

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Fairfield City Schools,	:	
Relator,	:	
v.	:	No. 09AP-271
The Industrial Commission of Ohio	:	(REGULAR CALENDAR)
and Edward J. Carpenter,	:	
Respondents.	:	

D E C I S I O N

Rendered on March 9, 2010

*Coolidge Wall Co., L.P.A., David C. Korte, Michelle D. Bach,
and Joshua R. Lounsbury, for relator.*

*Richard Cordray, Attorney General, and Elise Porter, for
respondent Industrial Commission of Ohio.*

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

SADLER, J.

{¶1} Relator, Fairfield City Schools ("relator"), commenced this original action requesting that this court issue a writ of mandamus ordering respondent, Industrial Commission of Ohio ("commission"), to vacate its order denying relator's R.C. 4123.343

application for handicap reimbursement, and to enter a new order granting that application or, in the alternative, to re-adjudicate the matter based upon the correct meaning of the term "cardiac disease."

{¶2} Pursuant to Civ.R. 53 and Loc.R. 12(M) of the Tenth Appellate District, this matter was referred to a magistrate who issued a decision including findings of fact and conclusions of law, which is appended hereto. Therein, the magistrate concluded that the commission did abuse its discretion and recommended that this court issue the requested alternative writ of mandamus. The commission filed objections to the magistrate's decision, and relator filed a memorandum opposing those objections. This cause is now before the court for a full review.

{¶3} "The General Assembly enacted R.C. 4123.343 in 1955 to encourage employers to employ and retain handicapped persons. 126 Ohio Laws 947. Pursuant to the statute, the commission reimburses or credits an employer, totally or partially, for compensation and benefits paid to a handicapped employee who is industrially injured and whose handicap contributed to the injury or resulting disability." *Columbus & S. Ohio Elec. Co. v. Indus. Comm.*, 64 Ohio St.3d 119, 120, 1992-Ohio-112. R.C. 4123.343(B) provides, in part: "Under the circumstances set forth in this section all or such portion as the administrator determines of the compensation and benefits paid in any claim arising hereafter shall be charged to and paid from the statutory surplus fund created under section 4123.34 of the Revised Code and only the portion remaining shall be merit-rated or otherwise treated as part of the accident or occupational disease experience of the employer." R.C. 4123.343(C) provides: "Any employer who has in its employ a

handicapped employee is entitled, in the event the person is injured, to a determination under this section."

{¶4} "Handicapped employee" means "an employee who is afflicted with or subject to any physical or mental impairment, or both * * * of such character that the impairment constitutes a handicap in obtaining employment * * * and whose handicap is due to any of [24 enumerated conditions]." R.C. 4123.343(A). One of the conditions enumerated therein is "cardiac disease." R.C. 4123.343(A)(3). In its application for handicap reimbursement relator alleged that one of its employees who had suffered an industrial injury was handicapped due to pre-existing "cardiac disease." Specifically, it alleged that the injured worker suffered from hypertension and that this condition hampered the worker's recovery from multiple back surgeries.

{¶5} The commission denied relator's application for handicap reimbursement because it determined that relator had not met its burden of proof that the injured worker had suffered from "cardiac disease" since the date of injury and that such "cardiac disease" had contributed to the costs of the claim. The commission explained that, while "there is medical evidence in file to establish that the injured worker suffers from hypertension[,] * * * the Hearing Officer finds that the employer must prove that one of the conditions provided for in O.R.C. 4123.343 is present and * * * hypertension is not one of the conditions set forth in the statute."¹

{¶6} The magistrate determined that the commission should have explained its decision with particular reference to the guidelines that the Ohio Bureau of Workers'

¹ Stip.Rec. at 79.

Compensation ("BWC") has developed for its use in processing handicap reimbursement applications. Those guidelines state: "Evidence of coronary artery disease is sufficient evidence of cardiac disease[.] Evidence of high blood pressure/hypertension, without more explanation, does not constitute sufficient evidence of cardiac disease[.]"² (Emphasis sic.) The magistrate concluded that the commission may not simply deny the application by noting that hypertension is not one of the conditions enumerated in R.C. 4123.343, but must discuss how, under the BWC's guidelines, the injured worker's hypertension does or does not equate to "cardiac disease" in this case. The General Assembly has not defined "cardiac disease" as that term is used in R.C. 4123.343.

{¶7} The magistrate cites no authority for the proposition that the commission must adhere to the BWC's internal guidelines. The magistrate notes that R.C. 4121.32 requires that the BWC and the commission together adopt a policy manual for use in deciding handicap reimbursement applications, but there is no indication in the record that the two agencies have done so.

{¶8} In its objections, the commission argues that it is not bound to follow and discuss the BWC's internal guidelines and that, absent any statutory definition for the term "cardiac disease," it is within the commission's discretion to conclude that hypertension is not a handicap under R.C. 4123.343(A), so long as the commission employs a reasonable construction of the statutory scheme. It goes on to argue that because it is the agency charged with interpreting the workers' compensation statutes, it has the discretion to determine whether hypertension – alone or with other symptoms – is

² Supp.Stip.Rec.

or is not "cardiac disease" and whether it is or is not a handicap that contributed to a particular injured worker's claim.

{¶9} In its memorandum contra, relator argues, without citation to authority, that the commission is bound to follow the BWC's internal guidelines on handicap reimbursement. Alternatively, relator argues that even if the commission is not so bound, Dr. Hogya's supplemental report proves that hypertension is a "cardiac disease" under R.C. 4123.343(A).

{¶10} With respect to relator's first argument, we are not aware of any source of law that binds the commission to define or interpret the term "cardiac disease" according to the BWC's internal guidelines for processing handicap reimbursement applications. "Where a particular term employed in a statute is not defined, it will be accorded its plain, everyday meaning." *Sharp v. Union Carbide Corp.* (1988), 38 Ohio St.3d 69, 70. "Language employed in a statute should be accorded its common, ordinary and usually accepted meaning in the connection in which it is used." *Mut. Bldg. & Invest. Co. v. Efros* (1949), 152 Ohio St. 369, paragraph one of the syllabus.

{¶11} The word "cardiac" means "Of, near, or relating to the heart[.]"³ The word "disease" means "A pathological condition of a part, organ, or system of an organism resulting from various causes, such as infection, genetic defect, or environmental stress, and characterized by an identifiable group of signs or symptoms."⁴ Therefore, the

³ Dictionary.com. *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/cardiac> (accessed: March 01, 2010).

⁴ Dictionary.com. *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/disease> (accessed: March 01, 2010).

ordinary meaning of the term "cardiac disease" is a pathological condition of the heart. The word "hypertension" means "Abnormally elevated blood pressure."⁵

{¶12} Hypertension is itself a medical condition. While it may lead to, or be associated with, pathological conditions of the heart, the record in this case does not demonstrate that the injured worker's hypertension is a pathological condition of his heart. Without any statutory definition of the term "cardiac disease," it was reasonable for the commission to conclude that the injured worker did not suffer from "cardiac disease" as that term is used in R.C. 4123.343. "It is a well-settled rule that courts, when interpreting statutes, must give due deference to an administrative interpretation formulated by an agency that has accumulated substantial expertise, and to which the General Assembly has delegated the responsibility of implementing the legislative command." *Swallow v. Indus. Comm.* (1988), 36 Ohio St.3d 55, 57.

{¶13} With respect to relator's second argument, we have thoroughly reviewed Dr. Hogya's report and addendum. We agree that, in his addendum, he opines that hypertension is "a disease of the cardiac system."⁶ However, we note that the article that Dr. Hogya attached to his addendum and upon which he relies to explain his opinion that hypertension is a "cardiac disease" states: "Uncontrolled and prolonged elevation of blood pressure (BP) can lead to a variety of changes in the * * * heart [and] [t]hese changes can lead to the development of [a variety of cardiac diseases] * * * [that] generally develop in response to chronically elevated BP."⁷

⁵ Dictionary.com. *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/hypertension> (accessed: March 01, 2010).

⁶ Supp.Rec. at S3.

⁷ Supp.Rec. at S5.

{¶14} Based upon this article, it is reasonable to conclude that hypertension can lead to a variety of cardiac diseases, but the article does not substantiate Dr. Hogg's statement that hypertension is itself a cardiac disease. In any case, as noted above, it is the province of the commission to interpret the term "cardiac disease" as the same is used in R.C. 4123.343 because the General Assembly has chosen not to define it. In our view, the commission discharged that duty in a reasonable manner and we must accord due deference to its determination.

{¶15} For all of the foregoing reasons, we find the commission's objection to be well-taken and we sustain it. Upon our thorough and independent review of the record and the arguments of the parties, we adopt the magistrate's findings of fact, but we reject the magistrate's conclusions of law and substitute them with our own, as set forth hereinabove. Because we find that the commission did not abuse its discretion in denying relator's application for handicap reimbursement, we deny the requested writ of mandamus.

*Objection sustained;
writ of mandamus denied.*

TYACK, P.J., and FRENCH, J., concur.

A P P E N D I X
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The Industrial Commission of Ohio	:	(REGULAR CALENDAR)
and Edward J. Carpenter,	:	
Respondents.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on November 17, 2009

Coolidge Wall Co., L.P.A., David C. Korte, Michelle D. Bach and Joshua R. Lounsbury, for relator.

Richard Cordray, Attorney General, and Elise Porter, for respondent Industrial Commission of Ohio.

I N M A N D A M U S

{¶16} In this original action, relator, Fairfield City Schools, requests a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order denying its R.C. 4123.343 application for handicap reimbursement, and

to enter an order granting the application or, in the alternative, to readjudicate the application based upon the correct meaning of "cardiac disease."

Findings of Fact:

{¶17} 1. On May 18, 2002, Edward J. Carpenter ("claimant"), sustained an industrial injury while employed in athletic field maintenance for relator, a state-fund employer. On that date, claimant injured his lower back while lifting a "drag" on a baseball field. The industrial claim (No. 02-858339) is allowed for "sprain lumbosacral; L5-S1 displacement; lumbosacral spondylosis; bilateral radiculopathy; aggravation of pre-existing anxiety disorder; depressive disorder; post laminectomy syndrome/failed back syndrome."

{¶18} 2. As a result of his May 18, 2002 industrial injury, claimant underwent multiple back surgeries. Following a lengthy period of temporary total disability, claimant was awarded permanent total disability compensation.

{¶19} 3. On November 21, 2002, orthopedic surgeon Jesse G. Eisler, M.D., wrote:

* * * He does have a prior history of arrhythmia and was hospitalized for this in 1995.

* * *

REVIEW OF SYSTEMS [sic]: Documented on the chart. Significant for high blood pressure, depression, heart palpitations, fatigue and difficulty sleeping. * * *

PHYSICAL EXAM: * * * His blood pressure is 120/78. * * *

{¶20} 4. On January 28, 2008, claimant filed an application for handicap reimbursement. The application form (CHP-4A) presents the statutory list of diseases or conditions for which handicap reimbursement may be obtained. From the list,

claimant selected "[c]ardiac disease" and "[p]sycho-neurotic disability following treatment in a recognized medical or mental institution."

{¶21} 5. At relator's request, Paul T. Hogya, M.D., conducted a medical file review that resulted in a three-page narrative report dated April 5, 2008.

{¶22} In the report, Dr. Hogya acknowledges his acceptance of "the objective findings of the examining physicians in regard to the allowed conditions in this claim." He then chronologically lists the medical evidence he reviewed along with a brief summary of that evidence. For example, Dr. Hogya lists:

- Dr. Eisler consultation report dated 11/21/02 reviewed.
 - Positive history of arrhythmia in 1995[.]
 - ROS positive for high blood pressure, heart palpitations, fatigue[.]
 - BP 120/78. Lumbar examination findings show pain and tenderness, but good ROM. No focal neurological deficits.
 - X-rays note L5-S1 Grade II spondy.

{¶23} Dr. Hogya then poses the question he was asked followed by his answer:

Question 1: Please determine whether or not "cardiac disease" pre-existed the industrial injury and if so, what handicap percentage did this condition(s) have in its effect on the allowed conditions in this claim.

The claimant does have history of hypertension with complicating cardiac arrhythmia in 1995[.] His hypertension has been managed with Lisinopril. His claim is recognized for multiple lumbar conditions with bilateral radiculopathy, depressive disorder, and aggravation of anxiety. He has had multiple fusion surgeries with residual back and right lower extremity pain. He failed spinal cord stimulator implantation. The hypertension would reasonably contribute to a handicap assessment with respect to his multiple lumbar surgeries as outlined above. Chronic hypertension plays a role in delaying healing from these surgeries, exacerbated by his chronic smoking. Hypertension results in stiffer arteries, which limits healing, particularly involving the fusion surgeries. Excellent blood flow is required to consolidate the bony fusion. In this

case, there was failed back surgery with non-union. This led to the two-stage surgery on 12/2/03 and 1/24/04[.] Consequently, there was substantial delay in recovery, resulting in the need for a second procedure, which involved two stages over two months. Therefore, a reasonable handicap assessment attributed to the cardiac disease (hypertension) would be 50%[.]

Handicap assessment in the claim would be 50% total.

This opinion is based on the medical file documentation provided to me and is based on a reasonable degree of medical certainty[.] * * *

(Emphases sic.)

{¶24} 6. Following an April 8, 2008 hearing before a representative of the administrator of the Ohio Bureau of Workers' Compensation ("bureau"), the administrator's representative mailed an order on April 16, 2008 denying relator's application. The order states that relator "withdrew psycho-neurotic disability."

{¶25} 7. Relator administratively appealed the administrator's order.

{¶26} 8. Following a May 29, 2008 hearing, a district hearing officer ("DHO") issued an order affirming the administrator's order. The DHO's order explains:

The order of the Administrator, dated 04/16/2008, is affirmed.

The District Hearing Officer hereby denies the employer's CHP-4A Application for Handicap Reimbursement, filed 01/28/2008. The District Hearing Officer finds the employer in this claim has failed to satisfy its burden of proving by a preponderance of the evidence that it is entitled to any handicap reimbursement in this claim under Revised Code 4123.343.

The District Hearing Officer notes that the employer has alleged that the injured worker suffers from "Cardiac Disease" and it was this condition which the injured worker aggravated and which contributed to the cost of this worker's compensation claim. However, the District Hearing Officer

finds there is insufficient medical evidence in the Industrial Commission claim file that the injured worker has been suffering from consequences of "Cardiac Disease" since the date of injury in this claim. The District Hearing Officer finds there is a lack of contemporaneous and/or corroborating medical documentation to confirm the injured worker has been suffering from "Cardiac Disease" since the date of injury in this claim. Further, the District Hearing Officer finds that Dr. Hogg's conclusory statements in this report of 04/05/2008 that the injured worker's recovery has been delayed as a result of his pre-existing cardiac condition is insufficient without actual contemporaneous and/or corroborating medical evidence regarding the injured worker's alleged problems from dealing with his cardiac disease.

Base[d] on the foregoing, and pursuant to Revised Code 4123.343, the District Hearing Officer hereby denies the employer's request for a handicap reimbursement in this claim.

{¶27} 9. Relator administratively appealed the DHO's order of May 29, 2008.

{¶28} 10. Following a July 29, 2008 hearing, a staff hearing officer ("SHO")

issued an order stating:

The order of the District Hearing Officer, from the hearing dated 05/29/2008, is affirmed.

* * *

It is the order of the Hearing Officer that the employer's CHP-4A Application for Handicap Reimbursement filed on 01/28/2008 is denied.

The Hearing Officer finds that the employer has not met its burden of proof in establishing that it is entitled to a handicap reimbursement set forth in O.R.C. 4123.343.

The Hearing Officer finds that the employer has failed to prove that the injured worker suffers from "cardiac disease." The Hearing Officer further finds that the employer has failed to establish by a preponderance of the evidence that this condition contributed to the cost of the workers' compensation claim. The Hearing Officer finds that there is medical

evidence in file to establish that the injured worker suffers from hypertension. However, the Hearing Officer finds that the employer must prove that one of the conditions provided for in O.R.C. 4123.343 is present and that this condition contributed to the cost of the claim. The Hearing Officer finds that hypertension is not one of the conditions set forth in the statute.

Because the Hearing Officer finds that the employer has not presented the requisite medical evidence, the Hearing Officer finds that it has not met its burden of proof for a handicap reimbursement.

This order is based upon O.R.C. 4123.343.

{¶29} 11. Relator administratively appealed the SHO's order of July 29, 2008 to the three-member commission. However, on August 26, 2008, another SHO refused relator's administrative appeal.

{¶30} 12. On March 17, 2009, relator, Fairfield City Schools, filed this mandamus action.

Conclusions of Law:

{¶31} It is the magistrate's decision that this court issue a writ of mandamus, as more fully explained below.

{¶32} R.C. 4123.343 provides:

This section shall be construed liberally to the end that employers shall be encouraged to employ and retain in their employment handicapped employees as defined in this section.

(A) As used in this section, "handicapped employee" means an employee who is afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character that the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if the employee should become unemployed and whose handicap is due to any of the following diseases or conditions:

* * *

(3) Cardiac disease[.]

{¶33} R.C. 4123.343(B) provides:

Under the circumstances set forth in this section all or such portion as the administrator determines of the compensation and benefits paid in any claim arising hereafter shall be charged to and paid from the statutory surplus fund created under section 4123.34 of the Revised Code and only the portion remaining shall be merit-rated or otherwise treated as part of the accident or occupational disease experience of the employer. * * * The provisions of this section apply only in cases of death, total disability, whether temporary or permanent, and all disabilities compensated under division (B) of section 4123.57 of the Revised Code. The administrator shall adopt rules specifying the grounds upon which charges to the statutory surplus fund are to be made.
* * *

{¶34} R.C. 4123.343(C) provides:

An employer shall file an application under this section for a determination with the bureau or commission in the same manner as other claims. * * *

{¶35} R.C. 4123.343(D)(2) provides:

Whenever a handicapped employee is injured or disabled or dies as a result of an injury or occupational disease and the administrator finds that the injury or occupational disease would have been sustained or suffered without regard to the employee's pre-existing impairment but that the resulting disability or death was caused at least in part through aggravation of the employee's pre-existing disability, the administrator shall determine in a manner that is equitable and reasonable and based upon medical evidence the amount of disability or proportion of the cost of the death award that is attributable to the employee's pre-existing disability and the amount found shall be charged to the statutory surplus fund.

{¶36} R.C. 4121.32 provides, in part:

(C) The bureau and commission jointly shall develop, adopt, and use a policy manual setting forth the guidelines and bases for decision-making for any decision which is the responsibility of the bureau, district hearing officers, staff hearing officers, or the commission. Guidelines shall be set forth in the policy manual by the bureau and commission to the extent of their respective jurisdictions for deciding at least the following specific matters:

* * *

(6) Transferring costs of a claim from employer costs to the statutory surplus fund pursuant to section 4123.343 of the Revised Code[.]

{¶37} Significantly, the parties have stipulated to "Handicap Reimbursement Guidelines" published by the bureau. The stipulation, filed in this action on October 2, 2009, states, in part:

* * * [C]ounsel for Respondent, The Industrial Commission of Ohio, hereby stipulates that the submitted "Handicap Reimbursement Guidelines" is an internal document for the guidance of BWC attorneys, and is available through a public records request, but is not available on the web site or in any publication.

{¶38} The handicap reimbursement guidelines, as stipulated by the parties, provides in part:

Cardiac disease

Evidence of coronary artery disease is sufficient evidence of cardiac disease[.]

Evidence of high blood pressure/hypertension, without more explanation, does not constitute sufficient evidence of cardiac disease[.]

(Emphases sic.)

{¶39} In her July 29, 2008 order, the SHO denies the application on grounds that relator failed to prove that claimant suffers from a "cardiac disease." That conclusion is

premised upon the SHO's finding that "hypertension is not one of the conditions set forth in the statute."

{¶40} Undisputedly, "hypertension" is not one of the conditions set forth in the statute, as the SHO's order points out. However, the commission's inquiry cannot end so abruptly.

{¶41} Conspicuously absent from the SHO's order is any mention of the handicap reimbursement guidelines which specifically address the bureau's understanding of the relationship between hypertension and cardiac disease.

{¶42} The SHO's silence on the matter strongly suggests that the commission failed to apply the definition of "cardiac disease" as provided in the handicap reimbursement guidelines.

{¶43} Application of the guideline definition of "cardiac disease" was a critical issue before the commission. The commission's failure to address or even recognize the critical issue before it constitutes an abuse of discretion. *State ex rel. Gen. Am. Transp. Corp. v. Indus. Comm.* (1990), 49 Ohio St.3d 91.

{¶44} Accordingly, it is the magistrate's decision that this court issue a writ of mandamus ordering the commission to vacate its SHO's order of July 29, 2008 to the extent that the handicap reimbursement application is denied, and to enter a new order that adjudicates the application based upon the definition of "cardiac disease" as provided by the bureau's handicap reimbursement guidelines.

/s/ Kenneth W. Macke

KENNETH W. MACKE
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).