

SUPREME COURT OF OHIO

State ex rel. E.I. DuPont DeNemours & Co. v. Industrial Commission

116 Ohio St. 3d 25 (Ohio 2007) · Decided October 23, 2007

SUMMARY

The Ohio Supreme Court affirmed the award of permanent total disability compensation to Ferrall L. Limle based on medical evidence that his allowed occupational diseases rendered him incapable of sustained remunerative employment. The court held that his predisability retirement from DuPont did not bar compensation because he later worked for a school district, there was no evidence of voluntary abandonment of the labor market, and his long-latency occupational diseases manifested after retirement.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Chief Justice Moyer; Justice Pfeifer; Justice Lundberg Stratton; Justice O'Connor; Justice O'Donnell; Justice Lanzinger; Justice Cupp
JURISDICTION	Ohio
DECIDED	October 23, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	DuPont appealed as of right from a Franklin County Court of Appeals judgment denying its mandamus challenge to the Industrial Commission's award of permanent total disability compensation to Limle.
STANDARD OF REVIEW	Whether the Industrial Commission abused its discretion in awarding permanent total disability compensation; in mandamus, the court reviews whether the commission's order is supported by some evidence and is not contrary to law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	E.I. DuPont DeNemours & Company v. Industrial Commission of Ohio, Ferrall L. Limle

TOPICS

workers compensation

administrative law

judicial review of agency action

remedies

employment law

PRACTICE AREAS

workers compensation

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QUESTIONS PRESENTED

1. Whether the Industrial Commission abused its discretion by relying on medical reports that also listed nonallowed conditions in finding Limle medically incapable of sustained remunerative employment.
2. Whether Limle's retirement from DuPont before the onset of disability barred his eligibility for permanent total disability compensation.

HOLDINGS

1. The Industrial Commission did not abuse its discretion because the medical reports, including Dr. Corriveau's report and follow-up, supported the finding that Limle was incapable of sustained remunerative employment based on his allowed conditions.
2. Predisability retirement does not bar permanent total disability compensation unless the claimant entirely retired from the labor market, and retirement does not defeat eligibility when disability results from a long-latency occupational disease that manifested after retirement.

KEY QUOTATIONS

“First, predisability retirement does not preclude eligibility for permanent total disability compensation unless the claimant retired entirely from the labor market.” (§ 9)

“Equally important, Limle’s disabilities stemmed from a long-latency occupational disease.” (§ 10)

FACTUAL BACKGROUND

Limle worked for DuPont for approximately 27 years and was exposed to asbestos. After retiring from DuPont in 1992, he worked for a local school district. In 2001, he was diagnosed with pneumoconiosis, asbestosis, and pleural disease attributable to his DuPont exposure, and those conditions were allowed in his workers' compensation claim. Medical reports, particularly Dr. Corriveau's report and addendum, supported a finding that Limle was incapable of sustained remunerative or physical work.

PROCEDURAL HISTORY

The Industrial Commission awarded Limle permanent total disability compensation based on medical reports concerning his allowed occupational-disease conditions and found that his retirement from DuPont was not a voluntary and total abandonment of employment. DuPont filed a mandamus complaint in the Franklin County Court of Appeals, which found that the commission's order was supported by evidence. The Supreme Court of Ohio affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Baker Material Handling Corp. v. Indus. Comm., 69 Ohio St. 3d 202, 631 N.E.2d 138 (1994)
- State ex rel. Liposchak v. Indus. Comm., 73 Ohio St. 3d 194, 652 N.E.2d 753 (1995)

OPINION

PER CURIAM.

Per Curiam. {¶ 1} We are asked to determine whether appellee Industrial Commission of Ohio abused its discretion in awarding permanent total disability compensation to appellee Ferrall L. Limle. We find that the commission did not err. {¶ 2} Limle worked for appellant E.I. DuPont DeNemours & Company for approximately 27 years, during which he was exposed to asbestos.

In 1992, he retired from DuPont and worked for Zane Trace School District. It is not known when or why Limle left that job. {¶ 3} In 2001, Limle was diagnosed with pneumoconiosis, asbestosis, and pleural disease as a result of his exposure at DuPont, and a workers' compensation claim was allowed for these conditions. Three years later, he applied for permanent total disability compensation. {¶ 4} Among other evidence before the commission were the reports of Dr. Michael L. Corriveau.

Dr. Corriveau discussed Limle's allowed conditions and, in *26a separate section, also listed Limle's other health problems, including diabetes, hypertension, and coronary problems. These nonallowed conditions were not part of his discussion of disability. Dr. Corriveau assessed a 75 percent impairment from asbestosis and pleural disease.

In an addendum dated the day after his report, Dr. Corriveau stated, "This injured worker is not capable of physical work activity." {¶ 5} Based on Corriveau's report and those from Drs. Joseph Bennett and Christopher Ryckman, the commission granted Limle compensation for permanent total disability.

The commission specifically found that (1) Limle was medically incapable of sustained remunerative employment and (2) his retirement from DuPont was not a voluntary and total abandonment of employment that would bar permanent total disability compensation. {¶ 6} DuPont filed a complaint in mandamus in the Court of Appeals for Franklin County, alleging that the commission had abused its discretion in awarding compensation.

The court of appeals disagreed, finding that the order was supported by evidence. {¶ 7} This cause is now before this court as an appeal as of right. {¶ 8} Based on the reports of Drs. Bennett, Ryckman, and Corriveau, the commission found that Limle was medically incapable of sustained remunerative work, a circumstance that negated the need to consider his nonmedical disability factors.

DuPont now claims that none of these medical reports attribute Limle's inability to work exclusively to his allowed conditions. That claim is not true. Dr. Corriveau's discussion of disability in his March 7, 2005 report was limited to Limle's allowed conditions, and his March 8 follow-up specifically stated that Limle was incapable of any physical work. Corriveau's listing of the other conditions that Limle suffered from does not mean that they were included in his assessment of disability.

The report does, therefore, support the commission's decision. {¶ 9} DuPont also maintains that because Limle retired from DuPont before becoming disabled, he is barred from obtaining compensation for permanent total disability. This argument is wrong for two reasons.

First, predisability retirement does not preclude eligibility for permanent total disability compensation unless the claimant retired entirely from the labor market. *State ex rel. Baker Material Handling Corp. v. Indus. Comm.*

(1994), 69 Ohio St.3d 202, 631 N.E.2d 138. Limle worked for a local school district after leaving DuPont. There is no information as to why Limle left his school position and thus no evidence that Limle voluntarily abandoned the entire labor market. {¶ 10} Equally important, Limle's disabilities stemmed from a long-latency occupational disease.

We have already upheld the eligibility for compensation for permanent total disability of claimants whose long-latency occupational diseases *27did not manifest themselves until after retirement. *State ex rel. Liposchak v. Indus. Comm.*

(1995), 73 Ohio St.3d 194, 652 N.E.2d 753. Accordingly, Limle's retirement from DuPont does not affect his eligibility for compensation. Vorys, Sater, Seymour & Pease L.L.P. and Robert E. Tait, for appellant. Marc Dann, Attorney General, and Sandra E. Pinkerton, Assistant Attorney General, for appellee. {¶ 11} The judgment of the court of appeals is affirmed.

Judgment affirmed. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.