

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Ronald L. Collins, Sr., :
Relator, :
v. : No. 14AP-186
Thomas Plageman and : (REGULAR CALENDAR)
Industrial Commission of Ohio, :
Respondents. :
:

D E C I S I O N

Rendered on March 3, 2015

*Gallon, Takacs, Boissoneault & Schaffer Co., L.P.A., and
Theodore A. Bowman, for relator.*

*Michael DeWine, Attorney General, and Colleen S. Erdman,
for respondent Industrial Commission of Ohio.*

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

LUPER SCHUSTER, J.

{¶1} Relator, Ronald L. Collins, Sr., has filed this original action requesting this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order which denied his application for temporary total disability ("TTD") compensation and issue an order granting Collins TTD compensation, or, in the alternative, issue a limited writ of mandamus compelling the commission to conduct a new hearing to determine his entitlement to TTD compensation.

{¶2} This court referred this 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, and recommended that this court deny Collins' request for a writ of mandamus. (Attached as Appendix.)

I. Facts and Procedural History

{¶3} As more fully set forth in the magistrate's decision, Collins sustained a work-related injury in 1993, while employed by respondent Thomas Plageman Ceramic Tile ("Plageman"). Collins' workers' compensation claim was allowed for thoracic region sprain, lumbar region sprain, herniated disc L5-S1, post-laminectomy syndrome-lumbar, and colles fracture of left distal radius. Collins returned to work at Plageman following his injury. Plageman subsequently went out of business. Collins thereafter began operating his own company. He underwent lumber surgeries in 1997 and 1998. In 1999, he began working for Home Depot.

{¶4} In March 2005, Collins' workers' compensation claim was additionally allowed for brief depressive reaction. Collins left his employment with Home Depot in 2005 and began working for Preferred Properties. In October 2011, Preferred Properties terminated Collins' employment because he took items from an eviction site. Collins never returned to the workforce following his termination.

{¶5} On December 28, 2011, Collins filed a motion seeking TTD compensation from December 13, 2011 forward based on his allowed psychological condition. Both the district hearing officer ("DHO") and staff hearing officer ("SHO") denied Collins' request. On January 4, 2013, Collins filed a motion seeking amendment of his claim for the additional condition of major depressive disorder and payment of TTD compensation from October 4, 2012 through March 1, 2013 and continuing. The DHO and SHO granted Collins' request for the additional claim allowance, but determined TTD compensation was not payable. The commission refused Collins' further appeal. Collins thereafter filed the instant mandamus action.

II. Collins' Objections

{¶6} Collins sets forth the following objections to the magistrate's decision:

1. The magistrate's conclusion, page 12, that "Whenever an injured worker is not working for reasons unrelated to the allowed conditions [in] the claim, whether because they left their job or were terminated, their departure is considered voluntary, and they can become eligible for TTD

compensation if they return to employment and again become disabled."

2. The magistrate's conclusion, at page 12, that the circumstances of this case rendered it unnecessary for the Industrial Commission to engage in an analysis under [*State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.*, 72 Ohio St.3d 401 (1995)].

3. The magistrate's conclusion, at page 12, that "Relator needed to prove that the allowed psychological condition prevented him from working. It is immaterial that relator was terminated from his job with Preferred Properties. The fact remained [that], according to his testimony, he was no longer working for Preferred Properties for reasons unrelated to the allowed conditions in his claim."

4. The magistrate's conclusion, at page 12, that "Although relator asserts that the Supreme Court rejected Honda's argument that TTD compensation was not payable because Corlew was unemployed and could not demonstrate an economic loss resulting for (*sic*) his allowed conditions, such is not the case. ... The industrial injury must remove the injured worker from his or her job[.] This requirement cannot be satisfied if the injured worker has no job at the time of the alleged disability."

III. Discussion

{¶7} As Collins' objections all relate to the analysis required in determining whether the commission properly denied TTD, we will address them together.

{¶8} Before the magistrate, Collins argued the commission abused its discretion by denying TTD compensation. More specifically, Collins argued the commission abused its discretion in failing to apply *State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.*, 72 Ohio St.3d 401 (1995), to determine whether his separation from employment with Preferred Properties constituted a voluntary or involuntary abandonment. Collins maintained the commission was required to engage in the analysis set forth in *Louisiana-Pacific* before determining whether TTD compensation was payable.

{¶9} Although a termination of employment ordinarily triggers a *Louisiana-Pacific* analysis, Collins' own testimony established that his termination was not causally related to the allowed conditions in his claim; accordingly, it was unnecessary for the

commission to engage in the analysis set forth in *Louisiana-Pacific Preferred Properties* terminated Collins for theft, not for his industrial injury, and Collins makes no allegation otherwise.

{¶10} Citing *State ex rel. Honda of Am. Mfg., Inc. v. Indus. Comm.*, 139 Ohio St.3d 290, 2014-Ohio-1894, Collins further contends, as he did before the magistrate, that the commission abused its discretion in denying TTD benefits based on the fact that he was not working at the time he requested compensation. As the magistrate aptly noted, however, the *Honda* court upheld the commission's determination that the claimant was eligible for TTD compensation because his retirement was related to the allowed conditions in the claim. As noted above, Collins' termination of employment from Preferred Properties was unrelated to the allowed conditions in his claim.

{¶11} After an examination of the magistrate's decision, an independent review of the record, and due consideration of Collins' objections, we overrule Collins' four objections and adopt the magistrate's findings of fact and conclusions of law as our own. Accordingly, we deny Collins' request for a writ of mandamus.

Objections overruled; writ denied.

BROWN, P.J., and BRUNNER, J., concur.

APPENDIX**IN THE COURT OF APPEALS OF OHIO****TENTH APPELLATE DISTRICT**

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|-----------------------------------------------|---|--------------------|
| State of Ohio ex rel. Ronald L. Collins, Sr., | : | |
| | : | |
| Relator, | : | |
| | : | |
| v. | : | No. 14AP-186 |
| | : | |
| Thomas Plageman and | : | (REGULAR CALENDAR) |
| Industrial Commission of Ohio, | : | |
| | : | |
| Respondents. | : | |
| | : | |

MAGISTRATE'S DECISION**Rendered on August 28, 2014**

Gallon, Takacs, Boissoneault & Schaffer Co., L.P.A., and Theodore A. Bowman, for relator.

Michael DeWine, Attorney General, and Colleen S. Erdman, for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶12} Relator, Ronald L. Collins, Sr., 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 his application for temporary total disability ("TTD") compensation, and ordering the commission to find that he is entitled to that compensation.

Findings of Fact:

{¶13} 1. Relator sustained a work-related injury on February 8, 1993 while employed by Thomas Plageman Ceramic Tile ("Plageman"). Relator's workers' compensation claim was originally allowed for: "sprain thoracic region; sprain lumbar region; herniated disc L5-S1; post-laminectomy syndrome-lumbar; colles fracture of left distal radius."

{¶14} 2. Relator returned to work following the 1993 injury.

{¶15} 3. At some point, Plageman went out of business, and relator began operating his own company.

{¶16} 4. In 1997, relator underwent lumbar surgery and, in 1998, relator underwent a second lumbar surgery.

{¶17} 5. In 1999, relator began working for Home Depot.

{¶18} 6. A third surgery was performed in 2000, after which relator returned to work with Home Depot.

{¶19} 7. In March 2005, relator's claim was amended to included "brief depressive reaction."

{¶20} 8. Relator ceased working at Home Depot after securing a better job with Preferred Properties.

{¶21} 9. Relator worked for Preferred Properties until October 2011 when he was terminated. Relator testified at the hearing that he was observed taking items from an eviction cite.

{¶22} 10. Relator did not return to work.

{¶23} 11. In December 2011, relator returned to Stanley M. Zupnick, Ph.D., whom he had seen in 2004 for an evaluation.

{¶24} 12. In his office note dated December 13, 2011, Dr. Zupnick noted that this was relator's first treatment visit, he was depressed, and Dr. Zupnick recommended bi-weekly sessions.

{¶25} 13. Dr. Zupnick completed a C-84 opining that relator was temporarily and totally disabled from December 13, 2011 through an estimated return-to-work date of March 15, 2012.

{¶26} 14. Relator was examined by Robert A. Muehleisen, Ph.D. In his February 27, 2012 report, Dr. Muehleisen identified the allowed psychological condition in relator's claim, identified the medical records which he reviewed, provided a history, noted relator's chief complaints, provided the findings of his mental status examination, and opined the requested period of disability was not related to relator's February 8, 1993 injury. Although Dr. Muehleisen noted that relator had an increased level of depression, Dr. Muehleisen opined that it did not warrant a period of TTD compensation.

{¶27} 15. Relator's request for TTD compensation was heard before a district hearing officer ("DHO") on April 24, 2012. The DHO denied the request, stating:

It is the order of the District Hearing Officer that the C-86 Motion, filed by Injured Worker on 12/28/2011, is denied.

Temporary total disability compensation is denied from 12/13/2011 to 04/24/2012. Injured Worker testified at hearing that he was not working at the time of his requested disability due to having been terminated from employment after having a non-injury related incident at work. Therefore, Injured Worker's disability is not compensable.

{¶28} 16. Relator appealed and the matter was heard before a staff hearing officer ("SHO") on June 4, 2012. The SHO modified the prior DHO order yet still denied the requested period of TTD compensation, stating:

The Staff Hearing Officer denies authorization for or payment of temporary total disability compensation from 12/13/2011 through 04/24/2012.

The Staff Hearing Officer notes based upon the rehabilitation records on file the Injured Worker returned to his last Employer in the same position of employment on full duty on 06/23/2004. This was the employment with Home Depot. There is an indication that the Injured Worker then changed employment and began working for Preferred Properties in a maintenance position. The Injured Worker had a disagreement with this Employer and was terminated on 10/02/2011. The termination of employment with this Employer was not related to the allowed conditions in this claim.

Therefore, the Staff Hearing Officer finds that the Injured Worker was not working at the time of his request for

temporary total disability. The Injured Worker's status of unemployment was not related to the allowed conditions in this claim.

The Staff Hearing Officer notes that the Ohio Revised Code 4123.56 offers temporary total disability compensation to replace earnings and wages lost as the result of an injury. The Staff Hearing Officer finds the facts in this claim do not indicate that the Injured Worker's unemployment status was related to the allowed conditions in this claim.

As the result, the Injured Worker is not entitled to temporary total disability compensation as he was unemployed due to reasons unrelated to the injury herein. Further the Injured Worker was not working at the time of the request for the temporary total disability compensation, therefore, there are no wages to replace.

{¶29} 17. Relator's further appeal was refused by order of the commission mailed June 27, 2012.

{¶30} 18. In a letter dated October 4, 2012, Dr. Zupnick advised relator's attorney that his "brief depression has turned into a more significant major depression." Dr. Zupnick recommended that relator undergo six more months of outpatient psychotherapy and psychopharmacological therapy.

{¶31} 19. Relator filed a C-86 motion asking that his claim be additionally allowed for the condition of major depressive disorder and requested TTD compensation from October 4, 2012 to March 1, 2013 and continuing.

{¶32} 20. An independent psychological evaluation was performed by Rachel M. Nijakowski, Ph.D., who opined that relator was currently suffering significant depression that was related to the work-related injury.

{¶33} 21. In an order mailed May 17, 2013, the Ohio Bureau of Workers' Compensation ("BWC") recommended that relator's claim be additionally allowed for the condition of major depressive disorder, but also recommended the denial of the request for TTD compensation because relator had not attempted to return to the workforce.

{¶34} 22. A hearing was held before a DHO on June 11, 2013. The DHO granted relator's request to additionally allow his claim for major depressive disorder, but determined that TTD compensation was not payable, stating:

The Injured Worker was previously denied payment of temporary total compensation on the emotional condition at Staff Hearing Officer hearing dated 06/04/2012. The order cited the Injured Worker's lack of current work status and the theory that there were no wages subject to wage replacement as of the last day worked in October 2011. The Injured Worker's work status has not changed to date. Despite the documented worsening of the emotional condition, the Injured Worker remains under the factual finding from the prior Staff Hearing Officer order. To the extent that there was a mistake of law in this final order, no judicial remedy was pursued with which to award benefits. In addition, the new diagnosis is not a sufficient basis with which to reinstate benefits. The Injured Worker was already determined to be totally disabled by Dr. Zupnick, Ph.D. in conjunction with the original period of temporary total compensation after October 2011. The Injured Worker remains totally disabled based upon the totality of the emotional conditions in the claim. Temporary total compensation is therefore DENIED as requested from 10/04/2012 to present.

(Emphasis sic.)

{¶35} 23. Relator appealed and the matter was heard before an SHO on July 22, 2013. The SHO likewise determined that relator's claim should be additionally allowed for major depressive disorder, but that TTD compensation be denied, stating:

The request for temporary total compensation is denied. The Hearing Officer does not find grounds to exercise continuing jurisdiction in this matter. The Hearing Officer finds the Injured Worker previously requested and was denied temporary total benefits for the period 12/13/2011 through 04/24/2012. The Commission determined that the Injured Worker "had a disagreement with this Employer and was terminated on 10/02/2011. The termination of employment with this Employer was not related to the allowed conditions in the claim." * * * Furthermore, the Commission explicitly found that "the Staff Hearing Officer finds that the Injured Worker was not working at the time of his request for temporary total disability. The Status of unemployment was not related to the allowed conditions in this claim." As the Injured Worker was not working at the time of the request for temporary total compensation, the Hearing Officer found no wages to be replaced.

The Hearing Officer finds therefore, that the issued [sic] of temporary total disability has already been determined by this Commission. The Injured Worker's argument that temporary total benefits were previously denied based upon the fact that Injured Worker was not working at the time of the request is not an accurate representation of the denial. Rather, the Hearing Officer finds the fact that the Injured Worker was terminated from employment due to facts [w]holly unrelated to the industrial injury which prevented his ability to receive temporary total benefits. The Hearing Officer finds the facts solicited at today's hearing further support the previous decision. Specifically, Injured Worker testified at hearing that he had a disagreement with his Employer and he was terminated. When pressed for more information, the Injured Worker elucidated that "there was a change in supervisor and the supervisor from before would let us take what we wanted when there was an eviction." "We were photographed taking things." The Injured Worker's testimony at today's hearing confirms that he was terminated for reasons unrelated to his industrial injury. Since his termination 10/02/2011, there has been no subsequent employment. Therefore, the Hearing Officer finds there is no basis for a finding of continuing jurisdiction to overturn the Staff Hearing Officer order which denied temporary total disability benefits. Similarly, the requests for new and changed circumstances is not found persuasive. The Hearing Officer finds that there is no new evidence to overturn the Staff Hearing Order. The Hearing Officer finds there was no mistake of law nor was there mistake of fact to exercise continuing jurisdiction and award temporary total benefits.

(Emphasis omitted.)

{¶36} 24. Relator's appeal was refused by order of the commission mailed August 13, 2012.

{¶37} 25. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶38} Relator's argument in this mandamus action focuses exclusively on his contention that the commission abused its discretion by not applying *State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.*, 72 Ohio St.3d 401 (1995), to determine whether

or not his separation from employment with Preferred Properties was a voluntary or involuntary abandonment. Relator contends that the commission must make this determination before it determines whether or not TTD compensation is payable. For the reasons that follow, the magistrate disagrees.

{¶39} In order for this court to issue a writ of mandamus as a remedy from a determination of the commission, relator must show 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). A clear legal right to a writ of mandamus exists where the relator shows that the commission abused its discretion by entering an order which is not supported by any evidence in the record. *State ex rel. Elliott v. Indus. Comm.*, 26 Ohio St.3d 76 (1986). On the other hand, where the record contains some evidence to support the commission's findings, 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 (1987). Furthermore, questions of credibility and the weight to be given evidence are clearly within the discretion of the commission as fact finder. *State ex rel. Teece v. Indus. Comm.*, 68 Ohio St.2d 165 (1981).

{¶40} TTD compensation awarded pursuant to R.C. 4123.56 has been defined as compensation for wages lost where a claimant's injury prevents a return to the former position of employment. Upon that predicate, TTD compensation shall be paid to a claimant until one of four things occurs: (1) claimant has returned to work; (2) claimant's treating physician has made a written statement that claimant is able to return to the former position of employment; (3) when work within the physical capabilities of claimant is made available by the employer or another employer; or (4) claimant has reached maximum medical improvement ("MMI"). See R.C. 4123.56(A); *State ex rel. Ramirez v. Indus. Comm.*, 69 Ohio St.2d 630 (1982).

{¶41} In *State ex rel. G&J Pepsi Cola v. Indus. Comm.*, 10th Dist. No. 07AP-642, 2008-Ohio-3564, this court first held that, where the employee has taken action that would preclude his returning to his former position of employment, even if he were able to do so, he is not entitled to continued TTD benefits since it is his own action, rather than the industrial injury, which prevents his returning to his former position of employment. *State ex rel. Jones & Laughlin Steel Corp. v. Indus. Comm.*, 29 Ohio App.3d 145 (1985).

The *Jones & Laughlin* rationale was adopted by the Supreme Court of Ohio in *State ex rel. Ashcraft v. Indus. Comm.*, 34 Ohio St.3d 42 (1987), wherein the court recognized a "two-part test" to determine whether an injury qualified for TTD compensation. *Ashcraft* at 44. The first part of the test focuses upon the disabling aspects of the injury whereas the latter part determines if there are any other factors, other than the injury, which prevent the claimant from returning to his former position of employment. *Id.* Thus, the *Ashcraft* court held that a claimant's incarceration precluded receipt of TTD compensation because, when a person chooses to violate the law, he is presumed to tacitly accept the consequences of his voluntary acts.

{¶42} In *State ex rel. Rockwell Internatl. v. Indus. Comm.*, 40 Ohio St.3d 44 (1988), the Supreme Court held that an injury-induced abandonment of the former position of employment, as in taking a retirement, is not considered to be voluntary.

{¶43} In *State ex rel. Diversitech Gen. Plastic Film Div. v. Indus. Comm.*, 45 Ohio St.3d 381 (1989), the Supreme Court held that a claimant's acceptance of a light-duty job did not constitute an abandonment of his former position of employment. The *Diversitech Gen.* court stated, at 383:

The question of abandonment is "primarily * * * [one] of intent * * * [that] may be inferred from words spoken, acts done, and other objective facts. * * * All relevant circumstances existing at the time of the alleged abandonment should be considered ." * * *

Id. at 383.

{¶44} In *Louisiana-Pacific Corp.*, the claimant was fired for violating the employer's policy prohibiting three consecutive unexcused absences. The *Louisiana-Pacific* court held, that the claimant's discharge was voluntary, stating:

[W]e find it difficult to characterize as "involuntary" a termination generated by the claimant's violation of a written work rule or policy that (1) clearly defined the prohibited conduct, (2) had been previously identified by the employer as a dischargeable offense, and (3) was known or should have been known to the employee. Defining such an employment separation as voluntary comports with *Ashcraft* and [*State ex rel. Watts v. Schottenstein Stores Corp.* (1993),

68 Ohio St.3d 118]- *i.e.*, that an employee must be presumed to intend the consequences of his or her voluntary acts.

Id. at 403.

{¶45} The Supreme Court recognized the great potential for abuse if a simple allegation of misconduct was allowed to preclude temporary total disability compensation. *State ex rel. Smith v. Superior's Brand Meats, Inc.*, 76 Ohio St.3d 408 (1996). The *Louisiana-Pacific* rationale was applied to preclude TTD compensation where a claimant was fired by his employer for violating his employer's written drug abuse policy. *State ex rel. Cobb v. Indus. Comm.*, 88 Ohio St.3d 54 (2000).

{¶46} In *State ex rel. McKnabb v. Indus. Comm.*, 92 Ohio St.3d 559 (2001), the Supreme Court further explained its decision in *Louisiana-Pacific*, stating:

Now at issue is *Louisiana-Pacific's* reference to a *written* rule or policy. Claimant considers a written policy to be an absolute prerequisite to precluding TTC. The commission disagrees, characterizing *Louisiana-Pacific's* language as merely illustrative of a TTC-preclusive firing. We favor claimant's position.

The commission believes that there are common-sense infractions that need not be reduced to writing in order to foreclose TTC if violation triggers termination. This argument, however, contemplates only some of the considerations. Written rules do more than just define prohibited conduct. They set forth a standard of enforcement as well. Verbal rules can be selectively enforced. Written policies help prevent arbitrary sanctions and are particularly important when dealing with employment terminations that may block eligibility for certain benefits.

Id. at 561. (Emphasis sic.)

{¶47} An injured worker who has voluntarily abandoned his employment may thereafter reinstate his TTD entitlement. *State ex rel. McCoy v. Dedicated Transport, Inc.*, 97 Ohio St.3d 25, 2002-Ohio-5305. The syllabus of *McCoy* states:

A claimant who voluntarily abandoned his or her former position of employment or who was fired under circumstances that amount to a voluntary abandonment of the former position will be eligible to receive temporary total

disability compensation pursuant to R.C. 4123.56 if he or she reenters the work force and, due to the original industrial injury, becomes temporarily and totally disabled while working at his or her new job.

{¶48} The fact pattern presented here is unique. First, relator was able to return to work without any restrictions with Plageman, the employer for whom he was working at the time he was injured. Second, relator's employment with Plageman ended not because relator retired or was fired, but because Plageman went out of business. At that time, relator was still performing his job duties without any restrictions. Third, relator secured other employment, first with Home Depot and then with Preferred Properties. Fourth, relator attended the hearings both in 2012 and in 2013 and testified that his employment with Preferred Properties ended when he was videotaped stealing from a worksite and was terminated. Relator never indicated that his termination was related to his injury. Fifth, relator did not return to any employment after his employment with Preferred Properties ended in 2011. At that time, relator was working without any restrictions.

{¶49} Relator testified that his employment with Preferred Properties ended for reasons other than the allowed conditions in his claim. This is the most unique aspect of this case. Injured workers usually argue that their termination was pretextual, should be considered involuntary, and should not affect their eligibility to receive TTD compensation. Further, relator acknowledged that he has not worked or looked for work in the nearly two years since his employment ended. The dangers contemplated by the Supreme Court in the *Superior Brands Meat* case (employer of record might terminate an employee to avoid paying compensation), are not present here. Relator asserts that this court must order the commission to engage in the analysis set forth in *Louisiana Pacific*, but the magistrate disagrees. Although relator's separation from employment was employer-initiated and arguably, "involuntary," relator's own testimony constitutes some evidence that his lack of employment was not related to the allowed conditions in his claim. Relator was not working at the time, for reasons other than the allowed conditions in his claim, he alleges he was disabled and had not looked for work for nearly two years.

{¶50} In support of his argument, relator directs this court's attention to a recent decision from the Supreme Court of Ohio in *State ex rel. Honda of Am. Mfr, Inc. v. Indus. Comm.*, 139 Ohio St.3d 290, 2014-Ohio-1894. In that case, Robert Corlew sustained a work-related injury while working for Honda in 2003. Honda paid TTD compensation for various periods until February 2008 when a DHO determined that Corlew's allowed conditions had reached MMI. At that time, Corlew was not able to return to his former position of employment. Honda offered Corlew the opportunity to participate in vocational rehabilitation services. Corlew declined.

{¶51} Between 2006 and 2008, Corlew had participated in Honda's Medically Inactive Transition Program ("MIT"), a program for employees who are unable to work for an extended period of time due to a medical condition. Corlew received long-term disability benefits for some of this time. After 130 weeks in the MIT program, Honda's long-term disability provider evaluated Corlew and determined he was no longer eligible. Because there was no position available for Corlew at Honda, Corlew retired as of December 31, 2008.

{¶52} In December 2009, Corlew underwent surgery for the allowed conditions and requested TTD compensation. Honda objected, arguing that Corlew had decided to retire even though he was physically capable of performing some type of work outside of Honda and that, because he was not working, he had no wages to replace and was not entitled to an award of TTD compensation. The commission disagreed, and this court denied Honda's request for a writ of mandamus.

{¶53} Honda appealed, and the Supreme Court of Ohio affirmed this court's judgment, stating:

This case involves Corlew's postretirement request for temporary-total-disability compensation to be paid during his postsurgical recovery period. The narrow issue advanced by Honda is whether a claimant who has not suffered a loss in earnings due to the industrial injury is entitled to an award of temporary-total-disability compensation. According to Honda, Corlew had been retired for one year at the time of the surgery and was not looking for a job, and there was no evidence that he intended to reenter the workforce. Honda has consistently maintained that regardless of whether Corlew's retirement was voluntary or involuntary, he

was not eligible for temporary-total-disability compensation, because he suffered no economic loss that could be directly attributed to his industrial injury.

The court of appeals concluded that when considering a postretirement request for temporary-total-disability compensation, the relevant issue is whether the claimant voluntarily or involuntarily retired. 2012-Ohio-3335, 2012 WL 3008039, ¶ 7. Our case law supports this conclusion. *State ex rel. Lackey v. Indus. Comm.*, 129 Ohio St.3d 119, 2011-Ohio-3089, 950 N.E.2d 542; *State ex rel. Corman v. Allied Holdings, Inc.*, 132 Ohio St.3d 202, 2012-Ohio-2579, 970 N.E.2d 929. In *Lackey*, we addressed a claimant's request for postretirement temporary-total-disability compensation following knee surgery. We clarified that "[e]ligibility for compensation under these circumstances depends on whether the separation from employment was injury-induced." *Id.* at ¶ 11. And if the retirement is related to the injury, it is not necessary for the claimant to first obtain other employment, but it is necessary that the claimant has not foreclosed that possibility by abandoning the entire workforce. *Id.*; *Corman* at ¶ 7.

Here, the court of appeals concluded that the commission had properly addressed the relevant issue of Corlew's retirement and had determined that the record contained evidence that Corlew retired because of his industrial injury, but that there was no evidence that he had abandoned the entire workforce.

Id. ¶ 14-16.

{¶54} Although relator asserts that the Supreme Court rejected Honda's argument that TTD compensation was not payable because Corlew was unemployed and could not demonstrate an economic loss resulting from his allowed conditions, such is not the case. The Supreme Court upheld the commission's determination that Corlew was eligible for TTD compensation because Corlew's retirement was related to the allowed conditions in his claim and therefore involuntary. Whenever an injured worker is not working for reasons unrelated to the allowed conditions in the claim, whether because they left their job or were terminated, their departure is considered voluntary, and they can become eligible for TTD compensation if they return to employment and again become disabled.

While a termination ordinarily triggers a *Louisiana Pacific* analysis, here the injured worker's own testimony demonstrated that his termination was unrelated to the allowed conditions in his claim, and it was unnecessary for the commission to engage in an analysis under *Louisiana Pacific*. The principles set out in *State ex rel. McGraw v. Indus. Comm.*, 56 Ohio St.3d 137 (1990), and *State ex rel. Eckerly v. Indus. Comm.*, 105 Ohio St.3d 428, 2005-Ohio-2587, remain valid: The industrial injury must remove the injured worker from his or her job. This requirement cannot be satisfied if the injured worker has no job at the time of the alleged disability.

{¶55} The record is clear that relator's allowed conditions did not prevent him from working. Relator needed to prove that the allowed psychological condition prevented him from working. It is immaterial that relator was terminated from his job with Preferred Properties. The fact remained that, according to his testimony, he was no longer working with Preferred Properties for reasons unrelated to the allowed conditions in his claim.

{¶56} Based on the forgoing, it is this magistrate's decision that relator has not demonstrated that the commission abused its discretion and this court should deny his 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).