

[Cite as *State ex rel. Gonzalez v. Lewis Tree Serv., Inc.*, 2011-Ohio-6816.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Milton Gonzalez and Isabel Pano Gomez,	:	
	:	
Relators,	:	
	:	
v.	:	No. 10AP-755
	:	
Lewis Tree Service Inc., and Industrial Commission of Ohio,	:	(REGULAR CALENDAR)
	:	
Respondents.	:	

D E C I S I O N

Rendered on December 30, 2011

Evans Law Office, and Marquette D. Evans, for relators.

*Morrow & Meyer LLC, and Tod T. Morrow, for respondent
Lewis Tree Service, Inc.*

*Michael DeWine, Attorney General, and Stephen D.
Plymale, for respondent Industrial Commission of Ohio.*

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

BROWN, J.

{¶1} Relators, Milton Gonzalez and Isabel Pano Gomez, have filed an original action requesting that this court issue a writ of mandamus ordering respondent, Industrial

Commission of Ohio ("commission"), to vacate its order denying their claim for death benefits and to enter an order granting such benefits.

{¶2} Pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued the appended decision, including findings of fact and conclusions of law, recommending that this court grant relators' request for a writ of mandamus to issue an order compliant with *State ex rel. Noll v. Indus. Comm.* (1991), 57 Ohio St.3d 203, and consider relevant evidence submitted to it. Relators and respondent, Lewis Tree Service, Inc. ("Lewis"), have filed objections to the magistrate's decision.

{¶3} In relators' objection, they argue that the magistrate erred when he found that the commission did not abuse its discretion when it failed to address the issues of partial dependency and prospective dependency in its order. The magistrate reasoned that relators never raised partial and prospective dependency before the commission, but only asserted relators were wholly dependent upon decedent. Relators now assert three reasons why the magistrate erred. First, relators contend the C-5 form, Additional Information for Death Benefits, does not indicate whether the application is for wholly or partially dependent applicants, and does not even contain a place to indicate prospective dependency. Second, relators argue that their argument that they were wholly dependent upon decedent does not foreclose the argument for prospective or partial dependency. Relators contend that, by asserting total dependency, they necessarily placed the issue of partial dependency before the tribunal. Third, relators contend that R.C. 4123.59(D) indicates that payments to dependents who are wholly or partially dependent upon the decedent are mandatory.

{¶4} Initially, we note that we agree with the magistrate that nowhere in the commission's record do relators claim anything other than they were wholly dependent upon Jesus Manuel Gonzalez Pano, their son and decedent. Before the staff hearing officer ("SHO"), relators' counsel argued only that "[t]hey were wholly dependent upon him at the time of his death." We find no other reference to any claim for partial or prospective dependency.

{¶5} Notwithstanding, we find none of relators' arguments have merit. As for the contention that the C-5 form does not indicate whether the application is for wholly or partially dependent applicants, we agree that relators failed to indicate whether the application was for whole or partial dependence, but the form does include a space to indicate such. Section 1 of the form specifically includes a main column entitled "Dependency." Under the "Dependency" column are three sub-columns entitled "Wholly," "Partially," and "Date of birth," with boxes provided thereunder to mark which type of dependency the applicant is claiming and indicate his or her birth date. Instead of marking the "Wholly" or "Partially" boxes, relators wrote the day and month of their birth dates. We fail to see how the fact that relators failed to mark the appropriate box(es) on the C-5 form benefits relators' argument. Instead, relators failure to do so more supports the magistrate's conclusion that relators never raised the issue of partial dependency. Thus, we find this argument unavailing.

{¶6} Relators next contend that their argument that they were wholly dependent upon decedent does not foreclose the argument for prospective or partial dependency. Relators contend that, by asserting total dependency, they necessarily placed the issue of

partial dependency before the tribunal. Relators present no support or argument for this contention, and we are not persuaded.

{¶7} Relators' final contention is that R.C. 4123.59(D) indicates that payments to dependents who are wholly or partially dependent upon the decedent are mandatory. R.C. 4123.59(D) provides that, "[i]n all other cases [in which dependency is not presumed] the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employee." Because the statute provides that dependency in whole or in part must be determined in every case, relators argue, the commission was under a clear legal duty to address both whole and partial dependency.

{¶8} We have found no authority addressing this issue, and we fail to find that relators have demonstrated a clear legal right to relief. Relators' reading of R.C. 4123.59(D) is incorrect. In essence, relators read this section to say, in cases in which dependency is not presumed, "the question of dependency, in whole or in part, shall be determined." Relators' reading ignores the full context of the provision, which says the question of dependency "shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employee." When read in its full context, we do not believe it requires whole and partial dependency to be determined in every case regardless of whether they are both at issue; rather, it requires whole and partial dependency, when at issue, to be determined pursuant to the facts existing at the time of the fatal injury. Because relators never raised partial or prospective dependency before the commission, we agree with the magistrate that they cannot be successful in mandamus in this respect. Thus, relators' objection is overruled.

{¶9} Lewis presents three objections to the magistrate's decision. In its first objection, Lewis argues that the magistrate erred when it found that the commission abused its discretion by failing to explain its decision consistent with *Noll*, which requires the commission to specifically state what evidence it relied upon and briefly explain the reasoning for its decision. Lewis contends that the basis of the commission's order here was apparent from the order; that is, that relators failed to meet their burden of proving they were wholly dependent upon their alleged decedent for support. Lewis cites 11 reasons why the commission could have rejected relators' evidence. Unfortunately, the commission cited not one of these reasons in its order. The commission merely indicated that decedent's representative did not meet his burden of proof to establish that decedent's parents were wholly dependent upon him at the time of his death. Although this may provide the basis for its decision, we agree with the magistrate that this recitation does not "briefly explain the reasoning for its decision." *Noll* at syllabus. In fact, the commission gave no reasoning. Despite Lewis's citation to 11 reasons why the commission may have rejected the decedent's evidence, we have no way of knowing which, if any, were relied upon by the commission, thereby making our review of the order impossible. Therefore, this objection is overruled.

{¶10} Lewis argues in its second objection that the magistrate erred when he found that the commission abused its discretion by failing to mention relators' new evidence in its order. Lewis relies upon the well-established tenets that there is a rebuttable presumption that the commission considered all evidence before it, and the commission has no obligation to list or address all evidence before it. The magistrate concluded that, despite the substantial amount of evidence submitted to the SHO that

was not previously before the district hearing officer, the SHO never mentioned any of this evidence, which suggests that the SHO did not consider it. We agree with the magistrate that the commission's failure to comment at all on the newly submitted evidence is dubious. Although it is true that the SHO was not required to list relators' evidence that it did not rely upon, there is an absence of any reasoning or basis for its apparent rejection of this evidence. Some explanation should be given because the newly submitted documentary evidence, at least on its face, arguably supported that the decedent's parents were wholly dependent upon the decedent for support. Decedent's mother, father, and sister separately averred the decedent "assumed the responsibility" for his parents by regularly sending them money. Relators also submitted two affidavits from a doctor detailing the extensive medical problems with both parents. This evidence begged for some comment from the SHO. Lacking any mention of this facially persuasive evidence, the decision is incomplete. For these reasons, we overrule Lewis's second objection.

{¶11} Lewis argues in its third objection that the magistrate erred when he based his decision on matters that were not raised in relators' complaint or brief. Specifically, Lewis contends relators never raised the issue of *No//* compliance, and, thus, deprived it of an opportunity to address the issue. Lewis cites no authority for the proposition that a magistrate hearing an action in mandamus is precluded from raising an issue sua sponte and deciding the matter based upon that issue. We reject Lewis's contention and overrule its third objection.

{¶12} After an examination of the magistrate's decision, an independent review of the record pursuant to Civ.R. 53, and due consideration of relators' and Lewis's

objections, we overrule the objections. Accordingly, we adopt the magistrate's decision as our own with regard to the findings of fact and conclusions of law, and we grant relators' request for a writ of mandamus ordering the commission to vacate its SHO's order of February 25, 2010 and, in accordance in a manner consistent with our decision, enter a new order adjudicating relators' dependency claims.

Objections overruled; writ of mandamus granted.

KLATT and DORRIAN, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Milton Gonzalez	:	
and Isabel Pano Gomez,	:	
	:	
Relators,	:	
	:	
v.	:	No. 10AP-755
	:	
Lewis Tree Service Inc., and	:	(REGULAR CALENDAR)
Industrial Commission of Ohio,	:	
	:	
Respondents.	:	

MAGISTRATE'S DECISION

Rendered on July 29, 2011

Evans Law Office, and Marquette D. Evans, for relators.

*Morrow & Meyer LLC, and Tod T. Morrow, for respondent
Lewis Tree Service, Inc.*

*Michael DeWine, Attorney General, and Stephen D.
Plymale, for respondent Industrial Commission of Ohio.*

IN MANDAMUS

{¶13} In this original action, relators Milton Gonzalez and Isabel Pano Gomez request a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order denying their claim for death benefits and to enter an order granting such benefits.

Findings of Fact:

{¶14} 1. On August 11, 2007, an application for employment with respondent Lewis Tree Service, Inc. ("Lewis Tree") was completed by an applicant whose name was stated to be "Emigdio Gonzalez." August 5, 1982 was listed as the applicant's date of birth. The application form asks the applicant to list information regarding an "emergency contact." No emergency contact was listed.

{¶15} 2. On June 23, 2009, the person known to Lewis Tree as Emigdio Gonzalez was killed in an industrial accident when he was struck by a falling tree branch.

{¶16} 3. It is undisputed that the person known to Lewis Tree as Emigdio Gonzalez is actually Jesus Manuel Pano ("decedent").

{¶17} 4. The record contains an Ohio death certificate for decedent. December 25, 1989 is listed as the date of birth. "Meliton Gonzalez Rodriguez" ("Milton") is listed as decedent's father. "Isabel Pano Gomez" is listed as decedent's mother. Decedent's birthplace is listed as "Petlatan, Mexico, Guerrero."

{¶18} 5. In August 2009, a death claim was filed on behalf of decedent on a form provided by the Ohio Bureau of Workers' Compensation ("bureau").

{¶19} 6. Also, on bureau form C-5, relators Milton Gonzalez and Isabel Pano Gomez are listed respectively as the father and mother of decedent and as dependents of decedent.

{¶20} 7. On November 16, 2009, the death claim was heard by a district hearing officer ("DHO"). The hearing was recorded and transcribed for the record. Following the hearing, the DHO granted the claim for the death of decedent, but held that he died without dependents. The DHO's order provides, in pertinent part:

* * * [T]he decedent Jesus Gonzalez, sustained a fatal injury in the course and scope of his employment as a trim [sic] trimmer when he was struck in the head by a large branch.

However, the District Hearing Officer finds that the decedent had no dependents. The decedent's representative, Mr. Evans, argued that the decedent's parents, Meliton Gonzalez R. and Isabel Pano Gomez were fully dependent upon the decedent at the time of his death.

The District Hearing Officer finds that the claim file contains no evidence supporting this proposition.

Specifically, the decedent's parents reside in Mexico. Further, there is no evidence that the decedent's parents relied upon him for support and there is no information concerning the employment status of the decedent's parents.

Accordingly, the District Hearing Officer finds that the decedent had no dependents at the time of his death.

{¶21} 8. Relators administratively appealed the DHO's order.

{¶22} 9. Relators' counsel submitted affidavits and translations from each relator, stating that they were in poor health and dependent on decedent before his death because he sent an average of \$1,000 per month to his sister, Fermina Gonzalez Pano ("Fermina") or brother-in-law, Abel Evangelista Ramos Marcos ("Abel"), because decedent's parents are illiterate. Also submitted were statements and translations from Dr. Cesar Alejandro Maciel Vargas regarding relators' health and that Fermina or Abel takes them to the appointments.

{¶23} 10. Relators' counsel also submitted two documents demonstrating money transferred to Fermina in April and June 2009. Fermina submitted an affidavit and translation that she is decedent's sister. There is a third, mostly illegible, document dated August 11, 2008, demonstrating money transferred to Abel.

{¶24} 11. After a hearing on February 25, 2010, a staff hearing officer ("SHO") affirmed the order of the DHO. The SHO's order provides, in pertinent part:

The Hearing Officer finds that the decedent, Jesus Gonzalez, was an employee of the named employer and on 06/23/2009 suffered an injury in the course of and arising out of his employment when he was struck in the head with a large branch. The Injured Worker died as a result of this injury.

The Hearing Officer finds however that the decedent had no dependents. On behalf of the decedent, Mr. Evans contended that the decedent had parents who live in Mexico. He contended that these parents were wholly dependent on the decedent at the time of his death and were therefore entitled to death benefits.

The Hearing Officer finds that the decedent has not established that he had parents who were wholly dependent upon him for support and were therefore entitled to death benefits. The Hearing Officer finds that the representative for Mr. Gonzalez has not met his burden of proof in establishing that the decedent had parents and that these parents were wholly dependent as defined in Ohio Revised Code 4123.59.

Therefore, the Hearing Officer orders that the request for the payment of death benefits to Mr. Meliton Gonzalez and Mrs. Isabel Pano Gomez is denied.

{¶25} 12. Relators filed an appeal on March 8, 2010, and the commission refused it in an order mailed April 20, 2010.

{¶26} 13. On August 6, 2010, relators Milton Gonzalez and Isabel Pano Gomez filed this mandamus action.

Conclusions of Law:

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

{¶28} R.C. 4123.59(B) provides for death benefits payable to "wholly dependent persons at the time of the death."

{¶29} R.C. 4123.59(C) provides for death benefits payable to "partly dependent persons at the time of the death."

{¶30} R.C. 4123.59(D) describes persons presumed to be wholly dependent. However, a natural parent of a decedent enjoys no such presumption unless the decedent was living with the natural parent at the time of the decedent's death. R.C. 4123.59(D)(2).

{¶31} R.C. 4123.59(D)(2) also provides for benefits where "prospective dependency" can be found. R.C. 4123.59(D)(2) provides:

The administrator may take into consideration any circumstances which, at the time of the death of the decedent, clearly indicate prospective dependency on the part of the claimant and potential support on the part of the decedent. No person shall be considered a prospective dependent unless such person is a member of the family of the deceased employee and bears to him the relation of surviving spouse, lineal descendant, ancestor, or brother or sister. The total award for any or all prospective dependency to all such claimants, except to a natural parent or natural parents of the deceased, shall not exceed three thousand dollars to be apportioned among them as the administrator orders.

In all other cases, the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employee, but no person shall be considered as dependent unless such person is a member of the family of the deceased employee, or bears to him the relation of surviving spouse, lineal descendant, ancestor, or brother or sister.

{¶32} Relators argue here that the commission abused its discretion in determining that relators failed to show that they were wholly dependent on decedent at the time of death. While the commission's orders find the evidence lacking as to whether relators were wholly dependent, the orders do not address partial dependency or prospective dependency.

{¶33} At the outset, the magistrate finds no abuse of discretion as to the commission's failure to address partial dependency or prospective dependency.

{¶34} Ordinarily, reviewing courts do not consider questions that were not presented below or ones that could have been called to the attention, but were not. *State ex rel. Quarto Mining Co. v. Foreman* (1997), 79 Ohio St.3d 78. See also *State ex rel. Schlegel v. Stykemain Pontiac Buick GMC, Ltd.*, 120 Ohio St.3d 43, 2008-Ohio-5303, where relator was prohibited from presenting evidence in mandamus proceedings for the first time when it was not presented at the administrative level. In this case, relators only argued to the commission that they were wholly dependent on decedent, not partially or prospectively dependent. Now they argue that the commission abused its discretion in not considering partial or prospective dependency.

{¶35} Based upon the above authorities, the magistrate concludes that the commission did not abuse its discretion in failing to adjudicate partial dependency or prospective dependency.

{¶36} Nevertheless, the magistrate does find that the commission abused its discretion in determining relators' claims to being wholly dependent upon decedent at the time of his death.

{¶37} The syllabus of *State ex rel. Noll v. Indus. Comm.* (1991), 57 Ohio St.3d 203, states:

In any order of the Industrial Commission granting or denying benefits to a claimant, the commission must specifically state what evidence has been relied upon, and briefly explain the reasoning for its decision.

{¶38} Analysis begins with a review of the DHO's order which found "no evidence" to support relators' claims that they were wholly dependent upon decedent at the time of his death.

{¶39} Following the decision of the DHO, relators submitted a document purporting to be an English translation of the declaration of Milton Gonzalez purportedly ratified by a notary of the District of Azueta, Guerrero. That document declares:

1. That the declarant is the father of Jesus Manuel Gonzalez Pano, deceased.
2. That the declarant is of 62 years of age, and suffers from health problems, including heart problems. Because of her [sic] age and poor health, he has been incapable of working.
3. That before the accident in which Jesus Manuel Gonzalez Pano died, Jesus Manuel assumed the responsibility for the declarant and his wife, Isabel Pano Gomez, in the sense that Jesus Manuel regularly sent funds from the United States for the maintenance of the declarant and his wife, Isabel Pano Gomez.
4. That the money was sent to the name of Fermina Gonzalez Pano, who is the daughter of the declarant, or to the name of Abel Evangelista Ramos, who is the husband of Fermina Gonzalez Pano. Jesus Manuel Gonzalez sent an average of \$1000.00 monthly for the maintenance of the declarant and his wife, Isabel Pano Gomez.
5. That the maintenance provided by Jesus Manuel Gonzalez Pano was sent to the name of the Fermina Gonzalez Pano or to the name of Abel Evangelista Ramos

for two reasons. First, the declarant and his wife, Isabel Pano Gomez are illiterate. Second, Fermina Gonzalez Pano and her husband, Abel Evangelista Ramos Marcos, undertook to take the declarant and his wife to their medical appointments, and usually distributed the money from Jesus Manuel Gonzales Pano on the occasions on which they were taking them to the doctor or for another errand.

{¶40} Also following the decision of the DHO, relators submitted a document purporting to be an English translation of the declaration of Isabel Pano Gomez purportedly ratified by a notary of the District of Azueta, Guerrero. That document declares:

1. That the declarant is the mother of Jesus Manuel Gonzalez Pano, deceased.
2. That the declarant is of 56 years of age, and suffers from health problems, including diabetes. Because of her age and poor health, she has been incapable of working.
3. That before the accident in which Jesus Manuel Gonzalez Pano died, Jesus Manuel assumed the responsibility for the declarant and her husband, Meliton Gonzalez, in the sense that Jesus Manuel regularly sent funds from the United States for the maintenance of the declarant and her husband, Meliton Gonzalez.
4. That the money was sent to the name of Fermina Gonzalez Pano, who is the daughter of the declarant, or to the name of Abel Evangelista Ramos, who is the husband of Fermina Gonzalez Pano. Jesus Manuel Gonzalez sent an average of \$1000.00 monthly for the maintenance of the declarant and her husband, Meliton Gonzalez.
5. That the maintenance provided by Jesus Manuel Gonzalez Pano was sent to the name of the Fermina Gonzalez Pano or to the name of Abel Evangelista Ramos for two reasons. First, the declarant and her husband, Meliton Gonzalez are illiterate. Second, Fermina Gonzalez Pano and her husband, Abel Evangelista Ramos Marcos, undertook to take the declarant and her husband to their medical appointments, and usually distributed the money

from Jesus Manuel Gonzalez Pano on the occasions on which they were taking them to the doctor or for another errand.

{¶41} Also following the decision of the DHO, relators submitted a document purporting to be the English translation of a declaration of Fermina Gonzalez Pano purportedly ratified by a notary of the District of Azueta, Guerrero. That document declares:

1. That the declarant is the sister of Jesus Manuel Gonzalez Pano, deceased.

2. That before the accident in which Jesus Manuel Gonzalez Pano died, Jesus Manuel assumed the responsibility for the parents of the declarant, in the sense that Jesus Manuel regularly sent funds from the United States for the maintenance of the parents of the declarant.

[3.] That the money was sent to the name of the declarant, Fermina Gonzalez Pano, or to the name of Abel Evangelista Ramos, who is the husband of Fermina Gonzalez Pano. Jesus Manuel Gonzalez sent an average of \$1000.00 monthly for the maintenance of the parents of the declarant.

[4.] That the maintenance provided by Jesus Manuel Gonzalez Pano was sent to the name of the declarant or to the name of her husband, Abel Evangelista Ramos for two reasons. First, her parents are illiterate. Second, the declarant and her husband, Abel Evangelista Ramos Marcos, undertook to take her parents to their medical appointments, and usually distributed the money from Jesus Manuel Gonzalez Pano on the occasions on which they were taking them to the doctor or for another errand.

{¶42} Also following the decision of the DHO, relator submitted a document purporting to be the English translation of the declaration of Dr. Cesar Alejandro Maciel Vargas. That document provides:

By means of this document, I place upon the record that Mr. Meliton Gonzalez Pano, of 62 years of age, is attended in

this medical until, for the past 8 years, and suffers from the prior pathologies of controlled cardiac insufficiency, chronic obstructive pulmonary diseases for 12 years, gastritis for ten years of controlled advance, denies allergies to medications. In his last visit, he was found to have glucose of 98 mg/dl., blood pressure of 120/70, temp. 36.8°C.. FC 75 LPM head [illegible] with respiratory roughness in both lungs, wheezing, cardiac rhythm noises of good intensity, soft, depressible abdomen without pain to palpation, no alterations to extremities.

He is brought by his son-in-law, Abel Evangelista, and/or hid [sic] daughter, Fermina Gonzalez Pano.

{¶43} Also following the decision of the DHO, relators submitted another document purporting to be the English translation of the declaration of Dr. Cesar Alejandro Maciel Vargas. That document provides:

By means of this document, I place upon the record that Ms. Isabel Pano G., of 57 years of age, is attended in this medical unit, for the past 12 years, and suffers from the prior pathologies of internal venal insufficiency, diabetes mellitus of 12 years of controlled advance, osteoporosis of 12 years, diabetic retinopathy of 4 years with CX. DI both eyes for 2 years, gastritis for 6 years of controlled advance, and 2 years ago she presented with hemorrhagic dengue. [illegible] allergies to medications. In his [sic] last visit, he [sic] was found to have glucose of 230 mg/dl., blood pressure of 100/70, temp. 36.5°C.. FC 90 LPM head and neck SOD thorax with both lungs well ventilated, cardiac rhythm noises of good intensity, soft, depressible abdomen without pain to palpation, in M L with data of venal insufficiency.

He [sic] is brought by his son-in-law, Abel Evangelista, and/or hid [sic] daughter, Fermina Gonzalez Pano.

{¶44} Given what relators submitted to the SHO on administrative appeal, it could no longer be accurately said that there is "no evidence" to support relators' dependency claims. On appeal to the SHO, there was indeed evidence to support the dependency claims. Of course, the SHO was not required to find that evidence credible.

{¶45} In her order, the SHO, in conclusory fashion, found that "decedent has not established that he had parents who were wholly dependent upon him." Also, in conclusory fashion, the SHO held that relators' counsel "has not met his burden of proof."

{¶46} How is it that relators failed to establish dependency? How is it that relators' counsel failed to meet his burden of proof? We are not told by the SHO.

{¶47} For the SHO to simply say that dependency has not been established or that relators' counsel has failed to meet his burden of proof is, in effect, to give no explanation or reasoning for the decision to deny the dependency claims. Certainly, it is not at all obvious that dependency was not established or that the burden of proof was not met.

{¶48} Based upon the above analysis, it is clear that the SHO's order violates *Noll* and that a writ of mandamus must issue requiring the commission to issue a *Noll* compliant order.

{¶49} There is yet another problem with the SHO's order that is fatal.

{¶50} Notwithstanding the substantial amount of evidence submitted to the SHO that had never been considered by the DHO, the SHO's order makes no mention of such evidence, thus strongly suggesting that the evidence was not considered by the SHO. Where the commission fails to consider relevant evidence submitted to it, its order adjudicating the issue cannot stand. See *State ex rel. Scouler v. Indus. Comm.*, 119 Ohio St.3d 276, 2008-Ohio-3915; *State ex rel. Donohoe v. Indus. Comm.*, 10th Dist. No. 08AP-201, 2010-Ohio-1317.

{¶51} Accordingly, for all the above reasons, it is the magistrate's decision that this court issue a writ of mandamus ordering the commission to vacate its SHO's order of

