

vacate its order denying relator's application for permanent total disability ("PTD") compensation as a result of injuries suffered while relator was employed by respondent, the Ohio Department of Transportation, and to enter an order finding that relator is entitled to the requested PTD compensation.

{¶2} We referred the case to a magistrate of this court pursuant to Loc.R. 12(M) and Civ.R. 53. On June 25, 2010, the magistrate rendered a decision, a copy of which is attached to this decision. The magistrate's decision recommends denial of the requested writ, because the commission's decision denying relator's application for PTD compensation was supported by some evidence, and the commission therefore did not abuse its discretion in rendering that decision.

{¶3} Relator filed objections to the magistrate's decision. However, on September 27, 2010, relator filed a notice withdrawing the objections.

{¶4} We have independently reviewed the record, and, based on that independent review, find that the magistrate has properly discerned the facts and has applied the relevant law to those facts. Therefore, we adopt the magistrate's decision as our own. In accordance with the magistrate's decision, we hereby deny the requested writ of mandamus.

Writ of mandamus denied.

TYACK, P.J., and BROWN, J., concur.

A P P E N D I X
 IN THE COURT OF APPEALS OF OHIO
 TENTH APPELLATE DISTRICT

State ex rel. Terrence M. Jerreals,	:	
Relator,	:	
v.	:	No. 10AP-74
The Ohio Department of Transportation and Industrial Commission of Ohio,	:	(REGULAR CALENDAR)
	:	
Respondents.	:	
	:	

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

Rendered on June 25, 2010

Clements, Mahin & Cohen, L.P.A., Co., and Edward Cohen,
for relator.

*Lee M. Smith & Associates Co., L.P.A., and Natalie Tackett-
Eby,* for respondent The Ohio Department of Transportation.

Richard Cordray, Attorney General, and Latawnda N. Moore,
for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶5} Relator, Terrence M. Jerreals, has filed this original action requesting that this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order which denied relator's application for permanent total

disability ("PTD") compensation and ordering the commission to find that he is entitled to that compensation.

Findings of Fact:

{¶6} 1. Relator sustained a work-related injury on February 4, 1999, when he was attacked by and assaulted by a co-worker. Relator's workers' compensation claim was originally allowed for contusion right scalp; contusion of right forearm.

{¶7} 2. In an order dated November 12, 1999, relator's claim was additionally allowed for "depression and anxiety." In an order dated August 19, 2005, relator's claim was additionally allowed for "concussion and intracranial injury with brief loss of consciousness and post-concussion headaches." Following some confusion regarding what conditions were actually allowed in relator's claim, his claim was additionally allowed for "post traumatic stress disorder."

{¶8} 3. In December 2007, relator filed his application for PTD compensation. According to his application, relator was 49 years of age and last worked February 4, 1999, the date of his injury. Further, relator indicated that he had completed two years of college and the Ohio College of Business and Technology and that he could read, write, and perform basic math. Relator indicated further that he had not participated in rehabilitation services because his doctor had never released him for vocational rehabilitation. Further, relator indicated that he was not receiving Social Security disability benefits; however, he was receiving Public Employee Retirement System ("PERS") disability benefits.

{¶9} 4. In support of his application, relator included the November 12, 2007 report of James P. Downey, who first saw relator in March 2005. Dr. Downey concluded as follows:

In summary, it is my professional opinion that Mr. Jerreals current psychological status renders him unable to engage in any type of remunerative employment activity. With the combination of the physical aspects of his injury, consideration should be given to obtaining a permanent and total disability determination on his behalf. It is further my opinion that he is permanently and totally disabled from his psychological standpoint and is unable to return to any type of gainful employment.

{¶10} 5. Relator also included the May 15, 2006 report of Richard T. Sheridan, M.D., who conducted an independent medical evaluation for purposes of relator's request for PERS disability benefits. Dr. Sheridan indicated that relator was suffering from the following conditions:

1. Status-post assault from 1999 with a closed head injury and post-traumatic stress disorder.
2. Migraine headaches.
3. Diabetes mellitus.
4. Hypertension.
5. Depression.
6. Peripheral neuropathy, greater on the left lower extremity than the right.

Dr. Sheridan concluded that "due to this constellation of medical impairments he is presume[d] to be physically and mentally incapacitated permanently for the performance of duty and should be entitled to a disability benefit."

{¶11} 6. Relator was examined by Dr. Kenneth J. Manges who issued a report dated March 31, 2008. Dr. Manges identified and discussed a significant number of medical reports and other documents which are in the record. In the summary portion of his report, Dr. Manges noted:

* * * His response style indicates a broad tendency to magnify the level of his experienced illness and a characterological inclination to complain or to be self-pitying.

* * * [H]e presents his condition in a somewhat exaggerated manner. His overall demeanor and history suggests a Personality Disorder, not otherwise specified, which appears to have pre-dated the assault in 1999.

Based on his substance abuse, suicidal ideation and psychiatric hospitalizations there is reason to believe that at least a moderate level of pathology characterizes Mr. Jerreals' overall personality organization.

* * *

In this examiner's opinion, to a reasonable degree of psychological certainty his condition was complicated by a pre-existing personality disorder, not otherwise specified and a pre-existing migraine condition dating anywhere from 10 to 19 years prior to the attack/assault he suffered.

Dr. Manges was not sure whether relator's claim had been additionally allowed for post-traumatic stress disorder ("PTSD"). Dr. Manges concluded:

* * * His self assertions, if they are to be believed, regarding his migraines, would preclude all work. The psychological condition of PTSD would preclude all work. His depression would not preclude all work but would restrict him to repetitive, routine tasks without public contact.

{¶12} 7. It was following Dr. Manges' report that the commission clarified the allowances and specifically indicated that relator's claim had been additionally allowed for PTSD.

{¶13} 8. Following the clarification of the allowed conditions, relator was examined by James R. Hawkins, M.D. Although Dr. Hawkins' report is not contained in the record, pursuant to a staff hearing officer ("SHO") order dated September 21, 2009, Dr. Hawkins' report was found deficient because he did not accept the allowed conditions of depression and anxiety and PTSD when he examined relator. The SHO referred the file to the commission for a new specialist examination.

{¶14} 9. An independent medical examination was conducted by Colin Zadikoff, M.D. Dr. Zadikoff examined relator for the following conditions:

1. Contusion right scalp.
2. Contusion of right forearm.
3. Concussion and intracranial injury with brief loss of consciousness.
4. Positive-concussion headaches.

In his report, Dr. Zadikoff took a history from relator and noted the following:

Mr. Jerreals indicates that on 2-4-99, he was working in his office for the Ohio Department of Transportation and was going over work assignments when a co-worker struck him on the head with a lead crystal dish, knocking him to the floor. He states that he was then stomped on and his head kicked. There are conflicting notes as to whether he was unconscious briefly, but notes of the witnesses' reports quoted by some of the previous examiners, would indicate that he was not unconscious. The patient was seen in the emergency room of the local hospital, had head CT done, and was sent home. * * * He states that he has had severe headaches since then. The patient has, in fact, had a history of migraine headache[s] since the early 1980's. There was some worsening of the headaches both in severity and frequency after the injury. He states that these have continued. * * * He states that he had had psychological problems since the injury, but review of records would also

suggest that there were premorbid difficulties, including depression and, possibly, personality disorder.

He continues to complain of pain in his right upper limb and feels that function is not normal. * * *

He states that the headaches occur on most days. * * *

The patient has a history of diabetes mellitus and hypertension. He has an insulin pump. He is on a long list of medications * * *.

Dr. Zadikoff opined that all the allowed conditions had reached maximum medical improvement ("MMI") as follows:

- 1) Contusion right scalp – This has resolved several years ago and there is no ongoing problem in that regard.
- 2) Contusion of right forearm – There are no residual effects of the contusion to the right forearm and that is felt to have resolved completely.
- 3) Concussion and intracranial injury with brief loss of consciousness – There is somewhat conflicting notation regarding the loss of consciousness and, from the report quoted, there does not appear to have been any definite loss of consciousness. He does appear, however, to have had concussion and that also appears to have resolved.
- 4) Post-concussion headaches – The patient had migraine which pre-dated the injury, was probably worsened immediately following the injury, but it is felt that the continued headaches are a continuation of his premorbid condition. It is, therefore, felt that he has reached maximum medical improvement with regard to each of the above conditions.

Dr. Zadikoff opined that relator had a zero percent impairment from the allowed conditions and concluded that he had no physical limitations resulting from the allowed conditions.

{¶15} 10. A new psychological examination was conducted by Michael A. Murphy, Ph.D. In his October 20, 2009 report, Dr. Murphy took an extensive history

from relator as part of his mental status examination. Dr. Murphy concluded that there was no evidence of cognitive dysfunction, his long-term memory was intact, abstract reasoning, concept formation, and fund of knowledge were estimated to be within normal limits and relator's short-term memory was intermittently impaired. Regarding his mood and affect, Dr. Murphy noted that relator self-reported the following:

* * * He states, "I feel hopeless." * * * He reports having nothing to look forward to, a loss of interests, little or no desire, and poor concentration. He states, "Nothing like it used to be." He reports previous episodes of depression. He reports multiple psychiatric admissions. He states, "I've lost count." He reports having crying spells. He states, "Three or four times a week." He has not attempted suicide. However, he states, "I walked around with a knife" (1999-2000). He reports suicidal ideation, but denies any suicidal intent or plan. He reports symptoms of anxiety, including intense fear, loss of control, and feelings of impending doom. * * * Symptoms of post-traumatic stress are present, including startle responses, flashbacks, nightmares (every night), and dissociative reactions. He states, "When I see a red S-10 truck." He reports Jeff Lewis also stalked his wife.

Regarding physical functioning, relator reported chronic pain every day with migraine/cluster headaches and vision loss. His appetite is normal, and his energy level was low. With regard to the aspects of residual functioning, specifically his daily activities, relator self-reported the following:

The Injured Worker's daily activities include driving, talking to people on the phone, preparing meals with his wife, watching television (24/7), visiting relatives, dining out (carry out), and attending medical appointments and therapies. He states, "I used to be an avid reader." His wife does the yard work. He denies walking. He states, "I got two bad knees. I use knee braces." The Injured Worker is able to care for his basic personal needs and drive independently. He is not able to drive when fully medicated. His wife handles his personal finances. He does not take vacations. He follows medication prescriptions and is aware of safety precautions.

He is able to leave his home. Pre-injury, he fished, hiked, and camped. * * *

Dr. Murphy concluded that relator's impairment in this area was moderate. Regarding his social interaction, relator self-reported that he lives with his family and relates with them, however he prefers being alone and reports having problems with crowds. Dr. Murphy concluded that his impairment in this area was mild. Regarding his adaptation (ability to respond appropriately to changes in the work place), Dr. Murphy noted that relator was able to maintain attendance and use his own transportation, could follow normal directions, required supervision and would be able to function under normal stress conditions with simple work tasks. Dr. Murphy opined that his impairment in this area was moderate. Regarding his concentration, persistence, and pace, Dr. Murphy concluded that relator was able to sustain focus or attention long enough to permit the completion of tasks in a suitable work environment, was able to complete a normal workday and workweek and maintain regular attendance from a psychological standpoint. Dr. Murphy opined that his impairment in this area was mild. Dr. Murphy was not able to complete any psychological testing because relator reported vision loss and the onset of a migraine. In conclusion, Dr. Murphy opined that relator's allowed psychological conditions had reached MMI, and that he had received a more than reasonable course of intervention. Dr. Murphy assessed a 26 percent impairment and opined that relator was not able to return to work with his former employer; however, he concluded that relator was capable of other work activity with the following limitations: repetitive work, non-complex, normal degree of stress, with reasonable supervision.

{¶16} 11. Relator's application for PTD compensation was heard before an SHO on December 16, 2009, and was denied. The SHO relied upon the medical reports of Drs. Zadikoff and Murphy and found that the nonmedical disability factors were positive stating:

The Staff Hearing Officer finds the Injured Worker is 51 years of age who obtained an Associate Degree in Electronics Technology from the College of Business and Technology. The Staff Hearing Officer finds that the Injured Worker has worked as a Transportation Tech Specialist, Electronics Assembler and Electrical/Mechanical Technician.

Ms. Paula Zinsmeister, vocational expert, opined in a report that the Injured Worker appears to have adequate skills to become competitively employed without additional training. Ms. Zinsmeister further opined that the Injured Worker would be a candidate for additional skill training if new job required this. Ms. Zinsmeister opined that the Injured Worker would be capable given his physical capabilities to perform jobs as an Electrical Board Assembler, Maintenance/Housekeeping, Appliance Repair, Appliance Service Technician, Electronics Technician, Electrical Assembly, Inspector, and Machine Operator.

The Staff Hearing Officer notes that the Injured Worker reported a 4.0 grade point average with his Associate Degree in Electronics Technology. The Staff Hearing Officer notes from the Injured Worker's permanent total disability application that he is able to read, write and do basic math. The Staff Hearing Officer finds that the Injured Worker's college education is an asset to the Injured Worker in securing future employment. Staff Hearing Officer finds that the Injured Worker's age of 51 is an asset in securing future employment. This Staff Hearing Officer finds that the Injured Worker's college education and his work history are assets which will allow him to learn new work rules and procedures. This Staff Hearing Officer finds that the Injured Worker's work history as a Transportation Tech Specialist, Electrical/Mechanical Technician and Assembler from 1977 to 1999 demonstrates other desirable traits such as steadiness and dependability and specialized skills in this area.

The Staff Hearing Officer finds that the Injured Worker, with the medical capabilities listed by Dr. Zadikoff and Dr. Murphy, together with his age of 51, Associate Degree of college education, and work history, render him capable of performing sustained remunerative employment.

Accordingly, the Staff Hearing Officer finds that the Injured Worker is able to engage in sustained remunerative employment.

{¶17} 12. Thereafter, relator filed the instant mandamus in this court.

Conclusions of Law:

{¶18} Relator asserts that the commission abused its discretion by relying on the reports of Drs. Murphy and Zadikoff as those reports do not constitute some evidence upon which the commission could properly rely.

{¶19} For the reasons that follow, it is this magistrate's conclusion that the reports of Drs. Murphy and Zadikoff do constitute some evidence upon which the commission could rely and this court should deny relator's request for a writ of mandamus.

{¶20} With regard to Dr. Murphy's report, relator argues that it is so internally inconsistent that it cannot constitute some evidence. Relator argues that Dr. Murphy failed to reconcile the actual findings in his report with his opinions.

{¶21} It is undisputed that a medical report which is internally inconsistent cannot constitute some evidence supporting the commission's decision. *State ex rel. Lopez v. Indus. Comm.*, 69 Ohio St.3d 445, 1994-Ohio-458. In *Lopez*, Dr. Katz had examined the claimant and despite normal physical findings, Dr. Katz assessed a high (50 percent) degree of impairment and then concluded that claimant could perform

heavy foundry labor. The court determined that Dr. Katz's report was so internally inconsistent that it could not constitute some evidence supporting the commission's decision.

{¶22} Similarly, in *State ex rel. Taylor v. Indus. Comm.* (1995), 71 Ohio St.3d 582, the court again found a report from Dr. Katz to be so internally inconsistent that it could not constitute some evidence. In that report, Dr. Katz found no objective finding and yet concluded that the claimant had a 50 percent permanent partial impairment.

{¶23} In both *Lopez* and *Taylor*, Dr. Katz made specific physical findings and then assessed percentages of impairment which were inconsistent with those physical findings. Relator asserts that the same situation is present here.

{¶24} In his brief, relator points to the following "findings" in Dr. Murphy's report:

* * * Dr. Murphy's report found that Mr. Jerreals' "[d]epressive cognition is present daily" and that "[s]ymptoms of post-traumatic stress are present, including startle responses, flashbacks, nightmares (every night), and dissociative reactions." * * * Mr. Jerreals "feel[s] hopeless," has "nothing to look forward to, a loss of interests, little or no desire, and poor concentration." * * * Mr. Jerreals suffers from "crying spells [t]hree or four time[s] a week" and has "suicidal ideation" coupled with feelings of "anxiety, including intense fear, loss of control, and feelings of impending doom."

Relator argues that "[t]hese findings, taken together, describe an individual in severe psychological distress, and are patently inconsistent with Dr. Murphy's conclusion that Mr. Jerreals' psychological impairment ranges from mild to moderate."

{¶25} Every statement listed above was self-reported by relator to Dr. Murphy. Although relator argues that all the above statements are objective "findings," the magistrate disagrees. Relator self-reported feelings of hopelessness, lack of interest,

crying spells, suicidal ideation, symptoms of anxiety, including intense fear, loss of control, and feelings of impending doom, startle responses, flashbacks, nightmares, and dissociative reactions, none of these are findings. At the outset of his report, Dr. Murphy stated that:

In the formulation of a psychological opinion, information derived from self-report, psychological testing, and findings of previous examiners (records) are utilized. I accept the allowed conditions in the claim and the findings of previous examiners, not necessarily their opinions.

{¶26} Included in the list of medical reports which Dr. Murphy reviewed and which findings he utilized, is the October 6, 2008 report of Lee Howard, Ph.D., who was unable to objectively validate any current or previous psychological or psychiatric diagnoses in relator's claim based on his clinical presentation. Dr. Howard concluded that any inability to perform work activities would be from a subjective standpoint without objective evidence.

{¶27} Dr. Murphy also cited the August 28 report of Gordon Harris, Ph.D., who opined that the evidence substantiates the existence of PTSD. Dr. Murphy also listed the July 12, 2000 and the October 5, 1999 reports of Michael Miller, M.D., who opined that relator had cognitive limitations and was emotionally labile. Dr. Miller indicated further that it was unlikely that relator could work because he continues to be easily startled, overwhelmed, and anxious/agitated. Dr. Miller opined further that relator would need at least one year to 18 months of treatment.

{¶28} Dr. Murphy also identified the March 31, 2008 report of Kenneth Manges, Ph.D., who found that relator's condition was complicated by a pre-existing personality disorder and a pre-existing migraine condition dating anywhere from ten to 19 years

prior to the date of injury. Dr. Manges stated that relator's PTSD symptoms were self-reported and could not be independently verified by testing. However, Dr. Manges also stated that if relator had PTSD condition as he alleged, then he would be precluded from work.

{¶29} Dr. Murphy also noted the November 12, 2007 report of Dr. Downey, who opined that relator's current psychological status rendered him unable to engage in any type of remunerative employment activity. Dr. Murphy listed six additional medical reports which he considered, four of which are contained in the stipulated evidence.

{¶30} Dr. Murphy considered the October 2, 2006 report of L. J. Mascarenhas, M.D., who provided a file review and opined that relator's ongoing headaches are the result of his being struck in the head and that the use of anticonvulsants, antidepressants, anti-anxiety medication, and antiemetic are appropriate.

{¶31} Dr. Murphy also listed the May 15, 2006 report of Dr. Sheridan, which was prepared and submitted with relator's PERS disability application. As noted in the findings of fact, Dr. Sheridan opined that relator was disabled according to PERS standards based on his closed head injury and post-traumatic stress disorder, migraine headaches, diabetes mellitus, hypertension, depression, peripheral neuropathy, greater on the lower extremity than the right.

{¶32} Dr. Murphy also noted the April 25, 2007 report of Seth H. Vogelstein, D.O., who opined that relator may have experienced a period a time in the month following his injury where he had an increase in his headaches, secondary to the diagnosed post-concussion headaches; however, it was Dr. Vogelstein's opinion that the post-concussion headaches had resolved long ago and that the ongoing headache

complaints were in fact related to his pre-existing migraines which were not caused by nor aggravated by his industrial injury. Dr. Vogelstein opined that relator could return to his former work activities.

{¶33} Lastly, Dr. Murphy referenced the March 16, 2008 report of David C. Randolph, M.D., who noted that relator's March 17, 2004 CT scan of the head was normal and unchanged and his December 3, 2004 MRI scan of his head and neck showed no significant abnormalities. Dr. Randolph concluded that relator was not permanently and totally removed from any and all forms of sustained remunerative employment and that he could return to work activities in at least a light to medium physical demand characteristic level, if motivated. Dr. Randolph provided a lengthy explanation for his conclusions including his determination that the concept of an "inter-cranial injury" was poorly supported by the records, especially when considering the CT scans and the MRI. Dr. Randolph also noted relator's long history of headaches and his substance abuse. As Dr. Randolph stated, opioids have long been recognized as drugs which can accelerate and increase the perception of pain. Dr. Randolph also noted that relator had been diagnosed with sarcoidosis and that the most common symptoms associated with sarcoidosis include headaches, ataxia, cognitive dysfunction, weakness, and seizures. Dr. Randolph stated that he could not find any objective evidence of relator's psychiatric conditions and concluded he probably could not return to work immediately following the injury, however, Dr. Randolph opined that should have been temporary and should not have lasted nine years.

{¶34} As can be seen from the above medical reports which Dr. Murphy reviewed and which contain many objective findings, it is those findings upon which he

based his opinion and not simply relator's self-reporting of his symptoms. Although some of the reports support relator's claims, some do not. Drs. Howard, Manges, and Randolph discussed the objective evidence in relator's file and explained why they concluded that those findings did not render relator permanently and totally disabled. Relator's contention that his subjective statements constitute objective findings is simply inaccurate.

{¶35} Relator also contends that Dr. Murphy's findings do not support his determination that relator had mild to moderate impairment in his daily activities, social interactions, adaptation, concentration, persistence, and pace. However, as above noted, relator bases these arguments on his subjective statements regarding his symptoms. Dr. Murphy was not required to accept relator's own statements concerning the severity of his symptoms.

{¶36} Although relator contends that his situation is analogous to the situations of the claimants in *Lopez* and *Taylor*, this magistrate disagrees. In both of those cases, Dr. Katz made objective physical findings which were essentially normal and then assessed high degrees of impairment. When considering all of the medical records which Dr. Murphy reviewed and his interview with relator, there is evidence that relator exaggerates his symptoms, has a substance abuse problem which could be causing some of his symptoms, and is taking many medications which, in combination, may be affecting his symptoms. Dr. Murphy's report does not resemble Dr. Katz's reports in the *Lopez* and *Taylor* cases and it is not internally inconsistent. As such, the magistrate finds that Dr. Murphy's report does constitute some evidence upon which the commission could rely.

{¶37} Relator also contends that the report of Dr. Zadikoff cannot constitute some evidence upon which the commission relied because he did not accept all the allowed conditions and he attributed relator's impairment to his pre-existing migraines.

{¶38} It is well established that, where a medical expert fails to consider all the allowed conditions, the opinion cannot constitute some evidence on which the commission may rely. *State ex rel. Richardson v. Quarto Mining*, 73 Ohio St.3d 358, 1995-Ohio-128. In the present case, with regard to relator's allowed condition of "concussion and intercranial injury with brief loss of consciousness" relator points to the following sentence in Dr. Zadikoff's report as evidence that Dr. Zadikoff clearly did not accept this condition: "There are conflicting notes as to whether he was unconscious briefly, but notes of the witnesses' reports quoted by some of the previous examiners, would indicate that he was not unconscious."

{¶39} This magistrate disagrees with relator's conclusion that Dr. Zadikoff's above statement establishes that he did not accept the allowed condition of concussion and intercranial injury with brief loss of consciousness.

{¶40} The magistrate finds that Dr. Zadikoff's statement is simply an accurate statement taken from the evidence. As early as October 5, 1999, Dr. Miller stated that there *may* have been a loss of consciousness. In a report dated October 25, 1999, Dr. Hughes stated that there was no loss of consciousness. A February 5, 2003 report by V.P. Mannava, M.D., indicates relator did not lose consciousness. In the July 29, 2005 report of Gerald Steiman, M.D., Dr. Steiman indicates that "Mr. Jerreals states he did not lose consciousness. He was not dazed and he remembers the entire event." According to the October 2, 2006 report of Dr. Mascarenhas, relator did not lose

consciousness. The April 25, 2007 report of Dr. Vogelstein also indicates that "notes indicated there was no indication of any loss of consciousness at the time of the injury." According to the March 16, 2008 report of Dr. Randolph, relator stated that he was not clear whether he lost consciousness or not. In his March 31, 2008 report, Dr. Manges noted "the information from Mr. Jerreals is not completely consistent with the medical records. Mr. Jerreals reported to this examiner he briefly lost consciousness at the scene but reported elsewhere he lost consciousness in the ambulance. This examiner was unable to find support for the loss of consciousness independent of the claimant's assertion."

{¶41} As the above statements indicate, there is conflicting evidence in the record as to whether or not relator actually lost consciousness. The fact that Dr. Zadikoff noted that the record revealed conflicting evidence on this does not substantiate relator's assertion that Dr. Zadikoff did not accept it as an allowed condition.

{¶42} Relator also contends that Dr. Zadikoff inappropriately attributed his impairment to nonallowed conditions. However, as this court stated in *State ex rel. Shaffer v. Indus. Comm.*, 10th Dist. No. 03AP-486, 2004-Ohio-3838, ¶21:

* * * The fact that a condition was allowed in the claim did not require [the doctor] to find that certain symptoms or impairments existed or that they existed as a *result of* the allowed condition. See, generally, *State ex rel. Foley v. Vulcan Mfg. Co.* (1998), 84 Ohio St.3d 59 * * *; *State ex rel. Domjancic v. Indus. Comm.* (1994), 69 Ohio St.3d 693 * * *.

(Emphasis sic.)

{¶43} In the present case, the record is replete with evidence that relator has suffered migraines for a significant portion of his life. Further, there is other medical

evidence in the record besides the report of Dr. Zadikoff attributing his current headaches to his migraines and opining that, nine years after the event, relator should not still be having post-concussion headaches. Without citing to every medical report in the record which discusses relator's migraine headaches wherein the doctor opines that his current headaches are not related to post-concussion headaches but are attributable to his pre-existing migraine headaches, there are other reports in the record which make this same finding. As this court noted in *Shaffer*, Dr. Zadikoff was not required to find that certain of relator's symptoms or impairment existed or that those symptoms or impairment existed as a result of his allowed post-concussion headaches. In the present case, Dr. Zadikoff considered post-concussion headaches as an allowed condition; however, it was his opinion that relator's current headaches were not related to the post-concussion headaches, but were instead related to his pre-existing migraines.

{¶44} Relator has not demonstrated Dr. Zadikoff failed to consider all the allowed conditions or that he improperly attributed relator's current symptoms to his migraine headaches.

{¶45} Based on the foregoing, it is this magistrate's decision that relator has not demonstrated that the commission abused its discretion by relying on the reports of Drs. Murphy and Zadikoff to deny his application for PTD compensation and this court should deny relator's request for a writ of mandamus.

/s/ Stephanie Bisca Brooks _____

STEPHANIE BISCA BROOKS
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).