[Cite as *State ex rel. Brunner v. Indus. Comm.*, 2012-Ohio-5974.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Kenneth E. Brunner,	:	
Relator,	:	
v.	:	No. 11AP-891
P A C E, Inc. and Industrial Commission of Ohio,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on December 18, 2012

Regas & Haag, Ltd., and *John S. Regas*; *Jennifer L. Brunner* and *Rick Brunner*, for relator.

Michael DeWine, Attorney General, and *Cheryl J. Nester*, for respondent Industrial Commission of Ohio.

IN MANDAMUS
ON OBJECTION THE MAGISTRATE'S DECISION

KLATT, J.

{¶ 1} Relator, Kenneth E. Brunner, commenced this original action in mandamus seeking an order compelling respondent, Industrial Commission of Ohio ("commission"), to vacate its order denying him permanent total disability ("PTD") compensation and to enter an order granting said compensation.

{¶ 2} Pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued a decision, including findings of fact and conclusions of law, which is appended hereto. The magistrate found that the

commission did not abuse its discretion: (1) in weighing relator's age in assessing the nonmedical factors; and (2) in determining that relator has some transferable skills. Therefore, the magistrate has recommended that we deny relator's request for a writ of mandamus.

{¶ 3} Relator has filed an objection to the magistrate's decision. Relator makes two arguments in support of his objection. First, relator contends that the commission abused its discretion when it analyzed the impact of relator's advanced age, in conjunction with his physical limitations resulting from the allowed conditions, in assessing the nonmedical factors. Second, relator contends that the commission abused its discretion when it found that relator's employment history reflected skills that were transferable to sedentary work. We find both of these arguments unpersuasive.

{¶ 4} We first note that relator does not contest the commission's determination that relator is physically capable of performing sedentary work with no overhead work. However, relator does challenge the commission's analysis of the nonmedical factors. Essentially, relator contends that he is not employable due to his advanced age (80) and other physical limitations. However, we agree with the magistrate that the commission did not abuse its discretion when it determined otherwise.

{¶ 5} The commission recognized that relator is of advanced age and that his age was a negative factor. However, the commission also correctly noted that age alone cannot be a basis for granting PTD. The commission must assess relator's age in conjunction with the other aspects of relator's individual profile that may lessen or magnify the effect of age. *State ex rel. Moss v. Indus. Comm.*, 75 Ohio St.3d 414, 417 (1996). As noted by the magistrate, the commission's order identified a number of positive nonmedical factors that lessened the effect of age. The commission's order recognized that relator has a high school education and has the ability to read, write, and perform basic math. The commission also found that relator had an aptitude for learning as demonstrated by his ability to obtain a certificate in insurance sales. The commission also deemed relator's work history to be a positive factor. Relator demonstrated the ability to work independently and to exercise judgment. Relator also has some supervisory experience. Lastly, we note that relator was working well into his 70s and was injured at age 77. Given all these factors, we agree with the magistrate that the

commission did not abuse its discretion in assessing the impact of relator's age and physical limitations in conjunction with the other nonmedical factors.

{¶ 6} Nor do we find that the commission abused its discretion when it found that relator's past employment experience created skills that are transferable to sedentary work. The commission discussed each of relator's past jobs and noted the specific skills relator would have retained. Relator simply disagrees with the commission's assessment. The commission, however, is the expert on nonmedical factors. It is not the role of this court to second-guess the commission's determination in the absence of a showing that the commission abused its discretion. Relator has not shown that the commission abused its discretion.

{¶ 7} For the foregoing reasons, we overrule relator's objection.

{¶ 8} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we deny relator's request for a writ of mandamus.

Objection overruled; writ of mandamus denied.

FRENCH and DORRIAN, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Kenneth E. Brunner,	:	
Relator,	:	
v.	:	No. 11AP-891
P A C E, Inc. 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 22, 2012

Regas & Haag, Ltd., and *John S. Regas*, for relator; *Jennifer L. Brunner*, and *Rick Brunner*, for relator.

Michael DeWine, Attorney General, and *Cheryl J. Nester*, for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶ 9} In this original action, relator, Kenneth E. Brunner, requests a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order denying him permanent total disability ("PTD") compensation and to enter an order granting the compensation.

Findings of Fact:

{¶ 10} 1. On November 11, 2008, at the age of 77, relator sustained an industrial injury when he fell face forward onto a driveway. His state-fund claim (No. 08-870421) is allowed for:

> Bilateral frontal bone fracture; fracture lateral wall right maxilla; fracture bilateral paranasal sinuses; closed fracture bilateral nasal bone; open wound of forehead; abrasion face; closed fracture C2 vertebra.

{¶ 11} 2. On January 17, 2011, at his own request, relator was examined by Timothy Lee Hirst, M.D. In his six-page narrative report, Dr. Hirst concludes:

> This claimant has an injury that is permanent and for which there is no curative therapy. This claimant has progressively suffered loss of function and has had to endure progressively more pain. The exam above shows that there is so little functional capacity and that the claimant is so affected by his condition and its required care, that there is no capacity for sustained remunerative employment and that there is no reasonable employer that would ever hire the claimant expecting any work capacity.
>
> Based on the examination above, review of documents, and based on sound medical reasoning I find that the allowed physical conditions, independently and by themselves, render the claimant permanently and totally disabled and unfit for all sustained remunerative employment.

{¶ 12} 3. On February 14, 2011, relator filed an application for PTD compensation. In support, relator submitted the January 17, 2011 report of Dr. Hirst.

{¶ 13} 4. The PTD application form asks for information regarding work history. In response, relator disclosed that he did "maintenance" work from August 2006 to November 2008. From 2004 to 2006, relator was employed in a "maintenance/labor" job. He was a dairy farmer from 1951 to 1993. He was a part-time "crop insurance adjuster" from 1968 to 2000. He was a school bus driver from 1954 to 1984.

{¶ 14} 5. The PTD application form also asks the applicant to disclose information regarding each job he has held. One of relator's duties as a dairy farmer was "to keep track of how much to feed the cows and their output." He also supervised two or three persons at a time.

{¶ 15} One of relator's duties as a crop insurance adjuster was to "estimate the amount of crop for the insurance companies." He "had to write reports for the insurance companies."

{¶ 16} 6. The PTD application form also asks the applicant to provide information regarding his education. Relator disclosed that he graduated from high school in 1949. He "had training and received certification for insurance sales."

{¶ 17} Among other information sought, the application form poses three questions to the applicant: (1) "Can you read?"; (2) "Can you write?"; and (3) "Can you do basic math?" Given a choice of "yes," "no," and "not well," relator selected "yes" in response to all three queries.

{¶ 18} 7. On April 1, 2011, at the commission's request, relator was examined by Jess G. Bond, M.D. Dr. Bond examined only for the allowed conditions: "Open wound of forehead; abrasion face; closed fracture C2 vertebra." In his three-page narrative report, Dr. Bond opines:

> Based on the AMA's Guide to the Evaluation of Permanent Impairment, Fifth edition, and with reference to the Industrial Commission Medical Examination Manual, it is my estimation of permanent impairment percentage for:
>
> The claim allowances: Open wound of forehead; abrasion face
>
> Section 8.7, Table 8-2, page 178, entitled: *Criteria for Rating Permanent Impairment Due to Skin Disorders*, **Class 1**

> (range 0% to 9%), which equated to a whole person permanent impairment of: 0%
>
> The claim allowance: Closed fracture C2 vertebra
>
> Table 15-7, page 404, *Criteria for Rating Whole Person Impairment Percent Due to Specific Spine Disorders to be used as Part of the ROM Method*, 1. Fractures B., Cervical, which equated to a whole person permanent impairment of 4%, and
>
> The ROM Method for the cervical spine (Table 15-12, page 418, Table 15-13, page 420, and Table 15-14, page 421), which equated to a whole person permanent impairment of 17%.
>
> The above whole person permanent impairment percentages were combined (using the Combined Values Chart) to determine a whole person impairment rating of: 20%.
>
> All of the above whole person permanent impairment percentages were combined (using the Combined Values Chart) to determine a **20%** whole person impairment rating for all of the examined allowed conditions of this claim.

(Emphasis sic.)

{¶ 19} 8. On a physical strength rating form, Dr. Bond indicates by his mark that relator is capable of sedentary work. For further limitations, Dr. Bond wrote "no overhead work."

{¶ 20} 9. On April 11, 2011, at the commission's request, relator was examined by Joseph P. Yut, M.D. In his two-page narrative report dated April 18, 2011, Dr. Yut opines:

> To answer the questions that are posed regarding his facial injur[i]es, namely bilateral frontal bone fracture, fracture lateral wall right maxilla, fracture bilateral nasal sinuses, closed fracture bilateral nasal bone, as well as the open wound of his forehead.
>
> [One] He has had a remarkable recovery and he has reached the maximum medical improvement with regard to all of these above conditions.

> [Two] Based on the AMA Guides, Fifth Edition, and with reference to the *Industrial Commission Medical Examination* manual; my medical opinion is that he has a 0% impairment of the whole person arising from each of the above allowed conditions. A combined total whole person impairment is 0%.
>
> [Three] I will complete the enclosed Residual Function Assessment as regards the injuries above. These injuries give him no work limitations.

{¶ 21} 10. On a residual functional assessment form dated April 11, 2011, Dr. Yut indicates by his mark "[t]his Injured Worker has no work limitations."

{¶ 22} 11. At relator's own request, vocational expert Mark A. Anderson prepared a vocational assessment. In his five-page narrative report dated June 15, 2011, Anderson wrote:

> There are a number of non-exertional limitations in this case. These include constant pain in his neck. Mr. Brunner reported that he is capable of lifting a maximum of 10 lbs. He has difficulty sitting, standing, walking, climbing stairs and bending due to neck pain. He is unable to squat, reach or kneel. He wears a soft collar when sleeping or driving due to problems with his neck. He noted problems rotating his neck to look when driving and often relies on his wife for assistance. He takes rest breaks throughout the day to control pain. Mr. Brunner reported that cold, wet and humid environmental conditions aggravate his symptoms. In addition, Mr. Brunner was not able to complete the Purdue Pegboard testing due to inability to reach forward with either extremity. His math and reading aptitude placed at the 5th Grade Level. His SRA Clerical aptitude placed below the 1st percentile.
>
> This combined set of exertional and severe non-exertional variables has had a negative impact on the claimant's ability to vocationally adjust to new work environments or a paced work setting. A computerized analysis of the local labor market revealed no occupations which match all of Mr. Brunner's restrictions.
>
> Based on the exertional and severe non-exertional limitations listed above, it is my opinion that Mr. Kenneth

> Brunner has no return to work potential. The medical reports and testing indicate that Mr. Brunner is capable of performing less than the full range of sedentary activities.
>
> The Vocational Diagnosis and Assessment of Residual Employability confirms that Mr. Brunner is not employable in the local, state or national economies. Based on his physical limitations, age, no clerical aptitude, and difficulties with reading and math comprehension, Mr. Brunner is not a feasible candidate for vocational rehabilitation.

{¶ 23} 12. Following an August 11, 2011 hearing, a staff hearing officer ("SHO") issued an order denying relator's PTD application. The SHO's order explains:

> On 11/11/2008, Mr. Brunner was injured when he tripped over a drain pipe and fell, hitting his face. Mr. Brunner was hospitalized following this injury. Mr. Brunner wore a cervical collar for a period of time, received physical therapy and there have been numerous diagnostic tests performed. There has also been pain management. Current treatment consists of medication visits with Dr. Hill, the use of Vicodin and Mr. Brunner testified that he does a home exercise program.
> On 04/01/2011, Jess G. Bond, M.D. examined Mr. Brunner on behalf of the Industrial Commission for the conditions open wound of forehead, abrasion face and closed fracture C2 vertebra. Dr. Bond has opined that these allowed conditions of this claim have reached maximum medical improvement. Dr. Bond further opined a 20% whole person impairment for these allowed conditions. Dr. Bond noted there has been a significant loss of cervical range of motion. Based upon his examination of Mr. Brunner, Dr. Bond opined that Mr. Brunner is capable of sedentary work with no overhead work.
>
> On 04/18/2011, Joseph P. Yut, M.D. examined Mr. Brunner on behalf of the Industrial Commission for the allowed conditions of bilateral frontal bone fracture, fracture lateral wall right maxilla, fracture bilateral nasal sinuses, closed fracture bilateral nasal bone and open wound forehead. Dr. Yut has opined that these allowed conditions have reached maximum medical improvement. Dr. Yut indicates that Mr. Brunner has made a remarkable recovery from these injuries and that the whole person impairment for same is 0%. Based upon his examination of Mr. Brunner, Dr. Yut has opined

that there are no work limitations due to these allowed conditions.

"Sedentary work" means exerting up to ten pounds of force occasionally (occasionally: activity or condition exists up to one-third of the time) and/or a negligible amount of force frequently (frequently: activity or condition exists from one-third to two-thirds of the time) to lift, carry, push, pull, or otherwise move objects. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

The opinions of Dr. Yut and Dr. Bond are found persuasive, and are adopted by the Staff Hearing Officer. Based upon the 04/01/2011 report of Dr. Bond and the 04/18/2011 report of Dr. Yut, the Staff Hearing Officer finds that Mr. Brunner is capable of performing sedentary work with no overhead work.

As Drs. Yut and Bond have opined that Mr. Brunner is capable of sedentary activity, an analysis of Mr. Brunner's non-disability factors is appropriate pursuant to *State ex rel. Stephenson v. Industrial Commission* (1987), 31 Ohio St.3d 161.

Mr. Brunner is 80 years old. He is considered a person of advanced age. In general, age refers to chronological age and the extent to which one's age affects the ability to adapt to new work situations and to do work in competition with others. Mr. Brunner's age is a negative factor as he is already beyond the age at which most individuals have retired from the work force and has little time left in the work force, if he should return to same. However, age alone is not a basis to grant permanent total disability compensation. Permanent total disability compensation is not intended to compensation [sic] one for growing older. *State ex rel. DeZarn v. Indus. Comm.* (1996), 74 Ohio St.3d 461. There is no age at which re-employment is considered impossible as a matter of law. **********State ex rel. Moss v. Indus. Comm.* (1996), 75 Ohio St.3d 141; *State ex rel. McComas v. Indus. Comm.* (1997), 77 Ohio St.3d 362.

The Staff Hearing Officer finds that Mr. Brunner has a positive educational history. Mr. Brunner graduated from

high school and indicates that he is able to read, write and perform basic math. These skills are helpful in the performance of sedentary work. Further, Mr. Brunner indicates he "went to school" and took a test to be certified in insurance sales, receiving his certification approximately 1990. This is evidence of an aptitude for learning which is also a positive factor for re-employment.

The Staff Hearing Officer also finds that Mr. Brunner has a positive work history. Mr. Brunner's primary occupation from 1951 through 1993 was dairy farmer, skilled, heavy work. Mr. Brunner testified that he ran the family farm with help from his wife, an accountant, who performed most of the paperwork. Mr. Brunner indicates he raised crops; used a tractor, plow and other farm machines, kept track of feed and each animal's output. Mr. Brunner describes taking milk samples from each animal, sending same for analysis and upon receiving reports adjusting feed for each animal to maximize each animal's output. Mr. Brunner's application indicates he also supervised two to three individuals.

In this position, Mr. Brunner exercised judgment, gave instructions and supervised others, analyzed reports and did calculations and made adjustments based on same and kept records which are all transferrable skills helpful in obtaining and/or performing sedentary work.

Mr. Brunner also drove a school bus from 1954 through 1984. This position is one of responsibility. It also requires the ability to work independently and the use of judgment. These are also transferrable skills useful in sedentary work.

Mr. Brunner also was employed as an insurance adjuster from 1968 through 2000. Mr. Brunner indicates he estimated crop loss for an insurance company which required using scales, taking samples and writing reports. The ability to make calculations and write reports would be transferrable to sedentary work.

Mr. Brunner's most recent employment has been in maintenance positions where he made repairs, used hand tools and performed manual labor.

The Staff Hearing Officer finds that Mr. Brunner has held a variety of jobs and has acquired a number of transferrable skills which would be useful in obtaining and performing sedentary work including, but not limited to, the ability to

> analyze data, the ability to write reports, the ability to calculate, the ability to use judgment, supervisory skills, the ability to work independently and the ability to keep records.
>
> Accordingly, the Staff Hearing Officer finds that Mr. Brunner's disability, due to the allowances in this claim, is not total and that Mr. Brunner is capable of engaging in sustained remunerative employment.
>
> Therefore, the request for an award of permanent total disability benefits is denied.

{¶ 24} 13. On October 1, 2011, the three-member commission mailed an order denying reconsideration.

{¶ 25} 14. On October 18, 2011, relator, Kenneth E. Brunner, filed this mandamus action.

Conclusions of Law:

{¶ 26} For its determination of relator's residual functional capacity, the commission, through its SHO, relied upon the medical reports of Drs. Bond and Yut. From those medical reports, the commission concluded that relator is medically able to perform "sedentary work with no overhead work."

{¶ 27} Here, relator does not challenge the commission's reliance upon the reports of Drs. Bond and Yut, nor does relator challenge the commission's determination that residual functional capacity is "sedentary work with no overhead work."

{¶ 28} However, relator does challenge the commission's analysis of the non-medical factors. Two issues are presented: (1) did the commission abuse its discretion in its consideration of relator's age, and (2) did the commission abuse its discretion in determining that relator has some transferability of work skills.

{¶ 29} Finding no abuse of discretion, it is the magistrate's decision that this court deny relator's request for a writ of mandamus, as more fully explained below.

{¶ 30} Turning to the first issue, Ohio Adm.Code 4121-3-34 sets forth the commission's rules for the adjudication of PTD applications.

{¶ 31} Ohio Adm.Code 4121-3-34(B) sets forth definitions.

> Ohio Adm.Code 4121-3-34(B)(3) is captioned "Vocational factors."
>
> Thereunder, Ohio Adm.Code 4121-3-34(B)(3)(a) states:
>
> "Age" shall be determined at time of the adjudication of the application for permanent and total disability. In general, age refers to one's chronological age and the extent to which one's age affects the ability to adapt to a new work situation and to do work in competition with others.

{¶ 32} In *State ex rel. Moss v. Indus. Comm.*, 75 Ohio St.3d 414, 417 (1996), the court states:

> * * * It is not enough for the commission to just acknowledge claimant's age. It must discuss age in conjunction with the other aspects of the claimant's individual profile that may lessen or magnify age's effects.

{¶ 33} In *Moss,* the commission denied the PTD application of a 78-year-old applicant with an eighth-grade education and an ability to read, write, and do basic math. The claimant had worked as a housekeeper. The *Moss* court stated:

> Our analysis of the commission's order reveals [*State ex rel. Noll v. Indus. Comm.* (1991), 57 Ohio St.3d 203] compliance. In so holding, we recognize the significant impediment that claimant's age presents to her reemployment. Workers' compensation benefits, however, were never intended to compensate claimants for simply growing old.
>
> Age must instead be considered on a case-by-case basis. To effectively do so, the commission must deem any presumptions about age rebuttable. Equally important, age must never be viewed in isolation. A college degree, for example, can do much to ameliorate the effects of advanced age.

Id. at 416-17.

{¶ 34} In *State ex rel. Rothkegel v. Westlake,* 88 Ohio St.3d 409, 411-12 (2000), the court states:

> Claimant also proposes that the commission's treatment of his age warrants a return of the cause for further consideration. The commission concedes that it mentioned claimant's age only in passing, but argues that the defect does not compel a return of the cause.
>
> Claimant relies on *State ex rel. Moss v. Indus. Comm.* (1996), 75 Ohio St.3d 414, 662 N.E.2d 364, in which we held:
>
> "[The commissions has a] responsibility to affirmatively address the age factor. It is not enough for the commission just to acknowledge claimant's age. It must discuss age in conjunction with the other aspects of the claimant's individual profile that may lessen or magnify age's effects." *Id.* at 417, 727 N.E.2d 869, 662 N.E.2d at 366.
>
> Since that time, we have declared that the absence of an age discussion is not necessarily a fatal flaw, nor does it, in some cases, even compel a return of the cause. In *State ex rel. Blue v. Indus. Comm.* (1997), 79 Ohio St.3d 466, 683 N.E.2d 1131—relied on by both the commission and the court of appeals—we wrote:
>
> "As another *Noll* flaw, claimant assails the commission's cursory mention of his age. While the commission did not 'discuss' this factor, that flaw, in this instance, should not be deemed fatal. Claimant was fifty-seven when permanent total disability compensation was denied. While not a vocational asset, claimant's age is also not an insurmountable barrier to re-employment. If claimant's other vocational factors were all negative, further consideration of his age would be appropriate, since age could be outcome-determinative—the last straw that could compel a different result. All of claimant's other vocational factors are, however, positive. A claimant may not be granted permanent total disability compensation due solely to his age. Therefore, even in the absence of detailed discussion on the effects of claimant's age, the commission's explanation satisfies *Noll.*"

Id. at 469-70.

{¶ 35} In *State ex rel. DeZarn v. Indus. Comm.*, 74 Ohio St.3d 461, 463-64 (1996), the court states:

> Permanent total disability compensation was never intended to compensate a claimant for simply growing old. Therefore, the commission must indeed have the discretion to attribute a claimant's inability to work to age alone and deny compensation where the evidence supports such a conclusion.

{¶ 36} On his PTD application, relator lists May 23, 1931 as his date of birth. In the order of August 11, 2011, the SHO correctly notes that relator's age, as of the hearing date, was 80 years. Thus, the commission complied with Ohio Adm.Code 4121-3-34(B)(3)(a) and correctly determined that relator's chronological age at the time of the adjudication was 80 years.

{¶ 37} In his opening brief, relator argues regarding the age issue:

> The Staff Hearing Officer's failure to address how such an advanced age of 80, combined with a limitation to a reduced range of sedentary work, not only constitutes an abuse of discretion, but it would appear to defy common sense. Brunner is well aware that age alone cannot serve as a basis for a finding of permanent and total disability. However, that is not the case in this instant action. Brunner was working well into his 70's and was injured at the age of 77. He suffered a significant cervical injury that has rendered him incapable of work beyond a reduced range of sedentary work activity. An individual with such limitations already has a significant barrier to re-employment. When such limitations are combined with an advanced age of 80, not only does the law recognize that age must be viewed as a significant barrier to re-employment, but common sense alone would dictate such a conclusion.

(Relator's brief, at 7.)

{¶ 38} In his reply brief, relator further argues regarding the age issue:

> Merely acknowledging that he is 80 years old and that this may have a negative impact is not a sufficient analysis. This is particularly important considering the very advanced

> nature of Brunner's age. 80 years old is an uncommonly high age for an analysis of disability factors.
>
> Given the very advanced nature of Brunner's age, there needed to be a greater analysis as to his age rather than just stating that it is a negative factor. Although Brunner has a high school education and positive aspects related to his work history, such an advanced age combined with a significant level of disability presents considerable barriers to re-employment. These barriers were ignored by the Commission.

(Relator's reply brief, at 1.)

{¶ 39} The magistrate disagrees with relator's arguments regarding the age issue.

{¶ 40} To begin, the commission did more than just acknowledge relator's chronological age as of the adjudication. The commission recognized that relator is of advanced age and that age 80 is a "negative factor," explaining that "he is already beyond the age at which most individuals have retired from the work force and has little time left in the work force." Citing the cases, the commission correctly notes that age alone cannot be a basis for granting PTD.

{¶ 41} As the *Moss* court stated, the commission "must discuss age in conjunction with the other aspects of the claimant's individual profile that may lessen or magnify age's effects." *Id*. at 417.

{¶ 42} Even if it can be said that the commission did not specifically discuss age in connection with the other aspects of claimant's individual profile, the commission's order identifies many positive non-medical factors that the commission could have viewed as lessening the effect of age. For example, relator has a high school education and he has admitted an ability to read, write, and perform basic math. Also, the commission found an aptitude for learning as demonstrated by relator's obtaining a certificate in insurance sales.

{¶ 43} The commission also found relator's work history to be positive. The commission found that relator has demonstrated the ability to work independently and use judgment. He has some supervisory experience. He has "analyzed reports" and performed "calculations and made adjustments based on same."

{¶ 44} While relator does not have a college degree to ameliorate the effects of his advanced age, the commission could nevertheless view his high school education, learning aptitude and ability to read, write, and do basic math as an ameliorating factor on relator's advanced age.

{¶ 45} In short, while relator's age is indeed a significant impediment to his re-employment, it was within the commission's discretion to weigh the age impediment with his many positive factors to conclude that relator can perform sustained remunerative employment.

{¶ 46} Turning to the second issue, Ohio Adm.Code 4121-3-34(B)(3)(c) is captioned "Work experience."

{¶ 47} Thereafter, it is stated:

> (iv) "Transferability of skills" are skills which can be used in other work activities. Transferability will depend upon the similarity of occupational work activities that have been performed by the injured worker. Skills which an individual has obtained through working at past relevant work may qualify individuals for some other type of employment.
>
> (v) "Previous work experience" is to include the injured worker's usual occupation, other past occupations, and the skills and abilities acquired through past employment which demonstrate the type of work the injured worker may be able to perform. Evidence may show that an injured worker has the training or past work experience which enables the injured worker to engage in sustained remunerative employment in another occupation. The relevance and transferability of previous work skills are to be addressed by the adjudicator.

{¶ 48} According to relator:

> There must be a limit to the Staff Hearing Officer's discretion. To use general terms such as "ability to use judgment" and the ability to "work independently", and to state that such general aptitudes constitute transferable work skills is inappropriate in the evaluation of an individual's ability to return to work. Such general traits can be found in virtually any job. Moreover, the Staff Hearing Officer extrapolated information that is not part of the record. The record does not indicate, and Brunner did not testify, that he performed calculations. He testified that the paperwork was performed by his wife.

(Relator's brief, at 9.)

{¶ 49} In its brief, the commission answers:

> The commission's order is very explicit as to Mr. Brunner's varied work history and the various skills that the Commission found to be obtained from that history. While Mr. Brunner may disagree with the Commission's conclusions, this is not a basis upon which to obtain a writ of mandamus. The Commission is the exclusive evaluator of disability and, unless it is shown that it lacked any evidence upon which it made its conclusion, its decision must stand.
>
> The Commission discussed each of Mr. Brunner's various jobs and noted the specific skills it found to have been obtained. These included the abilities to analyze data, write reports, calculate, use judgment, supervise others, work independently, and keep records.
>
> Mr. Brunner argues that the evidence does not support that he made calculations. However, in Mr. Brunner's application for PTD compensation, he indicated that as a crop insurance adjuster, he had weighed crops and estimated the amount of crop. Also, as a farmer, he indicated that he had to keep track of how much to feed his cows and to track their output. He would have performed calculations in [both] of these circumstances.
>
> Mr. Brunner also contends that the abilities to use judgment and to work independently are "found in virtually any job." While the Commission would contend that this is patently untrue, it is also irrelevant. The question is whether these skills would be transferable to sedentary work, and the

> Commission found that they are. Mr. Brunner does not contest this fact.

(Respondent commission's brief, at 8-9.)

{¶ 50} Noticeably absent from relator's argument and respondent's answer to the argument is any citation to authority.

{¶ 51} While the commission may credit offered vocational evidence, expert opinion is not critical or even necessary, because the commission is the expert on the matter. *State ex rel. Jackson v. Indus. Comm.*, 79 Ohio St.3d 266, 271 (1997).

{¶ 52} In *State ex rel. Ewart v. Indus. Comm.*, 76 Ohio St.3d 139, 141-142 (1996) the court states:

> The freedom to independently evaluate nonmedical factors is important because nonmedical factors are often subject to different interpretation.
>
> * * *
>
> Claimant worked for Refiners Transport and Terminal as a trucker for twenty-two years. Claimant's long tenure can be viewed negatively because it prevented the acquisition of a broader range of skills that more varied employment might have provided. It also, however, suggests a stable, loyal and dependable employee worth making an investment in. This is an asset and is an interpretation as valid as the first.

{¶ 53} Relator's argument is undermined by the role of the commission in PTD adjudications. That is, it is the commission, not this court, that evaluates the non-medical factors. Not only is the commission the expert on non-medical factors, it has the freedom to independently evaluate those factors which often are subject to different interpretations.

{¶ 54} Here, relator invites this court to adopt his evaluation of the non-medical factors. This court must decline the invitation.

{¶ 55} Accordingly, for all the above reasons, it is the magistrate's decision that this court deny relator's request for a writ of mandamus.

s/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).