

1 The State ex rel. Records, Appellant, v. Industrial Commission of Ohio,
2 Appellee.

3 [Cite as *State ex rel. Records v. Indus. Comm.* (1996), _____ Ohio St. 3d
4 _____.]

5 *Workers' compensation -- Application for permanent total disability*
6 *compensation -- Industrial Commission's denial of application not*
7 *an abuse of discretion when the explanation of the commission's*
8 *reasoning is not perfect but is based upon evidence in the record*
9 *and does give some explanation for its conclusion.*

10 (No. 94-975--Submitted October 24, 1996--Decided January 10,
11 1996.)

12 Appeal from the Court of Appeals for Franklin County, No.
13 93APD03-443.

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15 Appellant-claimant, Anthony P. Records, was injured in the course of
16 and arising from his employment with Schneider Sheet Metal, Inc. His
17 workers' compensation claim was allowed for back and neck injuries.
18 Claimant eventually moved appellee, Industrial Commission of Ohio, for
19 permanent total disability compensation. Among the evidence before the

1 commission was the report of Dr. Bernard B. Bacevich. He assessed a
2 fifteen percent permanent partial impairment for the allowed back
3 conditions and assigned the same value to claimant's allowed neck
4 conditions. He stated claimant could not do bending or lifting over ten
5 pounds. He opined that claimant could do "light gainful sustained
6 remunerative employment."

7 Dr. Clarence J. Louis felt claimant could do sedentary work and
8 found a twenty percent permanent partial impairment attributable to the
9 allowed conditions. Dr. Paul H. Dillahunt, in a combined effects review,
10 concurred with Louis' assessment of claimant's work capacities and
11 reported a forty percent combined effects permanent partial impairment.

12 The commission on January 13, 1993, denied permanent total
13 disability compensation, writing:

14 "**** [C]laimant is not permanently and totally disabled for the reason
15 that the disability is not total; that is, that claimant is able to perform
16 sustained remunerative employment ***.

17 "The reports of Doctor(s) Vocational Expert Riccio, Vocational
18 expert Tosi, Kelly, Bacevich, Forso, Braddom, Louis and Dillahunt were

1 reviewed and evaluated. The order is based particularly upon the reports of
2 Doctor(s) Bacevich, Louis and Dillahunt, the evidence in the file and/or
3 evidence adduced that the hearing.

4 “The medical evidence found persuasive includes the reports of Drs.
5 Bacevich, Louis and Dillahunt. Dr. Bacevich, Commission Orthopedist,
6 calculated a 15% impairment for claimant’s back and a 15% impairment for
7 his neck. Dr. Bacevich opined that the allowed conditions do not preclude
8 sedentary and light work. Dr. Louis, Commission Neurologist, found a 20%
9 impairment and stated that claimant can perform sedentary work. Dr.
10 Dillahunt, Commission Combined Effects Reviewer, found a total
11 impairment of only 40% [and] opined that claimant can perform sedentary
12 employment. Claimant is 56 years old, has obtained a GED and has work
13 experience as a sheet metal worker and sheet metal worker supervisor.
14 Claimant does hold a trade license as a journeyman sheet metal worker. It is
15 noted that claimant suffers from the following unrelated medical conditions:
16 chronic obstructive pulmonary disease, diabetes mellitus and coronary
17 artery disease. The Commission finds that the allowed conditions do not
18 render claimant permanently and totally disabled. Relying upon the reports

1 of Drs. Bacevich, Louis and Dillahunt, the Commission finds that the
2 allowed conditions do not preclude sedentary employment. Considering
3 claimant's work experience and especially his position as a supervisor, the
4 Commission finds that claimant possesses some skills for sedentary work.
5 Any inability to physically perform sedentary work would not be related to
6 the allowed conditions in this claim. It is noted that the Commission
7 Vocational Report of Dr. Tosi is not relied upon for the reason that
8 claimant's unrelated medical conditions were considered in assessing
9 claimant's ability to obtain sustained remunerative employment."

10 Claimant filed a complaint in mandamus in the Court of Appeals for
11 Franklin County, alleging that the commission abused its discretion in
12 denying permanent total disability compensation. The appellate court
13 disagreed and denied the writ. This cause is now before this court upon an
14 appeal as of right.

15

16 *Stewart Jaffy & Associates Co., L.P.A., Stewart R. Jaffy and Marc J.*
17 *Jaffy*, for appellant.

1 *Betty D. Montgomery, Attorney General, and Yolanda L. Barnes,*
2 Assistant Attorney General, for appellee.

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4 *Per Curiam.* Claimant seeks to compel the award of permanent total
5 disability compensation pursuant to *State ex rel. Gay v. Mihm* (1994), 68
6 Ohio St.3d 315, 626 N.E. 2d 666. The commission seeks to uphold its order
7 as is. Because review favors the latter, we affirm the judgment of the court
8 of appeals.

9 Most of the claimant's propositions of law can be summarily disposed
10 of:

11 1. Proposition of Law II(A). Contrary to claimant's contention, the
12 commission did specifically state why claimant was not entitled to
13 permanent total disability compensation as directed by *State ex rel. Hartung*
14 *v. Indus. Comm.* (1990), 53 Ohio St.3d 257, 560 N.E. 2d 196. The order
15 expressly found claimant capable of sustained remunerative employment.

16 2. Propositions of Law II(B) and (C). We hold that the commission
17 used the proper standard -- inability to perform sustained remunerative
18 employment -- in evaluating permanent total disability compensation.

1 3. Proposition of Law II(D). Contrary to appellant’s contention, the
2 commission did not deny compensation because claimant has nonallowed
3 health problems; it merely noted their presence.

4 4. Proposition of Law IV. It is not the case that the commission
5 ignored Riccio’s vocational report. The order specifically indicated the
6 report was considered.

7 5. Proposition of Law V. We have previously held that a lack of
8 commission permanent total disability compensation guidelines does not
9 constitute a due-process violation. *State ex rel. Blake v. Indus. Comm.*
10 (1992), 65 Ohio St.3d 453, 605 N.E. 2d 23. Appellant’s argument otherwise
11 thus lacks merit.

12 Claimant’s remaining propositions of law are attacks on the
13 commission’s interpretation of the nonmedical evidence on which the
14 success of claimant’s application for compensation hinges. As to the
15 medical evidence, claimant does not seriously dispute the commission’s
16 conclusion that he can do sedentary labor. Claimant, however, views his
17 age (fifty-six when permanent total disability compensation was denied),
18 education (GED) and work experience negatively. The commission

1 disagreed. The commission also viewed claimant's supervisory tenure at
2 the plant as an asset, whereas the claimant dismisses this factor as
3 insignificant.

4 *Gay* relief is appropriate only where the evidence compels but one
5 conclusion. That is not the case here. Claimant's age and education are not
6 inherently employment-obstructive. As to the claimant's work history, it
7 was the commission's prerogative to assign a higher value to claimant's
8 supervisory experience than did claimant. The commission is the ultimate
9 evaluator of both disability and evidentiary weight and credibility. *State ex*
10 *rel. Stephenson v. Indus. Comm.* (1987), 31 Ohio St.3d 167, 31 OBR 369,
11 509 N.E. 2d 946; *State ex rel. Burley v. Coil Packing, Inc.* (1987), 31 Ohio
12 St.3d 18, 31 OBR 70, 508 N.E. 2d 936.

13 As the appellate court observed, although the commission's
14 explanation of its reasoning is not perfect, it is "one that is based upon
15 evidence in the record and one that does give some explanation for its
16 conclusion." We, therefore, find that the commission complied with
17 *Stephenson, Burley, and State ex rel. Noll v. Indus. Comm.* (1990), 57 Ohio
18 St.3d 203, 567 N.E. 2d 245.

