

OPINIONS OF THE SUPREME COURT OF OHIO

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The State ex rel. Hart, Appellant, v. Industrial Commission of Ohio et al., Appellees.

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

Workers' compensation -- Industrial Commission improperly orders permanent total disability compensation suspended while claimant is incarcerated in a penal institution.

(No. 92-2469 -- Submitted January 11, 1994 -- Decided March 23, 1994.)

Appeal from the Court of Appeals for Franklin County, No. 92AP-309.

Appellant-claimant, Edward L. Hart, was injured in 1977 in the course of and arising from his employment with American Airlines, Inc. In 1983, appellee Industrial Commission of Ohio found claimant to be permanently and totally disabled.

In 1987, claimant was incarcerated at the Chillicothe Correctional Institution, serving a three to fifteen-year sentence for the commission of a felony. On February 7, 1989, the commission entered an order suspending claimant's permanent total disability benefits effective September 8, 1987.

Claimant was eventually released from prison and has since moved to have his permanent total disability benefits reinstated for the period of his incarceration.

Appellant filed a complaint in mandamus in the Franklin County Court of Appeals, claiming that the commission abused its discretion by suspending payment of permanent total disability compensation during the period of his incarceration. The appellate court denied the writ.

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

Butkovich, Schimpf, Schimpf & Ginocchio Co., L.P.A., and J. Kent Breslin, for appellant.

Lee I. Fisher, Attorney General, Cordelia A. Glenn and William J. McDonald, Assistant Attorneys General, for appellee.

Per Curiam. Pursuant to our decision in State ex rel. Brown v. Indus. Comm. (1993), 68 Ohio St.3d 45, 623 N.E.2d 55,

the judgment of the court of appeals is reversed.

Judgment reversed.

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

Wright, J., dissents.

Wright, J., dissenting. I dissent for reasons expressed  
in my dissent in State ex rel. Brown v. Indus. Comm. (1993), 68  
Ohio St.3d 45, 50, 623 N.E.2d 55, 59.