an employee falling through a roof opening. The Industrial Commission denied his application for additional compensation, finding that the injury involved a closed skylight rather than a roof opening.

PROCEDURAL HISTORY

Carder's workers' compensation claim was allowed after he fell through a skylight while reroofing a commercial building. The Industrial Commission denied his VSSR application, concluding that the applicable rule governing roof openings did not apply to the closed skylight. The Court of Appeals for Franklin County held that the commission did not abuse its discretion, and the Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Trydle v. Indus. Comm. (1972), 32 Ohio St. 2d 257, 61 O.O. 2d 488, 291 N.E.2d 748
- State ex rel. Burton v. Indus. Comm. (1989), 46 Ohio St. 3d 170, 545 N.E.2d 1216

OPINION

State ex rel. Carder v. Industrial Commission 94 Ohio St. 3d 165

PER CURIAM.

Per Curiam. On April 22, 1997, appellant-claimant, Gregory A. Carder, was working as a roofer for Colonial Builders, Inc. (“CBI”), reroofing a commercial building in Toledo, Ohio. What happened in the late afternoon on that day is unclear. Claimant stated that he lost his balance and fell through a skylight in the roof. Another witness indicated that claimant was sitting on the skylight and it broke. In any event, claimant was injured when he fell to the floor below. After his workers’ compensation claim was allowed, claimant moved appellee Industrial Commission of Ohio for additional compensation, alleging that CBI had violated former Ohio Adm.Code 4121:1-3-04(D)(3), which stated: “(3) Roof openings “Wherever there is a danger of an employee falling through a roof opening, a standard guard railing and toeboard shall be provided on all exposed sides or a cover which provides a factor of safety of no less than four shall be provided.” 1979-1980 Ohio Monthly Record 4-32. (The current version of the rule explicitly applies to skylights. 1998-1999 Ohio Monthly Record 847, eff. Apr. 1, 1999.) The commission denied the application: “It is found that this claim and injury did not involve a ‘roof opening.’ This was not a new construction site, and claimant did fall through (and break) the existing skylight. This provision for ‘roof openings’ would not adequately apprise the employer that a guard railing or a cover would be required to prevent a worker from falling thorough [sic] a skylight such as this. “As it has not been shown that a specific safety requirement applied to this injury and the facts in this case, the VSSR application must be denied.” Further hearing was denied. Claimant filed a complaint in mandamus in the Court of Appeals for Franklin County, alleging that the commission abused its discretion in denying his application. The court of appeals disagreed, finding that the commission did not abuse its discretion in refusing to construe a skylight as a roof opening. This cause is now before this court upon appeal as of right. Two principles control. First, specific safety requirements must contain specific and definite requirements of a character that plainly apprises an employer of its legal obligations. State ex rel. Trydle v. Indus. Comm. (1972), 32 Ohio St.2d 257, 61 O.O.2d 488, 291 N.E.2d 748. Second, because an award for a violation of a specific safety requirement is a penalty against the employer, all reasonable doubts regarding the applicability of the requirement must be resolved in the *167employer’s favor. State ex rel. Burton v. Indus. Comm. (1989), 46 Ohio St.3d 170, 545 N.E.2d 1216. Gallon & Takacs Co., L.P.A., and Theodore A. Bowman, for appellant. Betty D. Montgomery, Attorney General, and Dennis L. Hufstader, Assistant Attorney General, for appellee. “Opening” is not defined by the safety code, leaving its interpretation to the commission. Given the above principles, it was not an abuse of discretion for the commission to determine that a closed skylight did not constitute a roof opening for purposes of Ohio Adm.Code 4121:1-3-04(D)(3). As the magistrate best observed: “The word ‘opening’ has been defined as a gap, hole, breach, aperture, open width, or open span. See Webster’s Ninth New Collegiate Dictionary (1987), 826; Merriam Webster’s Collegiate Dictionary (1995), 814. There

simply was no ‘opening’ for the employer to consider. Whether a rule should exist that protects workers against weak portions of roofs is not before the court; the issue is simply whether the commission was within its discretion to conclude that the rules for ‘openings’ would not have placed the employer on notice of an obligation to guard the glassed portions of the roof. The magistrate agrees that the plain meaning of ‘openings’ would not suggest to employers that they need to test coverings already in place and provide stronger ones where the existing coverings would not hold a certain amount of weight.” 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.