[Cite as *State ex rel. Cooper Tire & Rubber Co. v. Indus. Comm.*, 2015-Ohio-2240.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Cooper Tire & Rubber Company,	:	
Relator,	:	
v.	:	No. 14AP-331
Carl J. Bowers, Sr. and Industrial Commission of Ohio,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on June 9, 2015

Eastman & Smith LTD., *Richard L. Johnson* and *Melissa A. Ebel*, for relator.

Cannizzaro, Bridges Jillisky & Streng, LLC, Nancy L. Jillisky and *Mark A. Stine*, for respondent Carl J. Bowers, Sr.

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

IN MANDAMUS
ON OBJECTION TO THE MAGISTRATE'S DECISION

BRUNNER, J.

{¶ 1} Relator, Cooper Tire & Rubber Company, has filed this original action for a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its orders of January 23, and February 14, 2014, and to enter an order denying the October 15, 2013 form C-9 request by Dr. Michael Keith, on behalf of respondent Carl J. Bowers, Sr. ("claimant"), for pre-authorization for follow-up treatment by Dr. Keith, and for x-rays of both claimant's elbows, and his left hand and wrist.

{¶ 2} This court referred the matter to a magistrate pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals. The magistrate issued a decision, including findings of fact and conclusions of law, appended hereto. The magistrate decided that relator's request for a writ of mandamus should be denied, and relator has filed the following objection:

> The Magistrate erred in finding that respondent Industrial Commission of Ohio relied upon some evidence establishing the three-prong test for authorization of medical services found in *State ex rel. Miller v. Indus. Comm.*, 71 Ohio St.3d 229 (1994).

{¶ 3} On February 6, 1995, claimant sustained an employment-related injury. His claim application was allowed for bilateral lateral epicondylitis; bilateral medial epicondylitis; bilateral carpel tunnel syndrome; and sprains of both wrists, elbows and forearms.

{¶ 4} On a follow-up examination, Dr. Keith reported on August 9, 2010 that claimant had pain in both elbows and that his conditions were as previously allowed, from repetitive use of his wrists and elbows; symptoms were recurring due to a very heavy work load. Relator appealed the district hearing officer ("DHO") order granting claimant's form C-9 request for retroactive authorization for right and left elbow injections, a cast for his right arm, and a follow-up evaluation. A staff hearing officer ("SHO") granted authorization and payment based on Dr. Keith's August 9, 2010 narrative report.

{¶ 5} The October 15, 2013 form C-9 at issue included five ICD-9 codes and Dr. Keith's request for additional services. Relator denied the request and asserted that there had been no treatment for three years, and no report of exacerbation of claimant's injuries. After a hearing, a DHO found that claimant had continued to treat intermittently for the allowed conditions and granted the request. The DHO indicated her reliance on Dr. Keith's August 9, 2010 narrative report and on the October 15, 2013 form C-9. At the hearing before the SHO on relator's appeal, claimant testified that Dr. Keith would no longer see him without pre-authorization due to anticipated difficulty in receiving payment for further treatment.

{¶ 6} The SHO found that claimant had ongoing symptomology and that it was reasonable and necessary for him to be evaluated by Dr. Keith. The SHO authorized and

ordered payment for a diagnostic evaluation to ascertain whether or not the symptoms were due to allowed conditions. Beyond the x-rays of both elbows and the left hand and wrist, no further treatment or payment was authorized. In his order, the SHO stated that he relied on the commission's April 29, 2011 order, claimant's testimony, and the form C-9 signed by Dr. Keith on October 15, 2013.

{¶ 7} Relator's appeal to the commission level was refused by order of February 14, 2014, and relator's request for reconsideration was denied on March 22, 2014. This action followed.

{¶ 8} Relator presses its argument, rejected by the commission, that there was no evidence accompanying the October 15, 2013 form C-9, let alone information to establish that the requested diagnostic services were reasonably related or medically necessary to treat the allowed conditions. Relator further argues that the list of ICD-9 codes for the allowed conditions does not establish a reasonable relation between the requested treatment and those conditions, and does not explain why Dr. Keith did not request authorization for the right wrist and hand in addition to the left. Relator also contends that the record contains no mention of claimant's testimony regarding his symptoms, or that the SHO relied on such testimony in the January 17, 2014 order.

{¶ 9} In order to establish the right to a writ of mandamus, relator must show that it has a clear legal right to the relief sought and that the commission has a clear legal duty to provide such relief. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141 (1967), paragraph nine of the syllabus. Relator must show that the commission abused its discretion by entering an order that is not supported by any evidence in the record. *State ex rel. Elliott v. Indus. Comm.*, 26 Ohio St.3d 76, 78-79 (1986). However, where the record contains some evidence to support the findings of the commission, there has been no abuse of discretion and mandamus is not appropriate. *State ex rel. Lewis v. Diamond Foundry Co.*, 29 Ohio St.3d 56, 57-58 (1987). Questions of credibility and the weight to be attributed to the evidence are within the fact-finding discretion of the commission. *State ex rel. Teece v. Indus. Comm.*, 68 Ohio St.2d 165, 169 (1981).

{¶ 10} For authorization of medical services, a three-part inquiry is undertaken: (1) whether the medical services are reasonably related to the industrial injury, that is, the allowed conditions, (2) whether the services are reasonably necessary for treatment of the

industrial injury, and (3) whether the cost of such services is medically reasonable. *State ex rel. Miller v. Indus. Comm.*, 71 Ohio St.3d 229, 232 (1994), citing *State ex rel. Noland v. Indus. Comm.*, 10th Dist. No. 86AP-594 (Aug. 27, 1987).

{¶ 11} Having examined the magistrate's decision and conducted an independent review of the record, we overrule relator's objection. The October 15, 2013 form C-9, including the ICD-9 codes, correspond with allowed conditions of the claim, relating to both elbows and the left hand and wrist for which Dr. Keith sought x-ray authorization. Together with Dr. Keith's August 9, 2010 narrative report, as the SHO determined, the form C-9 constituted some evidence to support the commission's authorization for the diagnostic services by Dr. Keith.

{¶ 12} In *State ex rel. Jackson Tube Servs., Inc. v. Indus. Comm.*, 99 Ohio St.3d 1, 2003-Ohio-2259, ¶ 25, the Supreme Court of Ohio addressed the "difficult issue" posed by a claimant who could not move for additional allowance before diagnostic surgery:

> All agree that *Miller* was never intended to permit an employee to circumvent additional allowance by simply asserting a relationship to the original injury. The problem in this case, however, is that because any conditions are internal, claimant could not know what conditions to seek additional allowance for without first getting the diagnosis that only surgery could provide.

Jackson Tube objected not only to the temporary total disability compensation sought by the claimant, but also to the surgical authorization, because two of the four conditions the surgeon diagnosed were not allowed in the claim. The Supreme Court held that the commission did not abuse its discretion in applying *Miller* and authorizing surgery. The surgeon consistently listed the allowed condition as requiring surgery, notwithstanding other conditions that may have been contemplated. " '[T]he existence of a contributing nonallowed condition is not a legitimate reason for refusing to pay for medical treatment independently required for an allowed condition.' " *Jackson Tube* at ¶ 26, quoting *State ex rel. Griffith v. Indus. Comm.*, 87 Ohio St.3d 154, 156 (1999).

{¶ 13} In *State ex rel. Penske Truck Leasing Co., LP v. Indus. Comm.*, 10th Dist. No. 10AP-774, 2011-Ohio-5764, we adopted our magistrate's decision to uphold the commission's authorization of x-rays and an MRI to pinpoint the cause of the claimant's

current symptoms, whether they were due to the allowed conditions, to pre-existing degenerative changes, or to an exacerbation of degenerative changes caused by the allowed conditions, even though the claimant had not undergone treatment for three years. As in the present matter, the commission in *Penske Truck* did not authorize any actual treatment, and the commission relied on "some evidence in the record" to find that the requested diagnostic treatment was reasonably related to the allowed conditions, was reasonably necessary, and that the cost of the procedures was reasonable. *Id.* at ¶ 54. We recognized that any factual discrepancies in the treating physician's report were matters of weight to be resolved by the commission, and there also was other evidence to support the commission's order. *Id.* at ¶ 8. We held that the commission could consider the claimant's testimony as part of its determination, particularly to explain the gap in treatment. *Id.* at ¶ 10.

{¶ 14} Here, the commission found that the diagnostic treatment requested in Dr. Keith's October 15, 2013 form C-9 was within the scope of the allowed conditions for which his 2010 treatment was authorized. There is no reason to deny the inference and the commission's finding, after hearing his testimony, that claimant had "ongoing symptomology similar to prior symptoms that have been treated under this claim." As this court's magistrate noted, that symptomology is stated in Dr. Keith's August 9, 2010 narrative report and in the commission's April 29, 2011 order. As in *Penske Truck*, we find that the commission's order does not constitute an abuse of discretion.

{¶ 15} Relator's reliance on *State ex rel. Keith v. Indus. Comm.*, 10th Dist. No. 06AP-1095, 2007-Ohio-5083, is inapposite. In *Keith*, the commission's denial of a neurosurgical consultation, along with termination of temporary total disability compensation, was based on a reviewing physician's unequivocal conclusion that the neurosurgical consultation pertained to conditions other than those allowed in the claim. Thus, there was some evidence in the record to support the commission's order denying the requested consultation. Here, as the commission observed, there is no medical opinion that the x-rays were sought for anything but allowed conditions.

{¶ 16} In summary, based on our independent review of this matter, we overrule relator's objection. We adopt the magistrate's decision, including the findings of fact and

conclusions of law contained therein, as our own. Accordingly, relator's request for a writ of mandamus is denied.

Objection overruled;
writ of mandamus denied.

BROWN, P.J., and KLATT, J., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Cooper Tire & Rubber Company,	:	
Relator,	:	
v.	:	No. 14AP-331
Carl J. Bowers, Sr. 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 December 31, 2014

Eastman & Smith LTD., *Richard L. Johnson* and *Melissa A. Ebel*, for relator.

Cannizzaro, Bridges Jillisky & Streng, LLC, *Nancy L. Jillisky* and *Mark A. Stine*, for respondent Carl J. Bowers, Sr.

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

IN MANDAMUS

{¶ 17} In this original action, relator, Cooper Tire & Rubber Company ("Cooper Tire"), requests a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate the January 17, 2014 order of its staff hearing officer ("SHO") that grants the motion of respondent Carl J. Bowers, Sr., for pre-authorization of a consultation and x-rays, and to enter an order that denies the motion.

Findings of Fact:

{¶ 18} 1. In July 1995, Carl J. Bowers, Sr. ("claimant") filed an occupational disease application on a form provided by the Ohio Bureau of Workers' Compensation ("bureau"). On the application, claimant indicated that his industrial injury was caused by the repeated use of his right and left wrists and both elbows. On the form, claimant listed February 6, 1995 as the date his symptoms first appeared. He also indicated that his occupational disease was diagnosed on February 10, 1995.

{¶ 19} 2. Relator, the self-insured employer, certified the industrial claim. The industrial claim (No. 95-445809) is allowed for:

> Bilateral lateral epicondylitis; bilateral medial epicondylitis; bilateral carpal tunnel syndrome; sprain of wrist; bilateral, sprain bilateral elbow/forearm.

{¶ 20} 3. On August 9, 2010, orthopedic surgeon Michael W. Keith, M.D., authored a clinical report regarding a "Follow-up examination, bilateral elbow pain." Dr. Keith wrote:

> HPI: He is having pain in both elbows, lateral epicondyle, right side medial elbow with numbness and tingling in his 4th and 5th fingers.
>
> PE: Physical exam shows once again his medial pain is due to his ulnar nerve. There is no paralysis or sensory loss found yet. His right lateral epicondyle was painful and this was injected with lidocaine, marcaine and corticosteroid. We will submit a retro C9 for this injection.
>
> * * *
>
> Medical Decision Making: We will continue to manage this with a protective elbow pad. Follow-up exam will be in six weeks.
>
> With regards to treatment of his left elbow, we will submit a C9 for authorization to inject his left elbow on his follow-up visit and to apply a cast to his right arm.
>
> His current conditions are as previously allowed and he has recurrence of symptoms due to his very heavy work load. The cast application request would be to limit his work load. If this doesn't work he will either have to change jobs or have

> the operations repeated. I would prefer not to re-operate on him.

{¶ 21} 4. On August 20, 2010, Dr. Keith completed a C-9, which is a form provided by the bureau. (The August 20, 2010 C-9 is not in the stipulated record.)

{¶ 22} 5. On February 16, 2011, claimant moved that the C-9 request be granted.

{¶ 23} 6. On March 19, 2011, claimant's motion was heard by a district hearing officer ("DHO") who thereafter issued an order. (The DHO's order is not contained in the stipulated record.)

{¶ 24} 7. Relator administratively appealed the DHO's order.

{¶ 25} 8. Following an April 26, 2011 hearing, an SHO mailed an order on April 29, 2011 that grants claimant's motion. The SHO's order explains:

> [T]he C-9 of Michael Keith, M.D. of 08/20/2010 requesting retroactive authorization for right elbow injection, left elbow injection and cast application right arm with follow-up evaluation on 09/29/2010 is granted.
>
> The Employer made argument that the injection in the elbow should not be paid as it was not pre-authorized. This Staff Hearing Officer notes Ohio Administrative Code Section 4121-17-07 specifically addresses this issue. This Administrative Code Section indicates, "In cases where treatment was not authorized in advance, the Hearing Officer, at the hearing, may, in the Hearing Officer's discretion, determine that fee bills for such treatment are to be paid retroactively." This Staff Hearing Officer gives deference to the treating orthopedic surgeon, Dr. Keith. This Staff Hearing Officer finds the 08/09/2010 office record of Dr. Keith clearly indicates that the treatment was being rendered to allowed conditions within this claim. The treating orthopedic surgeon is given deference that the treatment is reasonable and necessary. Therefore, the Self-Insuring Employer is to address payment regarding the date of service for 08/09/2010 including right elbow injection pursuant to Ohio Bureau of Workers' Compensation rules, guidelines and fee schedule.
>
> Further, this Staff Hearing Officer grants authorization and payment for a left elbow injection and right arm cast application and a follow-up exam based upon Dr. Keith's narrative of 08/09/2010.

{¶ 26} 9. On October 15, 2013, Dr. Keith completed a C-9 form. The C-9 is captioned "Request for Medical Service Reimbursement or Recommendation for Additional Conditions for Industrial Injury or Disease."

{¶ 27} 10. The C-9 form has four subparts requesting information from the physician of record. The first subpart, which the form captions "IW," requests the name of the injured worker, the industrial claim number, and the date of injury.

{¶ 28} On the C-9 form completed by Dr. Keith, the name of the injured worker, claim number, and date of injury are correctly provided.

{¶ 29} The second subpart of the C-9 is captioned "II Requested services." The second subpart requests the "Treating diagnosis for this request." On the C-9, in the space provided, Dr. Keith entered five ICD-9 codes.

{¶ 30} The second subpart of the C-9 then asks the physician to describe the requested services. In the space provided, Dr. Keith wrote:

> Pre-[authorization] for follow up [with] Dr. Michael Keith
>
> Pre-[authorization] for bilateral elbow x-rays [left] hand [and] wrist

{¶ 31} The third subpart of the C-9 is captioned "III Additional conditions." Appropriately, Dr. Keith did not provide information or otherwise respond to the third subpart.

{¶ 32} The fourth subpart of the C-9 is captioned "IV Physician/provider information." In the space provided, Dr. Keith entered his printed name and he signed in the space provided for his signature.

{¶ 33} Below the printed name and signature of Dr. Keith, the C-9 form reads in part: "I certify the above information is correct to the best of my knowledge."

{¶ 34} 11. By letter dated October 22, 2013, relator denied the October 15, 2013 request:

> We are in receipt of your request for follow up visit with Dr. Keith and bilateral elbow x-rays, left hand and wrist. Please be advised your request has been denied as there has been no treatment in this claim for 3 years and Mr. Bowers has not reported any type of exacerbation in reference to this injury.

{¶ 35} 12. On October 30, 2013, claimant moved the commission to grant the C-9 request.

{¶ 36} 13. Following a December 3, 2013 hearing, a DHO issued an order granting the C-9 request and claimant's October 30, 2013 motion.

{¶ 37} 14. Relator administratively appealed the DHO's order of December 3, 2013.

{¶ 38} 15. Following a January 17, 2014 hearing, an SHO issued an order stating that the DHO's order "is modified with the following rationale." The SHO's order explains:

> Therefore, the C-9 of Dr. Keith signed 10/15/2013 and filed 10/30/2013 is granted to the extent of this order.
>
> The Employer makes argument that there has been a three year gap in treatment and the Miller criteria for authorization of treatment has not been met. The Injured Worker argued that he has a 35% permanent partial disability related to allowed conditions within this claim and treatment was authorized in 2010 for the allowed conditions within this claim. This Staff Hearing Officer notes the argument made by the Employer related to treatment rendered in 2010, as memorialized in the SHO's order issued 04/29/2011, was that the treatment should not be paid as it was not pre-authorized. The Injured Worker testified that his treating physician will no longer see him unless treatment has been pre-authorized by the Self-Insuring Employer secondary to difficulty in getting payment for treatment for allowed conditions.
>
> This Staff Hearing Officer finds that the Injured Worker has ongoing symptomatology similar to prior symptoms that have been treated under this claim. As such, this Staff Hearing Officer finds it reasonable and necessary for the Injured Worker to be evaluated by his orthopedic surgeon, Dr. Keith. Therefore, this Staff Hearing Officer authorizes and orders payment for an evaluation with Michael Keith, M.D. on a diagnostic basis to ascertain whether or not symptoms are due to allowed conditions. No physician [h]as opined that the symptoms are not injury related. Further, this Staff Hearing Officer finds bilateral elbow x-ray, left hand x-ray and wrist x-rays are authorized as being reasonable and necessary diagnostic tools related to

> previously allowed conditions within this claim. This Staff Hearing Officer does not authorize and order payment for any treatment beyond that specifically authorized.
>
> This Staff Hearing Officer relies upon the previously issued Industrial Commission order mailed 04/29/2011, the Injured Worker's testimony, and the C-9 of Dr. Keith signed on 10/15/2013.

{¶ 39} 16. On February 14, 2014, another SHO mailed an order refusing relator's administrative appeal from the SHO's order of January 17, 2014.

{¶ 40} 17. On March 3, 2014, relator moved the three-member commission for reconsideration.

{¶ 41} 18. On March 22, 2014, the commission mailed an order denying reconsideration.

{¶ 42} 19. On April 21, 2014, relator, Cooper Tire & Rubber Company, filed this mandamus action.

Conclusions of Law:

{¶ 43} It is the magistrate's decision that this court deny relator's request for a writ of mandamus, as more fully explained below.

{¶ 44} The commission must rely upon medical evidence to establish a causal relationship between an industrial injury and a request for compensation or as in this case, a request for a medical consultation and x-rays. *State ex rel. Yellow Freight Sys., Inc. v. Indus. Comm.*, 81 Ohio St.3d 56 (1998). Without medical evidence, the commission has no basis to determine the cause of a medical condition because it simply does not have the expertise. *Id.*

{¶ 45} While compensation and benefits must be premised upon one or more allowed conditions in the claim, the Supreme Court of Ohio has allowed authorization for surgery to determine whether there are additional conditions in the claim. *State ex rel. Jackson Tube Servs., Inc. v. Indus. Comm.*, 99 Ohio St.3d 1, 2003-Ohio-2259. As the *Jackson* court explained:

> This is a difficult issue. On one hand, claimant could not move for additional allowance beforehand, since without the surgery, the problematic conditions could not be identified. On the other hand, self-insured JTS questions its recourse

> when ordered to pay for surgery that ultimately reveals any conditions to be nonindustrial.

Id. at ¶ 22.

{¶ 46} Thus, the court recognizes that some diagnostic medical procedures must be authorized before it is certain that the diagnostic medical procedures are related to the industrial claim. For example, this principal seems to underlie the bureau's policy for payment of x-rays found at Ohio Adm.Code 4123-6-31(F):

> Payment for x-ray examinations (including CT, MRI, and discogram) shall be made when medical evidence shows that the examination is medically necessary either for the treatment of an allowed injury or occupational disease, or for diagnostic purposes to pursue more specific diagnoses in an allowed claim. Providers shall follow all prior authorization requirements in effect at the time when requesting authorization and payment for such studies.

{¶ 47} In *State ex rel. Miller v. Indus. Comm*., 71 Ohio St.3d 229 (1994), the court established a three-prong test for authorization of medical services: (1) are the medical services reasonably related to the industrial injury; (2) are the services reasonably necessary for treatment of the industrial injury; and (3) is the cost of such service medically reasonable?

{¶ 48} Here, the SHO's order of January 17, 2014 relies upon three pieces of evidence to support the decision to grant authorization for a medical consultation and for x-rays: (1) the SHO's order mailed April 29, 2011, (2) claimant's hearing testimony, and (3) the C-9 completed by Dr. Keith on October 15, 2013. Relator challenges each piece of evidence and concludes that none of the relied upon evidence supports the granting of the motion. The magistrate disagrees with relator's analysis.

The C-9

{¶ 49} Unlike relator who begins its analysis with a challenge to the commission's reliance upon the SHO's order mailed April 29, 2011, the magistrate shall begin his analysis with the C-9 completed by Dr. Keith on October 15, 2013.

{¶ 50} Analysis begins with the observation that relator is incorrect in asserting:

> [T]here was no evidence from Dr. Keith or any other physician accompanying the C-9 which reasonably related

> the requested treatment to any of the allowed conditions or explained why the treatment was medically necessary.

(Relator's Brief, 6.)

{¶ 51} As noted earlier, the second subpart of the C-9 form asks the physician to list the "Treating diagnosis." On the C-9 completed by Dr. Keith, five ICD-9 codes were entered in the space provided. Relator does not contend that the ICD-9 codes listed by Dr. Keith fail to accurately describe the allowed conditions of the claim. Thus, contrary to relator's assertion here, Dr. Keith does relate the requested treatment to the allowed conditions of the claim.

{¶ 52} It appears that the bureau designed its C-9 form to facilitate the attending physician's production of a medical opinion supporting the request for medical services. Thus, when relator here argues that the C-9 completed by Dr. Keith on October 15, 2013 cannot, standing alone, provide the necessary medical opinion to support the request for medical services, relator is, in effect, attacking the bureau's C-9 form. Yet, relator cites to no case law suggesting that the C-9 form cannot, standing alone, provide the medical evidence/opinion to support a request for authorization of medical services.

{¶ 53} It can be observed that the *Miller* criteria are not listed on the C-9 form. However, that the *Miller* criteria are not printed on the form for the physician to adopt (such as by marking a box) does not render the form deficient for providing a medical opinion that supports a request for medical services.

{¶ 54} Here, the C-9 completed October 15, 2013 is Dr. Keith's certification and medical opinion that the request for a medical consultation and x-rays are reasonably related to the allowed conditions of the claim.

Claimant's Hearing Testimony

{¶ 55} In the order of January 17, 2014, the SHO finds "that the injured worker has ongoing symptomatology similar to prior symptoms that have been treated under this claim." Apparently, that was claimant's testimony at the hearing.

{¶ 56} While claimant's testimony is not medical evidence, it is indeed evidence upon which the physician can rely to reach his or her medical opinion that limited diagnostic medical services, in all probability, will show that claimant's current

symptomatology is related to the industrial injury. Clearly, the need for medical evidence to support authorization of diagnostic medical services does not automatically eliminate reliance upon the claimant's testimony. *State ex rel. Penske Truck Leasing Co., LP v. Indus. Comm.*, 10th Dist. No. 10AP-774, 2011-Ohio-5764.

{¶ 57} Accordingly, reliance upon claimant's hearing testimony in partial support of granting the requested authorization of medical services was not an abuse of discretion.

The SHO's order mailed April 29, 2011

{¶ 58} Relator contends that the SHO's order mailed April 29, 2011, as well as Dr. Keith's August 9, 2010 office note, are not some evidence upon which the commission can rely to support the October 15, 2013 C-9 request at issue.

{¶ 59} While the SHO's order mailed April 29, 2011 and Dr. Keith's August 9, 2010 report do not alone provide the necessary medical opinion or evidence to support the granting of the October 15, 2013 C-9, it was not improper for the SHO to refer to the order and to place some reliance upon it. The August 9, 2010 office note provided documentary support for claimant's testimony that he believed the symptoms he was experiencing in October 2013 were similar to the symptoms that he experienced in August 2010. As earlier noted, Dr. Keith could rely upon claimant's complaints to support his C-9 certification and medical opinion.

{¶ 60} 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/ MAGISTRATE
KENNETH W. MACKE

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).