

SUPREME COURT OF OHIO

State ex rel. Paneto v. Matos

129 Ohio St. 3d 1, 2011-Ohio-2857 (2011) · No. 2009-1869 · Decided June 16, 2011

SUMMARY

The Ohio Supreme Court affirmed the denial of Luiz A. Paneto’s request for scheduled-loss compensation for an alleged total loss of use of his left leg. The court held that his permanent-total-disability award, which was later terminated for fraud, did not constitute a new or changed circumstance warranting reconsideration, and that medical evidence supported the finding that he retained some use of the leg.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Maureen O'Connor, Chief Justice; Pfeifer; Lundberg Stratton; O'Donnell; Lanzinger; Cupp; McGee Brown
JURISDICTION	Ohio
DECIDED	June 16, 2011
DOCKET	2009-1869
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal as of right from a judgment of the Franklin County Court of Appeals denying Paneto's complaint for a writ of mandamus and upholding the Industrial Commission's denial of scheduled-loss compensation.
STANDARD OF REVIEW	In a mandamus action challenging an Industrial Commission decision, the court reviews whether the commission abused its discretion by entering an order unsupported by some evidence.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Ohio.
PARTIES	Luiz A. Paneto v. Industrial Commission of Ohio

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

workers' compensation

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appellate procedure

QUESTIONS PRESENTED

1. Whether Paneto's award of permanent-total-disability compensation constituted a new or changed circumstance permitting the Industrial Commission to reopen its final denial of scheduled-loss compensation under R.C. 4123.57(B).
2. Whether the Industrial Commission abused its discretion by denying scheduled-loss compensation after finding that Paneto retained some use of his left leg.

HOLDINGS

1. Paneto's permanent-total-disability award did not constitute a new or changed circumstance sufficient to permit reopening of the previously denied scheduled-loss claim, particularly because the award had been terminated.
2. The Industrial Commission did not abuse its discretion in denying scheduled-loss compensation because medical evidence supported its finding that Paneto retained some use of his left leg.

KEY QUOTATIONS

"The PTD award has been terminated." (129 Ohio St. 3d at 2)

"The commission cited medical evidence that supports that conclusion, which negates the need for any further discussion." (129 Ohio St. 3d at 2)

FACTUAL BACKGROUND

Paneto injured his left foot and ankle in a workplace fall and continued to walk with a cane and a moderately severe limp after surgery. The Industrial Commission determined that he had not sustained a total loss of use of his left leg and denied scheduled-loss compensation. Although Paneto later received permanent-total-disability compensation, that award was terminated after the commission found that he had been working full time and had fraudulently concealed his employment and income.

PROCEDURAL HISTORY

The Industrial Commission denied Paneto's application for scheduled-loss compensation under R.C. 4123.57(B), concluding that he had not suffered a total loss of use of his left leg. After Paneto later received permanent-total-disability compensation and reapplied, the commission again denied relief, finding the issue res judicata and independently finding that he still had some use of the leg. The Franklin County Court of Appeals denied his mandamus complaint, and the Supreme Court of Ohio affirmed. During the appeal, the commission terminated Paneto's permanent-total-disability award based on his full-time employment and fraud.

DISPOSITION

affirmed

OPINION

PER CURIAM.

[Cite as State ex rel. Paneto v. Matos, 129 Ohio St.3d 1, 2011-Ohio-2857.] THE STATE EX REL. PANETO, APPELLANT, v. MATOS ET AL.; INDUSTRIAL COMMISSION OF OHIO, APPELLEE. [Cite as State ex rel. Paneto v. Matos, 129 Ohio St.3d 1, 2011-Ohio-2857.] Workers' compensation — R.C. 4123.57 — Claimant alleged that his permanent total disability award was a new or changed circumstance warranting reconsideration of the previous denial of his application for scheduled loss compensation — Court of appeals' decision upholding commission's order denying reconsideration affirmed.

(No. 2009-1869 — Submitted June 8, 2011 — Decided June 16, 2011.) APPEAL from the Court of Appeals for Franklin County, No. 08AP-926, 2009-Ohio-4845. _____ Per Curiam. {¶ 1} Appellant, Luiz A. Paneto, seeks R.C. 4123.57(B) scheduled loss compensation for an alleged total loss of use of his left leg. Paneto injured his left foot and ankle after falling from a ladder at work.

Despite surgery on the foot, he still uses a cane to walk and has a moderately severe limp. {¶ 2} Paneto moved appellee, Industrial Commission of Ohio, for scheduled loss compensation, alleging that he had sustained a total loss of use of his left leg.

The commission denied the application after finding that Paneto's loss of use was not total, and that order became final. {¶ 3} Paneto was later awarded permanent total disability ("PTD") compensation. He then reapplied for total-loss-of-use compensation for the injured limb, alleging that his PTD award was a new or changed circumstance that warranted reconsideration of the previous denial.

SUPREME COURT OF OHIO {¶ 4} The commission disagreed. In an order dated September 15, 2008, a staff hearing officer found that the earlier denial of R.C. 4123.57(B) compensation rendered the issue res judicata and concluded that Paneto's PTD award was not a new or changed circumstance that would justify reopening the scheduled-loss issue.

The hearing officer also found that even if the issue were amenable to further consideration, Paneto had not lost all use of the injured extremity. He acknowledged that Paneto had a serious leg condition, but based upon the report of Dr. Karl V. Metz, concluded that Paneto "does in fact have some use of the left leg, and thus is not entitled to an award pursuant to Ohio Revised Code 4123.57, for a scheduled loss of use of the left leg." {¶ 5} Further appeal was refused. {¶ 6} Paneto filed a complaint in mandamus in the Court of Appeals for Franklin County, alleging that the commission had abused its discretion in denying scheduled loss compensation.

The court of appeals upheld the commission's order and denied the writ, prompting Paneto's appeal as of right to this court. {¶ 7} After Paneto filed his notice of appeal, the commission

learned that he had been working full time as a home remodeler since October 2008.

The commission accordingly terminated Paneto's PTD compensation as of that date and specifically found that he had committed fraud, detailing at length his deliberate efforts to conceal his employment and the income from it.

We granted the commission's motion to supplement the record with the PTD termination order. {¶ 8} Despite the fact that his PTD compensation was terminated, Paneto continues to argue that the award of PTD compensation was a new or changed circumstance sufficient to permit the commission to reopen the issue of scheduled loss benefits for his left leg.

We disagree. The PTD award has been terminated. Moreover, the commission—despite its 2008 determination that the scheduled 2 January Term, 2011 loss issue was *res judicata*—made a merit determination on Paneto's compensation request and found that Paneto did not have a total loss of use.

The commission cited medical evidence that supports that conclusion, which negates the need for any further discussion. {¶ 9} The judgment of the court of appeals is hereby affirmed. Judgment affirmed. O'CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O'DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur. _____ Shapiro, Marnecheck, Riemer & Palnik, Matthew A. Palnik, and Philip Marnecheck, for appellant.

Michael DeWine, Attorney General, and Charissa D. Payer, Assistant Attorney General, for appellee. _____ 3