

OPINIONS OF THE SUPREME COURT OF OHIO

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The State ex rel. Wiers Farms Company, Appellant, v. Industrial Commission of Ohio et al., Appellees.

[Cite as State ex rel. Wiers Farms Co. v. Indus. Comm. (1994), Ohio St.3d .]

Workers' compensation -- Industrial Commission does not abuse its discretion in finding that a claimant injured on a farm was injured in a workshop, when -- Ohio Adm.Code Chapter 4121:1-5, applied. (No. 93-1077 -- Submitted May 16, 1994 -- Decided July 13, 1994.)

Appeal from the Court of Appeals for Franklin County, No. 92AP-391.

Appellee-claimant, Steven R. Kennedy, was injured on October 3, 1985 during the course of and arising from his employment with appellant, Wiers Farms Company. Claimant was placing celery on a moving conveyor when the conveyor's unguarded drive belt caught his glove and pulled him into the machinery.

It is undisputed that the closest shutoff switch was approximately eight feet from claimant's work station. It is also agreed that the conveyor belt had no guarding or other protection. Photos of the accident site revealed that the conveyor was located with other machinery inside of a large building located on the farm.

After his workers' compensation claim was allowed, claimant sought additional compensation, alleging that appellant had violated several specific safety requirements. A staff hearing officer for appellee Industrial Commission of Ohio found violations of Ohio Adm. Code 4121:1-5-05(C)(2) (conveyors must have power shutoff at contact points) and (C)(4) (conveyor pinch points must be guarded). Among other findings made in an extremely detailed order, the staff hearing officer rejected appellant's defense that Ohio Adm. Code Chapter 4121:1-5, governing "workshops and factories," did not apply to farms. The staff hearing officer reasoned that consistent with the definition of "workshop" put forth earlier by the Franklin County Court of Appeals in State ex rel. York Temple Country Club, Inc. v. Indus. Comm. (Apr. 18, 1985), No.

84AP-818, unreported, the "structure and machinery wherein Claimant was injured, does, at least, meet that threshold test." (Emphasis added.)

Appellant filed a complaint for a writ of mandamus in the Court of Appeals for Franklin County, claiming that the commission abused its discretion in applying the specific safety requirement to it. The appellate court denied the writ.

This cause is now before this court upon an appeal as of right.

Jack L. Johnson, for appellant.

Lee I. Fisher, Attorney General, and Janie D. Roberts, Assistant Attorney General, for appellees Industrial Commission and Administrator, Bureau of Workers' Compensation.

Per Curiam. Based on our decision in *State ex rel. Buurma Farms, Inc. v. Indus. Comm.* (1994), 69 Ohio St.3d 111, 630 N.E.2d 686, the judgment of the court of appeals is hereby affirmed.

Judgment affirmed.

Moyer, C.J., A.W. Sweeney, Douglas, Wright, Resnick and F.E. Sweeney, JJ., concur.  
Pfeifer, J., dissents.