

THE STATE EX REL. HINDS, APPELLANT, v. INDUSTRIAL COMMISSION OF OHIO ET AL.,
APPELLEES.

[Cite as *State ex rel. Hinds v. Indus. Comm.* (1999), ___ Ohio St.3d ____.]

Workers' compensation — Where Industrial Commission has ruled that further participation in the workers' compensation system is barred by R.C. 4123.52's statute of limitations, that decision must be challenged by way of appeal.

(No. 96-2804 — Submitted January 13, 1999 — Decided February 10, 1999.)

APPEAL from the Court of Appeals for Franklin County, No. 95APD12-1598.

Appellant-claimant, Carl L. Hinds, has a prosthetic hand as a result of a 1974 industrial injury sustained with appellee GenCorp, Inc. In 1994, he applied for payment of medical bills related thereto. Appellee Industrial Commission of Ohio denied the payment, after finding that claimant's workers' compensation claim had expired under R.C. 4123.52's ten-year statute of limitations.

Claimant filed a complaint in mandamus in the Court of Appeals for Franklin County, alleging that the commission abused its discretion in denying payment. The court of appeals denied the writ, after finding that claimant had an adequate remedy at law by way of an appeal to common pleas court.

This cause is now before this court upon an appeal as of right.

Stewart Jaffy & Associates Co., L.P.A., Stewart R. Jaffy and Marc J. Jaffy,
for appellant.

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

Thompson Hine & Flory, L.L.P., and Robert W. Myers, for appellee
GenCorp, Inc.

Per Curiam. Decisions going to a claimant's right to participate, or to continue to participate, in the workers' compensation system must be appealed to common pleas court. *Afrates v. Lorain* (1992), 63 Ohio St.3d 22, 584 N.E.2d 1175. Thus, where the commission, as here, has ruled that further participation is barred by R.C. 4123.52's statute of limitations, that decision must be challenged by way of appeal. *Valentino v. Keller* (1967), 9 Ohio St.2d 173, 38 O.O.2d 412, 224 N.E.2d 748; *State ex rel. Consolidation Coal Co. v. Indus. Comm.* (1985), 18 Ohio St.3d 281, 18 OBR 333, 480 N.E.2d 807; *State ex rel. Superior's Brand Meats, Inc. v. Indus. Comm.* (1992), 63 Ohio St.3d 277, 586 N.E.2d 1077.

Claimant's reliance on *State ex rel. Saunders v. Metal Container Corp.* (1990), 52 Ohio St.3d 85, 556 N.E.2d 168, and *State ex rel. Morrow v. Indus. Comm.* (1994), 71 Ohio St.3d 236, 643 N.E.2d 118, is misplaced. These cases dealt only with the commission's authority to modify prior orders, not with R.C. 4123.52's statute of limitations. They are not, therefore, dispositive.

The judgment of the court of appeals is hereby affirmed.

Judgment affirmed.

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

RESNICK, J., dissents and would reverse the judgment of the court of appeals.

PFEIFER, J., dissents.