

1 The State ex rel. Reamer, Appellant, v. Industrial Commission of Ohio et
2 al., Appellees.

3 [Cite as State ex rel. Reamer v. Indus. Comm. (1997), ____ Ohio St.3d ____.]

4 *Workers' compensation -- Denial of wage loss compensation by*
5 *Industrial Commission not an abuse of discretion when*
6 *claimant voluntarily removes himself from the full-time labor*
7 *market and limits himself to part-time work for reasons*
8 *unrelated to his injury.*

9 (No. 94-2459 -- Submitted November 12, 1996 -- Decided February
10 19, 1997.)

11 APPEAL from the Court of Appeals for Franklin County, No.
12 93APD08-1177.

13 Appellant-claimant, James F. Reamer, was injured in 1988 while in
14 the course of and arising from his employment as a general laborer with
15 appellee Sisters of St. Francis. His workers' compensation claim was
16 allowed for "lumbosacral strain/sprain, sacroiliac strain/sprain." The injury
17 resulted in a permanent restriction against claimant's engaging in repetitive
18 lifting of over seventy-five pounds. Although no other limitations were

1 imposed, the lifting restriction prevented claimant from doing his former
2 job, and claimant was released from his employment.

3 Claimant worked sporadically for two employers between May 24,
4 1990 and September 17, 1990. In mid-September of that year, claimant
5 began full-time university studies and got a part-time job at the school
6 library. In 1991, claimant moved appellee Industrial Commission of Ohio
7 for wage-loss compensation pursuant to R.C. 4123.56(B). A district hearing
8 officer denied compensation, writing:

9 “The claimant is attending college and is not available for full time
10 employment. [H]is employment consists of work study. The request for
11 wage loss under [R.C.] 4123.56(B) is therefore denied. The Claimant’s
12 wage loss is found not related to the injury.”

13 The regional board of review affirmed, as did commission staff
14 hearing officers, who clarified the period of compensation denial as May 24,
15 1990 through March 30, 1993.

16 Claimant filed a complaint in mandamus in the Court of Appeals for
17 Franklin County, alleging that the commission abused its discretion in
18 denying wage-loss compensation. The appellate court denied the writ.

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

2 *Gallon & Takacs Co., L.P.A., and Theodore A. Bowman, for*

3 appellant.

4 *Betty D. Montgomery, Attorney General, and Melanie Cornelius,*

5 Assistant Attorney General, for appellee Industrial Commission.

6 *Brent T. Howard, for appellee Sisters of St. Francis.*

7 *Per Curiam.* R.C. 4123.56(B) provides:

8 “Where an employee in a claim allowed under this chapter suffers a

9 wage loss as a result of returning to employment other than his former

10 position of employment or as a result of being unable to find employment

11 consistent with the claimant’s physical capabilities, he shall receive

12 compensation at sixty-six and two-thirds of his weekly wage loss not to

13 exceed the statewide average weekly wage for a period not to exceed two

14 hundred weeks.”

15 Supplementing the statute, Ohio Adm. Code 4121-3-32(D) provides:

16 “In injury claims in which the date of injury * * * is on or after

17 August 22, 1986, the payment of compensation [for] wage loss pursuant to

1 division (B) of section 4123.56 of the Revised Code shall commence upon
2 application with a finding of any of the following:

3 “(1) The employee, as a direct result of the allowed conditions in the
4 claim, returns to employment other than his former position of employment
5 and suffers a wage loss.

6 “(2) The employee returns to his former position but suffers a wage
7 loss.

8 “(3) The employee, as a direct result of the allowed conditions in the
9 claim, is unable to find work consistent with the employee’s physical
10 capabilities and suffers a wage loss.”

11 Wage loss has two components -- actual wage loss and causal
12 relationship to claimant’s injury. *State ex rel. The Andersons v. Indus.*
13 *Comm.* (1992), 64 Ohio St.3d 539, 597 N.E.2d 143. Claimant concededly
14 made less over the disputed period than he did at Sisters of St. Francis. At
15 issue is whether the wage diminution was causally related to his injury. For
16 the reasons to follow, we find that it was not.

17 Claimant maintains that once an inability to return to the former
18 position of employment has been causally related to his injury, wage loss

1 eligibility is established. This is incorrect. Where compensation, as here, is
2 sought pursuant to Ohio Adm. Code 4121-3-32(D), it is necessary to
3 explore why the particular alternative job was selected. As we stated in
4 *State ex rel. Pepsi-Cola Bottling Co. v. Morse* (1995), 72 Ohio St.3d 210,
5 216, 648 N.E.2d 827, 832-833:

6 “Pepsi’s better argument is one that may ultimately prove inherent
7 whenever lower-paying alternate employment underlies a request for wage-
8 loss compensation - - the reason for taking the job. This is particularly
9 relevant where the alternate employment is a part-time job, since the
10 combined amount of wages and compensation could produce close to a full-
11 time weekly income for part-time work. Wage-loss compensation was not
12 intended to provide a disincentive to resumption of full-time employment or
13 to subsidize - -at the State Insurance Fund’s or self-insured employer’s
14 expense -- a part-time lifestyle. Conversely, if a part-time job is the only
15 work available within a claimant’s post-injury capabilities, he or she should
16 not be discouraged from accepting it.”

17 The present claimant had a minimal physical-capability restriction --
18 no repetitive lifting of over seventy-five pounds -- that would preclude few

1 jobs. This left claimant with a wide array of lighter jobs that he could have
2 performed on a full-time basis. Since claimant provided no evidence of a
3 job search that might have shown that such full-time work was unavailable,
4 the commission did not abuse its discretion in concluding that claimant
5 voluntarily removed himself from the full-time labor market and thus
6 limited himself to part-time work for reasons unrelated to his injury. Such a
7 voluntary limitation bars wage-loss compensation.

8 Accordingly, the judgment of the court of appeals is affirmed.

9 *Judgment affirmed.*

10 MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK
11 and LUNDBERG STRATTON, JJ., concur.

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