

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

**[Cite as *State ex rel. Filkill v. Indus. Comm.*, 1998-Ohio-355.]**

*Workers' compensation--Court of appeals' judgment affirmed.*

(No. 98-744—Submitted October 12, 1998—Decided December 9, 1998.)

APPEAL from the Court of Appeals for Franklin County, No. 97APD04-559.

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*Law Office of Thomas Tootle and Thomas Tootle*, for appellant.

*Betty D. Montgomery*, Attorney General, and *Michael A. Vanderhorst*,  
Assistant Attorney General, for appellee.

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{¶ 1} The judgment of the court of appeals is affirmed consistent with the  
opinion of the court of appeals.

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

DOUGLAS, RESNICK and F.E. SWEENEY, JJ., dissent.

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**ALICE ROBIE RESNICK, J., dissenting.**

{¶ 2} I would reverse the judgment of the court of appeals and enter  
judgment pursuant to *State ex rel. Gay v. Mihm* (1994), 68 Ohio St.3d 315, 626  
N.E.2d 666.

DOUGLAS and F.E. SWEENEY, JJ., concur in the foregoing dissenting  
opinion.

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