

**THE STATE EX REL. O'BRIEN, APPELLANT, v. INDUSTRIAL COMMISSION OF  
OHIO, APPELLEE.**

[Cite as *State ex rel. O'Brien v. Indus. Comm.*, 1998-Ohio-76.]

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

(No. 97-616—Submitted August 19, 1998—Decided October 14, 1998.)

APPEAL from the Court of Appeals for Franklin County, No. 96APD04-425.

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*Daniel D. Connor Co., L.P.A., Daniel D. Connor and Kenneth S. Hafenstein*, for appellant.

*Betty D. Montgomery*, Attorney General, and *Miltina A. Gavia*, 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 return the cause to the Industrial Commission pursuant to *State ex rel. Noll v. Indus. Comm.* (1991), 57 Ohio St.3d 203, 567 N.E.2d 245.

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

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