

THE STATE EX REL. FOLEY v. VULCAN MANUFACTURING COMPANY ET AL.

[Cite as *State ex rel. Foley v. Vulcan Mfg. Co.*, 1998-Ohio-308.]

Mandamus to compel Industrial Commission to grant relator's application for permanent total disability compensation—Writ denied, when.

(No. 97-2064—Submitted September 15, 1998—Decided December 2, 1998.)

IN MANDAMUS.

Butkovich, Schimpf, Schimpf, & Ginocchio Co., L.P.A., James A. Whittaker and Stephen P. Gast, for relator.

Betty D. Montgomery, Attorney General, and *Julie M. Lynch*, Assistant Attorney General, for respondents Industrial Commission and Administrator, Bureau of Workers' Compensation.

Per Curiam.

{¶ 1} Relator, C.L. Foley, seeks a writ of mandamus ordering respondent Industrial Commission of Ohio to grant his application for permanent total disability compensation ("PTD"). He insists that the commission impermissibly denied him PTD based on the opinions of two doctors who failed to consider all his allowed conditions before they pronounced him able to work. Upon review of the doctors' reports, we agree with the commission that neither doctor ignored the two conditions Foley cites, "major depression" and "aggravation of pre-existing degenerative arthritis of the low back," that were allowed in 1990. The doctors instead determined that, as of their examinations in 1992, they could not find symptoms of one or the other condition. Their reports constitute some evidence on which the commission could rely in denying PTD. Accordingly, we cannot disturb

SUPREME COURT OF OHIO

the commission's decision. *State ex rel. Burley v. Coil Packing, Inc.* (1987), 31 Ohio St.3d 18, 31 OBR 70, 508 N.E.2d 936.

{¶ 2} The writ of mandamus is denied.

Writ denied.

MOYER, C.J., PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

DOUGLAS, J., dissents.

RESNICK and F.E. SWEENEY, JJ., dissent and would grant the writ.
