[Cite as *State ex rel. Snyder v. Ohio Wesleyan Univ.*, 2013-Ohio-608.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Geneva S. Snyder,	:	
Relator,	:	No. 12AP-550
v.	:	(REGULAR CALENDAR)
Ohio Wesleyan University, and Industrial Commission of Ohio,	:	
Respondents.	:	

D E C I S I O N

Rendered on February 21, 2013

Michael J. Muldoon, for relator.

Newhouse, Prophater, Letcher & Moots, LLC, Wanda L. Carter and *Christopher E. Hogan*, for respondent Ohio Wesleyan University.

Michael DeWine, Attorney General, and *Patsy A. Thomas*, for respondent Industrial Commission of Ohio.

IN MANDAMUS
ON OBJECTION TO THE MAGISTRATE'S DECISION

TYACK, J.

{¶ 1} Geneva S. Snyder has filed this action in mandamus seeking a writ to compel the Industrial Commission of Ohio ("commission") to grant her application for permanent total disability ("PTD") compensation.

{¶ 2} In accord with Loc.R. 13(M), the case was referred to a magistrate to conduct appropriate proceedings. The parties stipulated the pertinent evidence and filed briefs. The magistrate then issued a magistrate's decision, appended hereto, which

contains detailed findings of fact and conclusions of law. The magistrate's decision includes a recommendation that we deny the request for a writ of mandamus.

{¶ 3} Counsel for Snyder has filed an objection to the magistrate's decision. Counsel for the commission has filed a memorandum in response. Counsel for Ohio Wesleyan University ("OWU"), Snyder's former employer, has also filed a memorandum in response. The case is now before the court for a full, independent review.

{¶ 4} Snyder was 69 years old when she filed her application for PTD compensation in 2009. A staff hearing officer ("SHO") ruled against her.

{¶ 5} Counsel for Snyder pursued an action in mandamus and a panel of this court returned the case to the commission so it could address and comment on the report issued by Michael G. Drown, Ph.D. Dr. Drown had reported that, in his opinion, Snyder's psychiatric disability was "permanent total."

{¶ 6} After the case was returned to the commission, an SHO reached the same conclusion about the merits of Snyder's application for PTD compensation, but expressly rejected Dr. Drown's opinion for reasons explained in the SHO's order.

{¶ 7} Counsel for Snyder has filed a second action in mandamus arguing that a full, evidentiary hearing should have been conducted. Further, counsel asserts that the only experts qualified to opine about Snyder's psychological condition both said Snyder was entitled to PTD compensation, but the SHO denied the application anyway.

{¶ 8} As to the first issue, our previous writ of mandamus did not order a complete, new evidentiary hearing. We only directed the commission through its SHO to address the merits of Dr. Drown's report. In the words of our prior decision:

> We note, however, that the SHO makes no mention of the uncontroverted report of Dr. Drown. If the SHO intended to reject Dr. Drown's report, then she should have provided an explanation for doing so. See [*State ex rel.] Albano [v. Indus. Comm.*, 10th Dist. No. 02AP-1228, 2004-Ohio-102], [State ex rel.] *Davis [v. Indus. Comm.*, 10th Dist. No. 01AP-1371, 2002-Ohio-4444], [State ex rel.] *Eberhardt* [*v. Flxible Corp.*, 70 Ohio St.3d 649 (1994)] and [State ex rel.] *Noll* [*v. Indus. Comm.*, 57 Ohio St.3d 203]. While some of the commission's reasons for rejecting Dr. Rabold's reports may also apply to the report of Dr. Drown, we are limited to reviewing the order before us. In these circumstances, we find that the

> commission abused its discretion when it either did not consider Dr. Drown's uncontroverted report, or when it failed to explain the basis for rejecting such.

(Fn. deleted.) [*State ex rel.*] *Snyder v. Ohio Wesleyan Univ.*, 10th Dist. No. 10AP-587 (Sept. 22, 2011) (memorandum decision) at ¶ 11.

{¶ 9} As to the second issue, the SHO felt that both psychological reports (that of Dr. Drown and one by Denise E. Rabold, Ph.D.) were founded on the assumption that Snyder's psychological problems were the result of her recognized physical injuries. The SHO felt her depression was more the result of Snyder's many other physical problems. A medical report before the SHO indicated Snyder had no restrictions and could return to her former duties as a housekeeper for OWU.

{¶ 10} The SHO basically found that Snyder had failed to prove her case. We do not disagree.

{¶ 11} We overrule the objection and adopt the findings of fact and conclusions of law in the magistrate's decision and deny the request for a writ of mandamus.

Objection overruled; writ denied.

BROWN and McCORMAC, JJ., concur.

> McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).

A P P E N D I X

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Relator,	:	No. 12AP-550
v.	:	(REGULAR CALENDAR)
Ohio Wesleyan University, and Industrial Commission of Ohio,	:	
Respondents.	:	

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

Rendered on November 13, 2012

Michael J. Muldoon, for relator.

Newhouse, Prophater, Letcher & Moots, LLC, Wanda L. Carter and *Christopher E. Hogan*, for respondent Ohio Wesleyan University.

Michael DeWine, Attorney General, and *Patsy A. Thomas*, for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶ 12} Relator, Geneva S. Snyder, 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 she is entitled to that award.

Findings of Fact:

{¶ 13} 1. Relator has sustained three separate work-related injuries and her claims have been allowed for the following conditions:

> * * * [C]laim 97-455241 has been allowed for: SPRAIN RIGHT HIP AND THIGH.
>
> Claim MV697907 has been allowed for: CONTUSION RIGHT ELBOW; CONTUSION RIGHT HIP; SPRAIN OF NECK; SPRAIN THORACIC REGION; SPRAIN LUMBAR REGION; SPRAIN BOTH SHOULDERS AND CONTUSION SCALP.
>
> Claim 95-300554 has been allowed for: SPRAIN OF NECK; SPRAIN THORACIC REGION; SPRAIN RIGHT SHOULDER/ARM; CONTUSION OF RIGHT UPPER ARM; PAIN DISORDER ASSOCIATED WITH BOTH PSYCHOLOGICAL FACTORS AND GENERAL MEDICAL CONDITION.

{¶ 14} 2. On November 9, 2009, relator filed the instant application for PTD compensation. According to the commission's order, this was relator's fourth application for PTD compensation.

{¶ 15} 3. According to her application, relator was 69 years of age, had graduated from high school and could read, write, and perform basic math. Relator's work history consisted of housekeeping work for respondent Ohio Wesleyan University ("employer"). Further, the stipulation of evidence indicates that relator had applied for and was receiving Social Security Disability Benefits.

{¶ 16} 4. In support of her application, relator submitted the September 7, 2009 report of Michael G. Drown, Ph.D., who examined her for her allowed psychological condition. As part of the history provided by Dr. Drown, he noted that relator received "four sessions of psychotherapy for her work related distress five years ago [but] she is currently not in therapy." Dr. Drown administered two tests to relator; however, she was not able to finish one of them. Dr. Drown indicated that the BDI-II test revealed that relator had severe depression. Ultimately, Dr. Drown concluded as follows:

> Based on the review of available prior medical and psychological reports, this most recent interview data along with psychometric test results, it can be said that Ms. Geneva Snyder continues to suffer from "psychogenic pain"; her psychiatric condition has clearly worsened across time. Ms. Snyder is age 69. Given the information from available medical reports as well as the most recent interview and psychometric data, it is within reasonable certainty that her psychiatric disability taking in the whole body is permanent total. In reference to the AMA Guide (Fourth Edition) regarding Mental and Behavioral Disorders, this psychiatric impairment (taking in the whole body) falls with the moderate-marked range.

{¶ 17} 5. An independent medical examination was performed by Denise E. Rabold, Ph.D. Dr. Rabold examined relator for her allowed psychological condition. Dr. Rabold also administered the BDI-II test and stated that the results indicated that relator suffered from moderate depression. Dr. Rabold indicated that relator's Global Assessment of Functioning ("GAF") score was 60 which would indicate moderate difficulty in social and occupational functioning. Dr. Rabold opined that relator's allowed psychological condition had reached maximum medical improvement ("MMI"), that relator had moderate impairment in regards to activities of daily living, social functioning, concentration, and adaptation, and assessed a 25 percent whole person impairment. Ultimately, Dr. Rabold opined that relator was incapable of working.

{¶ 18} 6. Dr. Rabold completed an addendum on February 4, 2010 wherein she indicated that her opinion had been based on the allowed conditions that led to the diagnosis of pain disorder associated with both psychological factors and general medical condition and that relator's significant nonallowed physical conditions were not considered.

{¶ 19} 7. An independent medical examination was performed by Kenneth H. Doolittle, II, Ph.D. In his December 28, 2009 report, Dr. Doolittle listed the allowed conditions, provided a history of relator's injuries, noted the nonallowed conditions from which relator suffers, provided his physical findings upon examination, and concluded that, within a reasonable degree of medical probability, relator's allowed conditions would have healed a long time ago and opined further that there was no permanent total

disability reasonably related to any of the allowed physical conditions in relator's claim. Dr. Doolittle opined that relator had no work limitations related to the allowed physical conditions in her three claims.

{¶ 20} 8. Relator's application was heard before a staff hearing officer ("SHO") on April 14, 2010. At this time, the SHO issued an interlocutory continuance order so that the commission's medical advisor, Terrance B. Welsh, M.D., could conduct a review of the sufficiency of Dr. Rabold's December 17, 2009 report and her February 4, 2010 addendum to determine whether another psychological examination was warranted. The SHO recognized that Dr. Rabold's opinion was inconsistent with other evidence in the file, specifically:

> [One] The accompanying physical examination and report dated 12/28/2009 of Kenneth H. Doolittle, M.D., indicates that the Injured Worker is able to perform her former position of employment as well as any other sustained remunerative employment as she has no (0% permanent partial) impairment from the allowed physical conditions recognized in the three claims under consideration, all of which are recognized for only contusions, sprains and strains;
>
> [Two] The Injured Worker has previously been denied permanent and total disability compensation on three occasions (04/16/2004, 05/10/2006 and 04/11/2008). These orders relied on the 12/11/2003 psychological report of Earl F. Greer, Ed.D., the 02/27/2006 psychological report of Michael A. Murphy, Ph.D., and the 09/26/2007 psychological report of Donald L. Brown, M.D., respectively, all of whom found the Injured Worker to be able to perform her former position of employment as well as any other sustained remunerative employment based on the allowed psychological condition with a permanent partial impairment rating between 10 and 15%. Importantly, Dr. Rabold's report reflects that she only reviewed the report of Dr. Brown among the record she reviewed;
>
> [Three] The Injured Worker has not received temporary total disability compensation at anytime due to the allowed psychological condition recognized in claim 95-300554 and in fact has only received temporary total disability compensation from 11/03/1999 through 11/14/1999 in claim

> MV 697907. Dr. Rabold's report also indicates that the Injured Worker has only received 3 counseling sessions in the past and is not currently receiving such treatment, although she is receiving medications;
>
> [Four] Finally, the Injured Worker has numerous unrelated medical conditions which have necessitated multiple surgeries as well as causing her to be wheelchair bound.

{¶ 21} 9. Terrence B. Welsh, M.D., reviewed the report of Dr. Rabold and provided the following memorandum:

> I agree that Dr. Rabold's report is inconsistent with prior examinations performed for the same condition and purpose. I do not believe the report is internally inconsistent, defective, or infirm. Therefore, I do not believe another psychological examination is warranted.
>
> The question of sufficiency or credibility of Dr. Rabold's report as evidence will be left to the discretion of the SHO.

{¶ 22} 10. Relator's application was heard before a different SHO on May 24, 2010. The SHO ultimately denied relator's application for PTD compensation. With regard to the allowed physical conditions, the SHO relied on the December 28, 2009 report of Dr. Doolittle and found that relator had no work limitations with regard to the allowed physical conditions. Thereafter, the SHO concluded that relator's medical evidence regarding disability related to the allowed psychological condition was not persuasive. Specifically, the SHO noted that no temporary total disability ("TTD") compensation had been requested or paid for the allowed psychological condition and further that the 1995 claim in which the allowed psychological condition was allowed had not resulted in any TTD compensation being awarded. Further, the SHO indicated as follows:

> Dr. Rabold considers conditions which are not allowed in any of the three industrial claims. According to Dr. Rabold's narrative report, the Injured Worker last worked in 2000 when she retired due to pain in her back. Dr. Rabold further opines that the Injured Worker's current complaints include confusion, and loss of independence, especially because she is in a wheelchair due to her left leg being in a full brace. The Staff Hearing Officer notes that there is no allowance for a

> left leg injury or condition. The Staff Hearing Officer further notes that the Injured Worker had sustained a fracture to the left knee which is a nonindustrial medical condition. The Staff Hearing Officer relies upon Dr. Doolittle's 12/28/2009 report wherein Dr. Doolittle indicated that the Injured Worker was currently being treated for a fracture of the left knee in December of 2009 and that this is unrelated to any of the claims. The Staff Hearing Officer further finds that none of the three claims include a left knee injury or leg injury. Dr. Rabold's two reports indicate that the Injured Worker's daily activities are limited and restricted currently due to the left leg and wheelchair. The Staff Hearing Officer finds that the Injured Worker's limitations are not due to the allowed conditions but rather due to the non-allowed left knee condition. Dr. Rabold states the Injured Worker's daily activities were moderately impaired mainly due to her leg problem. The Staff Hearing Officer, therefore, is not persuaded by a preponderance of the evidence that Dr. Rabold, in fact, considered the correct physical conditions for which the pain disorder is associated. The Staff Hearing Officer notes that Dr. Rabold's conclusion that the Injured Worker is rendered permanently and totally disabled due to the allowed psychological condition of "pain disorder associated with psychological factors and general medical condition" is rejected as Dr. Rabold considered the impact of the non-industrial left leg/knee condition on the Injured Worker when she rendered her opinion. Therefore, the Staff Hearing Officer specifically rejects Dr. Rabold's two reports.

{¶ 23} The SHO did not mention or otherwise discuss the uncontroverted report of Dr. Drown.

{¶ 24} 11. Relator filed a mandamus action and, for the following reasons, this court granted a limited writ of mandamus:

> We note, however, that the SHO makes no mention of the uncontroverted report of Dr. Drown. If the SHO intended to reject Dr. Drown's report, then she should have provided an explanation for doing so. See [*State ex rel. Albano v. Indus. Comm.*, 10th Dist. No. 02AP-1228, 2004-Ohio-102], [*State ex rel. Davis v. Indus. Comm.*, 10th Dist. No. 01AP-1371, 2002-Ohio-4444], [*State ex rel. Eberhardt v. Flxible Corp.* (1994), 70 Ohio St.3d 649], and [*State ex rel. Noll v. Indus. Comm.*, 57 Ohio St.3d 203 (1991)]. While some of the commission's reasons for rejecting Dr. Rabold's reports may

> also apply to the report of Dr. Drown, we are limited to reviewing the order before us. In these circumstances, we find that the commission abused its discretion when it either did not consider Dr. Drown's uncontroverted report, or when it failed to explain the basis for rejecting such.

(Footnote deleted.) State ex rel. Snyder v. Ohio Wesleyon Univ., 10th Dist. No. 10AP-587, (Sept. 22, 2011) (memorandum decision).

{¶ 25} 12. This court's judgment entry stated:

> For the reasons stated in the decision of this court rendered herein on September 22, 2011, we grant a limited writ of mandamus to compel the commission to issue an order that complies with *Albano, Davis, Eberhardt,* and *Noll.*

{¶ 26} 13. On remand, the commission issued findings of fact and an order referring the matter back to the initial SHO, stating:

> The order of the Industrial Commission dated 03/27/2012, and mailed on 04/04/2012, is VACATED due to mistake of fact.
>
> Pursuant to the Judgement Entry of the Tenth Appellate District Court of Appeals dated 09/22/2011, which was filed with the Industrial Commission on 03/08/2012 for the case of State ex rel. Geneva Snyder v. Ohio Wesleyan University and Industrial Commission of Ohio, assigned Case No. 10AP-587, it is found that the requested Writ of Mandamus has been GRANTED.
>
> Therefore, in accordance with the Writ, it is the order of the Industrial Commission that the Staff Hearing Officer order issued 05/24/2010, findings mailed 06/15/2010, which denied the IC-2 Application for Permanent Total Disability compensation filed 11/09/2009, be referred to the Staff Hearing Officer that presided over the 05/24/2010 hearing on the IC-2 Application.
>
> Pursuant to the Court instructions, the Staff Hearing Officer shall issue an amended order on the merits clarifying whether or not the Staff Hearing Officer rejected Dr. Drown's report addressing the Injured Worker's allowed psychological condition, and provide an explanation if Dr. Drown's report is rejected. The Staff hearing Officer shall, if appropriate, modify its decision on the IC-2 Application,

> consistent with its findings and conclusion relative to the consideration of Dr. Drown's report.

(Emphasis sic.)

{¶ 27} 14. Thereafter, relator filed a letter dated May 8, 2012 requesting that the matter be scheduled for a formal hearing to address her application for PTD compensation.

{¶ 28} 15. The matter was returned to the SHO who originally presided over the hearing regarding relator's PTD application and the SHO issued an amended order mailed June 15, 2012. The second order was identical to the first order which followed the May 24, 2010 hearing except that, in compliance with this court's memorandum decision and judgment entry, the SHO discussed Dr. Drown's report and explained the reasons why that report was rejected:

> The Staff Hearing Officer also rejects Dr. Drown's 9/7/2009 report and opinion. Dr. Drown indicated that prior to the industrial injury (1995 industrial injury) the Injured Worker had good agility and ambulatory capabilities, and enjoyed working in her garden, cooking, cleaning, and loved being active in the work force. Following the work injury, Dr. Drown indicated that the Injured Worker became more focused on the problem of pain, worry, and had a depressed mood as she was unable to clean, garden, and felt exhausted with the struggle of pain and distress. Dr. Drown did not identify the location or cause of the Injured Worker's physical pain nor did he identify the source of the Injured Worker's "distress" referred to in his report. Dr. Drown then opined that the Injured Worker's coping strength was compromised by the work related "injuries."
>
> The allowed psychological condition of pain disorder associated with both psychological factors and general medical condition was allowed in the 1995 claim and is associated to the allowed physical conditions in the 1995 claim of neck sprain, thoracic sprain, right shoulder/arm sprain and contursion [sic] of right upper arm. The allowed psychological condition was granted in 2001. Since 2001, the Injured Worker had heart surgery in 2003, has been treated for hypertension and diabetes. Dr. Drown opined that the medical issues which wear on the Injured Worker

> unceasingly were work-related and caused unrelenting physical pain.
>
> The Staff Hearing Officer rejects Dr. Drown's opinion based on the fact that the allowed physical conditions in the 1995 claim were not of such severity to have caused total disability. In addition, the Staff Hearing Officer relies on Dr. Doolittle's 12/28/2009 opinion that the allowed physical conditions in all three industrial claims had healed long ago and do not cause any permanent physical impairment. Dr. Doolittle also opined that the Injured Worker had multiple medical conditions unrelated to the work injuries for which she has had surgeries and that the Injured Worker's current non specific pain complaints were due to the natural aging process and not the allowed conditions in the three claims. Based upon the aforementioned facts, the Hearing Officer rejects Dr. Drown's 9/7/2009 report.

(Emphasis deleted.)

{¶ 29} 16. The SHO having relied on Dr. Doolittle's report indicating that, from a physical stand point, relator could return to her former position of employment with no restrictions and having now rejected the reports of Drs. Rabold and Drown and having explained why those reports were being rejected, the SHO denied relator's application for PTD compensation.

{¶ 30} 17. Thereafter, relator filed the instant mandamus action.

Conclusions of Law:

{¶ 31} There is one issue in this case: did the commission abuse its discretion when, on remand from this court, the commission issued a new order denying relator's application for PTD compensation without first holding a hearing?

{¶ 32} Finding that the commission did not abuse its discretion by issuing a new order denying relator's PTD compensation without first holding a new hearing, this court should deny relator's request for a writ of mandamus.

{¶ 33} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act

requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28 (1983).

{¶ 34} As above stated, relator contends that when this court granted a limited writ of mandamus and remanded the matter to the commission, the commission was required to hold a new hearing. For the reasons that follow, this magistrate disagrees.

{¶ 35} When the commission originally denied her application for PTD compensation and relator filed her mandamus action in this court, relator argued that, because all the psychological evidence filed at the time of her application indicated that she was permanently and totally disabled based solely on the allowed psychological condition, the commission was required to find that evidence credible and grant her PTD compensation. Relator did not challenge the report of Dr. Doolittle who had examined her for her allowed physical conditions and had concluded that she had no impairment and no restrictions resulting from the allowed physical conditions.

{¶ 36} There were two medical reports in the record both then and now addressing relator's allowed psychological condition. Relator submitted the report of Dr. Drown and an independent medical examination was performed by Dr. Rabold. Both Drs. Drown and Rabold determined that relator was incapable of performing some sustained remunerative employment due solely to her allowed psychological condition.

{¶ 37} In the first commission order denying her application for PTD compensation, the commission addressed the psychological report of Dr. Rabold and explained why that report was being rejected. Specifically, the commission stated:

> Dr. Rabold opines that the Injured Worker is permanently and totally disabled due to the allowed psychological condition. Dr. Rabold opined that the Injured Worker's pain is very limiting and has not resolved as the Injured Worker continues to have pain at a four to five pain level out of ten even when taking medications. The Staff Hearing Officer finds Dr. Rabold's two reports are not found persuasive. Dr. Rabold considers conditions which are not allowed in any of the three industrial claims. According to Dr. Rabold's narrative report, the Injured Worker last worked in 2000 when she retired due to pain in her back. Dr. Rabold further opines that the Injured Worker's current complaints include confusion, and loss of independence, especially because she is in a wheelchair due to her left leg being in a full brace. The

> Staff Hearing Officer notes that there is no allowance for a left leg injury or condition. The Staff Hearing Officer further notes that the Injured Worker had sustained a fracture to the left knee which is a nonindustrial medical condition. * * * Dr. Rabold's two reports indicate that the Injured Worker's daily activities are limited and restricted currently due to the left leg and wheelchair. The Staff Hearing Officer finds that the Injured Worker's limitations are not due to the allowed conditions but rather due to the non-allowed left knee condition. Dr. Rabold states the Injured Worker's daily activities were moderately impaired mainly due to her leg problem. The Staff Hearing Officer, therefore, is not persuaded by a preponderance of the evidence that Dr. Rabold, in fact, considered the corrected physical conditions for which the pain disorder is associated. The Staff Hearing Officer notes that Dr. Rabold's conclusion that the Injured Worker is rendered permanently and totally disabled due to the allowed psychological condition of "pain disorder associated with psychological factors and general medical condition" is rejected as Dr. Rabold considered the impact of the non-industrial left leg/knee condition on the Injured Worker when she rendered her opinion. Therefore, the Staff Hearing Officer specifically rejects Dr. Rabold's two reports.

{¶ 38} Thereafter, having found that relator had no physical limitations, the commission denied relator's application for PTD compensation without explaining why it did not find the report of Dr. Drown to be persuasive.

{¶ 39} In granting a limited writ of mandamus, this court found that the commission abused its discretion when it either did not consider Dr. Drown's uncontroverted report or when it failed to explain the basis for rejecting such. The limited writ of mandamus was granted ordering the commission to issue an order which complied with *State ex rel. Albano v. Indus. Comm.*, 10th Dist. No. 02AP-1228, 2004-Ohio-102], *State ex rel. Davis v. Indus. Comm.*, 10th Dist. No. 01AP-1371, 2002-Ohio-4444, *State ex rel. Eberhardt v. Flxible Corp.* (1994), 70 Ohio St.3d 649, and *State ex rel. Noll v. Indus. Comm.*, 57 Ohio St.3d 203 (1991).

{¶ 40} On remand, the commission considered the report of Dr. Drown and the SHO specifically explained why that report was found not to be persuasive. Specifically, the commission stated:

> The Staff Hearing Officer also rejects Dr. Drown's 9/7/2009 report and opinion. Dr. Drown indicated that prior to the industrial injury (1995 industrial injury) the Injured Worker had good agility and ambulatory capabilities, and enjoyed working in her garden, cooking, cleaning, and loved being active in the work force. Following the work injury, Dr. Drown indicated that the Injured Worker became more focused on the problem of pain, worry, and had a depressed mood as she was unable to clean, garden, and felt exhausted with the struggle of pain and distress. Dr. Drown did not identify the location or cause of the Injured Worker's physical pain nor did he identify the source of the Injured Worker's "distress" referred to in his report. Dr. Drown then opined that the Injured Worker's coping strength was compromised by the work related "injuries."
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> The allowed psychological condition of pain disorder associated with both psychological factors and general medical condition was allowed in the 1995 claim and is associated to the allowed physical conditions in the 1995 claim of neck sprain, thoracic sprain, right shoulder/arm sprain and contursion [sic] of right upper arm. The allowed psychological condition was granted in 2001. Since 2001, the Injured Worker had heart surgery in 2003, has been treated for hypertension and diabetes. Dr. Drown opined that the medical issues which wear on the Injured Worker unceasingly were work-related and caused unrelenting physical pain.
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> The Staff Hearing Officer rejects Dr. Drown's opinion based on the fact that the allowed physical conditions in the 1995 claim were not of such severity to have caused total disability. In addition, the Staff Hearing Officer relies on Dr. Doolittle's 12/28/2009 opinion that the allowed physical conditions in all three industrial claims had healed long ago and do not cause any permanent physical impairment. Dr. Doolittle also opined that the Injured Worker had multiple medical conditions unrelated to the work injuries for which she has had surgeries and that the Injured Worker's current non specific pain complaints were due to the natural aging process and not the allowed conditions in the three claims. Based upon the aforementioned facts, the Hearing Officer rejects Dr. Drown's 9/7/2009 report.

(Emphasis deleted.)

{¶ 41} Having now explained why it was rejecting the report of Dr. Drown, the commission has, in fact, complied with this court's order. Relator's only other argument at this time is that there was no legitimate basis to reject the report of Dr. Drown. Relator asserts that, in reality, the commission that her claim has been allowed for the psychological condition of pain disorder associated with both psychological factors and general medical condition. The magistrate disagrees. The commission simply found that the degree of impairment that Drs. Drown and Rabold found was due in part to non-allowed physical conditions. Finding that relator's allowed physical conditions did not necessitate any restrictions or limitations, the commission rejected Dr. Drown's assessment that relator was experiencing severe pain related to the allowed physical conditions and that pain rendered her unable to return to sustained remunerative employment from a psychological stand point. As with the report of Dr. Rabold, the commission determined that Dr. Drown's report was based on non-allowed conditions and that it did not constitute some evidence upon which the commission could rely. A disability finding can never be based—even in part—on medical conditions that are unrelated to the industrial injury. *State ex rel. Waddle v. Indus. Comm.*, 67 Ohio St.3d 452 (1993). As such, the commission provided a valid reason for rejecting the report of Dr. Drown.

{¶ 42} The commission did exactly what this court ordered it to do. There was no requirement, either by this court, or in the law, that required the commission to hold a second hearing. In *State ex rel. Eltra Corp. v. Indus. Comm.*, 36 Ohio St.2d 96 (1973), the Ohio Supreme Court held that the commission could obtain evidence subsequent to a hearing and then proceed to disposition without affording the parties an additional oral hearing. Likewise, in *State ex rel. Owens-Illinois, Inc. v. Indus. Comm.*, 10th Dist. No. 88AP-636 (Mar. 15, 1990), this court held that the parties were not entitled to a rehearing following the submission of additional information after the initial hearing was held. This court noted that it was well-settled law that the commission could request additional evidence after the initial hearing on a claimant's PTD application without requiring another hearing.

{¶ 43} Based on the foregoing, it is this magistrate's decision that relator has not demonstrated that the commission abused its discretion in denying her application for PTD compensation without holding a second hearing and this court should deny relator's request for a writ of mandamus.

/S/ MAGISTRATE
STEPHANIE BISCA BROOKS

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).