

**THE STATE EX REL. DAVAKIS, APPELLANT AND CROSS-APPELLEE, v. GENERAL  
FIREPROOFING COMPANY ET AL.; INDUSTRIAL COMMISSION OF OHIO,  
APPELLEE AND CROSS-APPELLANT.**

**[Cite as *State ex rel. Davakis v. Gen. Fireproofing Co.*, 1998-Ohio-64.]**

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

(No. 97-1549—Submitted August 19, 1998—Decided October 14, 1998.)

APPEAL and CROSS-APPEAL from the Court of Appeals for Franklin County, No.  
96APD01-34.

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*Green, Haines, Sgambati, Murphy & Macala Co., L.P.A., Ronald E. Slipski*  
and *Steven L. Paulson*, for appellant and cross-appellee.

*Betty D. Montgomery*, Attorney General, and *Cecille Caluya Harris*,  
Assistant Attorney General, for appellee and cross-appellant.

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

{¶ 2} 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.**

{¶ 3} I would reverse the judgment of the court of appeals on the issue of  
permanent total disability (“PTD”), since there is no credible evidence supporting  
a finding that claimant is capable of any sustained remunerative employment. I  
would, however, return the cause to the commission to adequately consider and  
explain the issue of whether claimant’s retirement was voluntary, with instructions

SUPREME COURT OF OHIO

that if claimant's retirement is found to be injury-induced, an order granting compensation for PTD shall be entered.

{¶ 4} I would affirm on the issue of temporary total disability pursuant to *State ex rel. Russell v. Indus. Comm.* (1998), 82 Ohio St.3d 516, 696 N.E.2d 1069.

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

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