

**THE STATE EX REL. SOWERS, APPELLANT, v. INDUSTRIAL COMMISSION OF
OHIO, APPELLEE.**

[Cite as *State ex rel. Sowers v. Indus. Comm.*, 1998-Ohio-314.]

*Workers' compensation—Denial of wage-loss compensation by Industrial
Commission—Judgment of court of appeals denying writ of mandamus
affirmed on authority of State ex rel. Justus.*

(No. 96-2159—Submitted October 28, 1998—Decided December 9, 1998.)

APPEAL from the Court of Appeals for Franklin County, No. 95APD08-997.

{¶ 1} Appellant-claimant, Ronald R. Sowers, was employed as a fire fighter for the city of Circleville. In 1990, he alleged that he had contracted an occupational disease in the course of his employment. Appellee, Industrial Commission of Ohio, allowed a workers' compensation claim for "chronic obstructive pulmonary disease."

{¶ 2} In 1992, claimant successfully moved for change-of-occupation benefits pursuant to R.C. 4123.57(E). On February 1, 1994, claimant obtained employment with Clearcreek Township as a deputy clerk. Claimant earned less at his clerk's job than he had as a fire fighter.

{¶ 3} In 1995, claimant applied for wage-loss compensation pursuant to R.C. 4123.56(B). A staff hearing officer denied claimant's application, citing R.C. 4123.68(W).

{¶ 4} Claimant filed a complaint in mandamus in the Court of Appeals for Franklin County, alleging that the commission abused its discretion in denying wage-loss compensation. The court of appeals disagreed and denied the writ.

{¶ 5} This cause is now before this court upon an appeal as of right.

SUPREME COURT OF OHIO

Dean G. Reinhard Co., L.P.A., and Charles Zamora, for appellant.

Betty D. Montgomery, Attorney General, and *Gerald H. Waterman*,
Assistant Attorney General, for appellee.

Stewart Jaffy & Associates, Stewart R. Jaffy and Marc J. Jaffy, urging
reversal for *amici curiae*, Ohio Association of Professional Fire Fighters and Ohio
Academy of Trial Lawyers.

Per Curiam.

{¶ 6} On authority of *State ex rel. Justus v. Indus. Comm.* (1998), 83 Ohio
St.3d 364, 700 N.E.2d 1, the judgment of the court of appeals is affirmed.

Judgment affirmed.

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