[Cite as *State ex rel. Rappach v. Indus. Comm.*, 2015-Ohio-984.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Joseph J. Rappach,	:	
Relator,	:	
v.	:	No. 14AP-436
Industrial Commission of Ohio and Winner Aviation Corporation,	:	(REGULAR CALENDAR)
Respondents.	:	

D E C I S I O N

Rendered on March 17, 2015

Urban Co., L.P.A., and *Anthony P. Christine*, for relator.

Michael DeWine, Attorney General, and *LaTawnda N. Moore*, for respondent Industrial Commission of Ohio.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

SADLER, J.

{¶ 1} Relator, Joseph J. Rappach, commenced this original action requesting a writ of mandamus ordering respondent Industrial Commission of Ohio ("commission") to vacate its order denying relator's request for temporary total disability ("TTD") compensation and to reinstate an order of the Ohio Bureau of Workers' Compensation ("BWC") awarding him TTD compensation.

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

the commission did not abuse its discretion when it denied relator's request for TTD compensation and exercised continuing jurisdiction, based on a clear mistake of law, to vacate an order granting relator TTD compensation. Accordingly, the magistrate recommended that this court deny the requested writ of mandamus.

I. BACKGROUND

{¶ 3} Relator did not file objections to the magistrate's findings of fact. An independent review of those findings by this court reveals no error. Accordingly, we adopt the magistrate's findings of fact as our own. For purposes of discussion, a brief summary of the relevant facts is provided here.

{¶ 4} On March 13, 2010, relator sustained a work-related injury. He filed a signed "First Report of an Injury, Occupational Disease or Death" ("FROI-1") form on March 19, 2010. On the FROI-1, relator listed his last day of work as March 18 and relator's doctor indicated that the incident would not cause him to miss eight or more days of work. Relator's doctor repeatedly examined him over the next few months and produced a variety of medical records relaying relator's work restriction status. The medical records indicated no physical work restrictions on the date of the FROI-1 filing, "full duty no lost time/medical only" a few days later, light-duty work restrictions from April 1 through 28, no work restrictions on April 29, and light-duty work restrictions again on May 6 and 7. (Mar. 22, 2010 Physician Note.)

{¶ 5} On May 6, 2010, relator signed a modified job-duty offer to return to work with his employer, Winner Aviation Corporation. On July 2, 2010, after a hearing on the FROI-1, a district hearing officer allowed relator's claim for "sprain lumbosacral; sprain lumbar region" and noted "[c]urrently, there is no evidence of compensable lost time." (July 2, 2010 Order.) On the same day, relator's doctor signed and filed the second page of a C-84 form certifying that relator was temporarily and totally disabled from March 19 through May 19, 2010. Relator did not file the first page of the C-84 form, entitled "Request for Temporary Total Compensation," at that time.

{¶ 6} Nearly three and one-half years later, on December 9, 2013, relator filed with the BWC the complete C-84 form, including the signed first page requesting TTD compensation and the same second page previously completed and filed by his doctor. In an order mailed January 9, 2014, the BWC granted relator's request based on the

complete C-84. Later that month, the BWC asked the commission to exercise its continuing jurisdiction to correct a mistake of law contained in the order and indicated that an award of TTD compensation for a back period of over two years from the filing of the complete C-84 was contrary to law. A district hearing officer of the commission denied the BWC's motion and ordered that the BWC award remain in full force and effect. However, on appeal, a staff hearing officer of the commission granted the BWC's request to exercise continuing jurisdiction to vacate the January 9, 2014 order. After the commission denied further appeal, relator filed the instant mandamus action, which the court referred to a magistrate as indicated above.

{¶ 7} The magistrate concluded that the commission did not abuse its discretion when it exercised continuing jurisdiction, based on a clear mistake of law, to vacate the order of the BWC and deny relator's request for TTD compensation. Specifically, the magistrate found that the commission did not abuse its discretion in determining that the order granting TTD compensation for the period of March 19 through May 19, 2010 violated R.C. 4123.52(A), which prohibits an award of compensation "for a back period in excess of two years prior to the date of filing application therefor," where relator filed the complete C-84 "Request for Temporary Total Compensation" form on December 9, 2013.

{¶ 8} In reaching this conclusion, the magistrate employed the factors listed in *State ex rel. Drone v. Indus. Comm.*, 93 Ohio St.3d 151, 153 (2001), to determine that two previously filed forms—the FROI-1 form and page two of the C-84 form—failed, both separately or together, to constitute an "application" for TTD compensation. The magistrate noted that the FROI-1 was not treated as an application for TTD compensation because the doctor indicated, in his opinion, that relator would not miss eight days or more of work. The magistrate further noted that page two of the C-84 conflicted with the medical records and also lacked explicit application language compared to page one of the C-84. Finally, the magistrate noted that relator did not treat either or both forms as a TTD application: relator entered into a work agreement with his employer during the purported TTD compensation period, and relator waited three and one-half years to file the first page of the C-84. Overall, the magistrate found the commission did not abuse its discretion in exercising continuing jurisdiction "[e]ven applying a liberal construction as

mandated by R.C. 4123.95." (Magistrate's Decision, ¶ 50.) Accordingly, the magistrate recommended that this court deny the requested writ of mandamus.

II. OBJECTION

{¶ 9} Relator presents the following objection:[1]

> "The Magistrate has applied the liberal construction statute, ORC 4123.95, to the guideline for continuing jurisdiction in favor of the Ohio BWC" instead of relator.

III. DISCUSSION

{¶ 10} Relator essentially contends the magistrate applied the "liberal construction" statute, R.C. 4123.95, in favor of the wrong party in analyzing continuing jurisdiction. In support of this objection, relator insists that the FROI-1 supplemented by page two of the C-84 comprises an application "clearly filed within the proper 2 year period" required by R.C. 4123.52(A), and, therefore, no mistake of law supported the commission's order. (Relator's Objection, 2.)

{¶ 11} R.C. 4123.95 states that "[s]ections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees." However, the mandate to liberally construe the workers' compensation statutes in favor of employees does not require a court to automatically find in favor of that employee. *See, e.g., State ex rel. Garrett v. Indus. Comm.*, 96 Ohio St.3d 60, 2002-Ohio-3533, ¶ 8 (holding that relator's additional allowance of claim was not an application for compensation for purposes of R.C. 4123.52); *State ex rel. Goedel v. Indus. Comm.*, 10th Dist. No. 10AP-704, 2011-Ohio-5657, ¶ 4 (finding that an application for TTD benefits was filed outside the two-year period of R.C. 4123.52). Instead, the Supreme Court of Ohio determined that liberal statutory construction in favor of employees is one of four factors that a court should weigh in determining whether an R.C. 4123.52 application exists. *Drone*; *State ex rel. Gen. Refractories Co. v. Indus. Comm.*, 44 Ohio St.3d 82, 83-84 (1989).

{¶ 12} We disagree that the magistrate applied the liberal construction statute in favor of BWC. The magistrate applied the *Drone* factors and found the commission did not abuse its discretion in exercising continuing jurisdiction "[e]ven applying a liberal

[1] This objection was condensed from the "Law and Argument" page in relator's "Objections to Magistrate's Decision." The page entitled "Objection" simply states he is submitting objections and incorporating his original brief as if fully rewritten.

construction as mandated by R.C. 4123.95." (Magistrate's Decision, ¶ 50.) Relator offers no support for his objection outside of reiterating his position that the FROI-1 and page two of the C-84 constituted an "application" within two years of the TTD compensation period. This is essentially the same argument relator submitted to the magistrate. Our review of the magistrate's decision confirms that the magistrate considered those arguments at length and concluded that, based on the facts of this case, the FROI-1 and page two of the C-84 did not comprise an "application" for TTD compensation for purposes of R.C. 4123.52(A). Our independent review of the decision and record shows the magistrate properly applied the law without liberally construing R.C. 4123.52 in favor of the BWC. Accordingly, we overrule relator's objection.

IV. CONCLUSION

{¶ 13} Upon review of the magistrate's decision, an independent review of the record, and due consideration of relator's objection, we find the magistrate has properly determined the facts and applied the appropriate law. Therefore, we overrule relator's objection to the magistrate's decision and adopt the magistrate's decision as our own, including the findings of fact and conclusions of law therein. The requested writ of mandamus is denied.

Objection overruled;
writ of mandamus denied.

KLATT and DORRIAN, JJ., concur.

A P P E N D I X

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Joseph J. Rappach,	:	
Relator,	:	
v.	:	No. 14AP-436
Industrial Commission of Ohio and Winner Aviation Corporation,	:	(REGULAR CALENDAR)
Respondents.	:	

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

Rendered on November 24, 2014

Urban Co., L.P.A., and *Anthony P. Christine*, for relator.

Michael DeWine, Attorney General, and *LaTawnda N. Moore*, for respondent Industrial Commission of Ohio.

IN MANDAMUS

{¶ 14} Relator, Joseph J. Rappach, 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 wherein the commission exercised its continuing jurisdiction and denied his request for temporary total disability ("TTD") compensation, and ordering the commission to reinstate his award of TTD compensation.

Findings of Fact:

{¶ 15} 1. Relator sustained a work-related injury on March 13, 2010, and his workers' compensation claim has been allowed for the following conditions: "sprain lumbosacral; sprain lumbar region."

{¶ 16} 2. On March 19, 2010, relator signed a First Report of an Injury, Occupational Disease or Death ("FROI-1") form indicating that, on March 13, 2010, he injured his low back, right hip, and right leg. Relator's treating physician Robert M. Bell, D.C., also signed the form opining that relator had suffered a lumbosacral sprain/strain and lumbar sprain/strain.

{¶ 17} On the form, relator was asked to indicate the date he last worked and relator indicated March 18, 2010, the day before he signed the FROI-1.

{¶ 18} In response to the question "Will the incident cause the injured worker to miss eight or more days of work," Dr. Bell indicated "No."

{¶ 19} 3. The stipulation of evidence contains numerous medical records from Dr. Bell's office charting relator's office visits. Each of those records has a space for Dr. Bell to note whether or not he was imposing any work restrictions on relator. Those records provide:

(a) March 19, 2010 - No restrictions.

(b) March 22, 2010 - Dr. Bell indicates no restrictions and writes that relator is released to "full duty, no lost time/medical only."

(c) March 25 and 29, 2010 - Dr. Bell does not indicate whether or not there are any restrictions.

(d) April 1, 2010 - Dr. Bell indicates that relator is restricted to light-duty work and specifically notes that he is requesting an EMG and other tests.

(e) April 5 through 26, 2010 - Dr. Bell indicates that relator is restricted to light-duty work.

(f) April 27, 2010 - Dr. Bell indicates that relator is restricted to light-duty work with a ten pound lifting restriction.

(g) April 28, 2010 - Dr. Bell indicates that relator is restricted to light-duty work.

(h) April 29, 2010 - No restrictions.

(i) May 6 and 7, 2010 - Dr. Bell again restricts relator to light-duty work.

{¶ 20} 4. Relator's employer Winner Aviation Corporation, challenged the allowance of relator's claim.

{¶ 21} 5. On May 6, 2010, relator signed a modified job duty offer to return to work with his employer.

{¶ 22} 6. On July 2, 2010, Dr. Bell signed and filed the second page of a C-84 form certifying that relator was temporarily and totally disabled from March 19 through May 19, 2010.

{¶ 23} 7. A hearing was held before a district hearing officer ("DHO") on July 2, 2010. The DHO granted relator's FROI-1, stating:

> This claim is ALLOWED for LUMBOSACRAL SPRAIN/STRAIN; LUMBAR SPRAIN/STRAIN.
>
> Currently, there is no evidence of compensable lost time.
>
> This decision is based on the 03/19/2010 FROI-1 Treatment Information Record from Bell Family Chiropractic and the 06/26/2010 report from Ira Ungar, M.D.

(Emphasis sic.)

{¶ 24} 8. On December 3, 2011, relator filed an application seeking a determination of his permanent partial disability ("PPD").

{¶ 25} 9. A hearing was held before a DHO on April 27, 2012, and relator was awarded a two percent PPD award.

{¶ 26} 10. On October 22, 2013, relator signed the first page of a C-84 form requesting TTD compensation. On that form, relator indicated the "last date worked due to the current period of work-related disability" was March 18, 2010.

{¶ 27} In the section of the form inquiring about employment information, relator checked the box indicating that he has a job to return to, specifically with Winner Aviation, that he was not currently working in any capacity, and has not worked in any capacity during the requested period of disability.

{¶ 28} Relator further indicated the last date he worked anywhere was November 8, 2011 and that his employment ended because he was terminated.

{¶ 29} This form was filed with the Ohio Bureau of Workers' Compensation ("BWC") on December 9, 2013.

{¶ 30} 11. In an order mailed January 9, 2014, the BWC granted relator's request for TTD compensation from March 19 through May 18, 2010. The BWC relied on the "C84 and [M]edco-14 from Dr. Bell and C84 from the injured worker."

{¶ 31} 12. In an order mailed January 29, 2014, the BWC referred the matter to the commission for consideration of relator's C-84 filed December 9, 2013 for the following reasons:

> BWC requests that the Industrial Commission exercise its continuing jurisdiction pursuant to ORC 4123.52 to correct a mistake of law contained within the BWC order dated 01/09/2014 and to vacate the order. Specifically the order awarded TT [sic] compensation for a period which occurred more than two years prior to the filing of the application, that is for the period 03/19/2010 to 05/18/2010. The application was filed 12/09/2013 and cannot be granted by law.

{¶ 32} 13. The matter was heard before a DHO on February 27, 2014. The DHO granted relator's request for TTD compensation as requested and denied the BWC's motion asking the commission to exercise its continuing jurisdiction after finding that the BWC properly awarded relator TTD compensation. Specifically, the DHO found:

> It is the decision of the District Hearing Officer that based upon the First Report of Injury, the physician's portion of the C-84, and the order from the Industrial Commission of Ohio issued 07/07/2010, that an application for temporary total disability compensation was filed in 2010 for this inclusive period of temporary total disability.
>
> It is the decision of the District Hearing Officer that a first report of injury that includes a last date worked and is filed by the Injured Worker between the last date worked and the return to work date is an application for allowance of claim and temporary total disability compensation. Further, when the Industrial Commission of Ohio issues an order that indicates there was no evidence of compensable lost time, the Industrial Commission of Ohio is not indicating that there was no request or application for temporary total compensation, but rather no medical evidence of temporary total compensation to consider. Thereafter, once the physician completed his portion of the C-84 for temporary total compensation, filed 07/02/2010, the District Hearing Officer finds that the entire application and request for

temporary total compensation from 03/19/2010 to 05/18/2010, inclusive, was fully completed.

The District Hearing Officer further relied on Drone v. Industrial Commission of Ohio (2001), 93 Ohio St.3d 151, in which the Ohio Supreme Court cited four factors in determining whether an application existed:

(1) The documents contents; (2) The nature of relief sought; (3) How the parties treated the document; and (4) The liberal construction mandate of Revised Code 4123.95. When the court applied these four factors, they determined that the Employer knew that the Injured Worker had been off work for medical reasons and that Injured Worker's additional allowance motion was generated.

Likewise, in the instant claim, the District Hearing Officer finds that the Bureau of Workers' Compensation had knowledge of an alleged work related injury and resulting time off work due to the work related injuries from the treating doctor within two months of his time off work. Further, with the Industrial Commission of Ohio indicating in its order, issued 07/07/2010, that temporary total disability compensation is not considered because of a lack of evidence of compensable lost time, the Industrial Commission of Ohio has acknowledged an application or request for temporary total compensation at that hearing pursuant to the First Report of Injury, filed 03/22/2010.

Therefore, since it is the decision of the District Hearing Officer that an application for temporary total disability compensation was filed by the Injured Worker within two years of the inclusive period of temporary total disability, it is the order of the District Hearing Officer that there was no mistake of law pursuant to Revised Code 4123.52, and the Bureau of Workers' Compensation motion, filed 01/29/2014, is denied.

It is the order of the District Hearing Officer that the Bureau of Workers' Compensation order, issued 01/09/2014, remains in full force and effect.

The District Hearing Officer further relied on the Bureau of Workers' Compensation order issued 01/09/2014, and the District Hearing Officer order issued 07/07/2010.

> The District Hearing Officer further relied on the First Report of Injury, filed 03/22/2010.
>
> Therefore, since it is the decision of the District Hearing Officer that an application for temporary total disability compensation was filed by the Injured Worker within two years of the inclusive period of temporary total disability, it is the order of the District Hearing Officer that there was no mistake of law pursuant to Revised Code 4123.52, and the Bureau of Workers' Compensation motion, filed 01/29/2014, is denied.
>
> It is the order of the District Hearing Officer that the Bureau of Workers' Compensation order, issued 01/09/2014, remains in full force and effect.
>
> The District Hearing Officer further relied on the Bureau of Workers' Compensation order, issued 01/09/2014, and the District Hearing Officer order, issued 07/07/2010.
>
> The District Hearing Officer further relied on the First Report of Injury, filed 03/22/2010.
>
> The District Hearing Officer further relied on the C-84 Request for Temporary Total Compensation, filed 07/02/2010.
>
> The District Hearing Officer further relied on Revised Code 4123.52.

{¶ 33} 14. The BWC appealed and the matter was heard before a staff hearing officer ("SHO") on April 8, 2014. The SHO vacated the DHO order and granted the BWC's request that the commission exercise its continuing jurisdiction. Specifically, the SHO stated:

> It is the finding of the Staff Hearing Officer that the Bureau of Workers' Compensation's request filed 12/09/2013 requesting the Industrial Commission to exercise its continuing jurisdiction to deny a period of temporary total compensation paid i.e. 03/19/2010 through 05/18/2010 inclusive pursuant to Bureau of Workers' Compensation order issued 01/09/2014 is hereby granted as said request is based upon one of the appropriate grounds for the Industrial Commission to exercise its continuing jurisdiction i.e. mistake of law.

> The Staff Hearing Officer finds that per the prior Bureau of Workers' Compensation order issued 01/09/2014, temporary total compensation was hereby ordered paid from 03/19/2010 through 05/18/2010 inclusive.
>
> Pursuant to Revised Code Section 4123.52 regarding the Industrial Commission's continuing jurisdiction to correct or modify prior orders due [to] a mistake of law, the Staff Hearing Officer grants the Administrator's request and said Administrator order issued 01/09/2014 is hereby vacated and held for naught.
>
> O.R.C. 4123.52 reads in part "... the Industrial Commission shall not make any such modification, change, finding, or award which shall award compensation for a back period in excess of two years prior to the date of filing application therefore..."
>
> The Staff Hearing Officer finds that the mere submission of a physician's portion of a C-84 filed 07/02/2010 in and of itself is not an "application" for compensation, but is merely medical evidence in support of same, and as such finds that there was no request made by the Injured Worker for the above indicated period of disability within the two year statutory period of said period of disability until 12/09/2013. As such the Staff Hearing Officer finds that the above paid period of temporary total compensation was not timely filed within 4123.52 and was not properly payable.
>
> This order is based upon a review of R.C. 4123.52 Ohio Case Law State ex rel. Garrett v. Industrial Commission (2002), 96 Ohio St.3d 60, State ex rel. Welsch v. Industrial Commission, 86 Ohio St.3d 178 (1999), review of Industrial Commission Hearing Officers Manual Policy Memo I-2, as well as all evidence and testimony presented at hearing.

{¶ 34} 15. Relator's appeal was refused by order of the commission mailed May 1, 2014.

{¶ 35} 16. Thereafter, relator filed the instant mandamus action in this court.

Conclusions of Law:

{¶ 36} Two issues are presented: (1) whether the commission abused its discretion in exercising continuing jurisdiction over the BWC's order mailed January 9,

2014; and (2) whether the commission abused its discretion when it determined that R.C. 4123.52 barred the payment of TTD compensation to relator.

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

{¶ 38} Turning to the first issue, continuing jurisdiction is not unlimited. Its prerequisites are: (1) new and changed circumstances; (2) fraud; (3) clear mistake of fact; (4) clear mistake of law; or (5) error by inferior tribunal. *State ex rel. Royal v. Indus. Comm.*, 95 Ohio St.3d 97 (2002) and *State ex rel. Nicholls v. Indus. Comm.*, 81 Ohio St.3d 454 (1998).

{¶ 39} In the present case, the BWC had awarded relator TTD compensation from March 19 through May 18, 2010 based on Dr. Bell's C-84 and Medco-14, and relator's C-84. Thereafter, the BWC referred the claim to the commission on grounds that its order mailed January 9, 2014 contained a clear mistake of law because, inasmuch as the application was filed December 9, 2013, the BWC had awarded compensation beyond the two-year period provided in R.C. 4123.52.

{¶ 40} When the DHO found the award of compensation was appropriate, the DHO specifically relied on the Supreme Court of Ohio's decision in *State ex rel. Drone v. Indus. Comm.*, 93 Ohio St.3d 151 (2001). In that case, Evelyn Drone's average weekly wage ("AWW") was set at $138.96. On September 1, 1998, the BWC discovered its error and in December 1998 notified Drone as follows:

> The average weekly wage was incorrectly calculated resulting in an underpayment in your claim. Your corrected average weekly wage is $174.08. BWC will issue a payment to you for the underpayment. However, adjustments will be limited to compensation paid for the two-year period prior to September 1, 1998, the date the error was discovered.

Id. at 152.

{¶ 41} On December 31, 1998, Drone formerly objected and the commission determined that the BWC was only required to pay Drone the money she was owed due to the BWC's miscalculation of her AWW back to December 31, 1996, the date two years prior to her objection to the BWC's order.

{¶ 42} Ultimately, the Supreme Court was faced with the task of interpreting R.C. 4123.52 and applying it to the facts. The BWC argued the statute of limitations began to run September 1, 1998, the day the BWC discovered its error; however, the commission had determined the statute of limitations began to run December 31, 1998, the date of Drone's written objection. Ultimately, the court determined the statute of limitations was never triggered because no application had ever been filed. The court discussed its holding from *State ex rel. Gen. Refractories Co. v. Indus. Comm.*, 44 Ohio St.3d 82 (1989), and the four factors the court found relevant to determine whether an application existed: (1) the document's contents; (2) the nature of relief sought; (3) how the parties treated the document; and (4) the liberal construction mandate of R.C. 4123.95.

{¶ 43} Applying the above to the present case, this court must determine whether relator's FROI-1 filed March 22, 2010 constituted an application for TTD compensation. The court's four factors cited in *Gen. Refractories* need to be applied here and in applying those factors, the court must decide whether or not the BWC's order mailed January 9, 2014 contained a clear mistake of law. The magistrate finds that it did.

{¶ 44} As noted in the findings of fact, relator signed his FROI-1 on March 19, 2010. A review of that document reveals the following: relator alleged the date of his injury was March 13, 2010 he notified his employer that he was injured March 16, 2010, and; the date he last worked was March 18, 2010. Further, Dr. Bell was asked to indicate whether or not relator would miss eight or more days of work. Dr. Bell indicated the industrial injury would not cause relator to miss eight or more days of work.

{¶ 45} The question on a FROI-1 asking the treating physician whether or not an injured worker will miss eight or more days of work is extremely relevant because R.C. 4123.55 provides:

> No compensation shall be allowed for the first week after an injury is received * * * no compensation shall be allowed for the first week of total disability, whenever it may occur, unless and until the employee is totally disabled for a continuous period of two weeks or more, in which event compensation for the first week of total disability, whenever

> it has occurred, shall be paid, in addition to any other weekly benefits which are due.

{¶ 46} Considering just the FROI-1, that document, in and of itself, was not treated as an application for TTD compensation because Dr. Bell indicated that, in his opinion, relator would not miss eight days or more of work and compensation would not need to be paid because R.C. 4123.55 would not apply.

{¶ 47} Considering the other medical evidence in the record, the magistrate also finds that the second page of the C-84 signed by Dr. Bell, likewise, does not constitute an application for TTD compensation when you consider Dr. Bell's medical records during the time the C-84 certified that relator was unable to work. Specifically, the magistrate notes that on the C-84, Dr. Bell certified that relator was disabled beginning March 19, 2010. Relator did first see Dr. Bell on March 19, 2010. At the end of his treatment note for that date, there is a place where the treating physician indicates whether or not the patient has restrictions. Dr. Bell circled the word none. Further, in his March 22, 2010 office note, Dr. Bell again indicates that relator has no restrictions and can return to full duty. As noted previously, Dr. Bell's office notes from March 25 and 29, 2010 do not indicate whether or not relator has any restrictions. It is not until relator's visit on April 1, 2010 that Dr. Bell indicates any restrictions because he indicates relator is capable of only light-duty activities. However, on April 29, 2010, Dr. Bell again noted that relator had no restrictions until again limiting relator to light-duty work as of May 6, 2010.

{¶ 48} Looking at Dr. Bell's office notes and his portion of the C-84, the first two weeks that Dr. Bell certified that relator was temporarily unable to return to his former position of employment, he indicated in his medical records that relator had no restrictions and was capable of returning to his former position of employment. Also, between April 29 and May 6, 2010, a period of eight days, Dr. Bell's office notes indicate no restrictions. Further, nothing on this portion of the C-84 indicates it is an application. By comparison, the first page of the application, which is completed and signed by the injured worker on October 22, 2013 is entitled "Request for Temporary Total Compensation" and asks the question: "Is this application requesting a new period of temporary total compensation or an extension?"

{¶ 49} A comparison of pages one and two of the C-84 provides a stark contrast. Page one specifically indicates a request for TTD compensation and identifies itself as an application. By comparison, the second page has none of those indicia.

{¶ 50} Looking at the contents of page two of the C-84, the magistrate notes that, on its own, it does indicate that relator is unable to work from March 19 through May 19, 2010. However, as noted earlier, Dr. Bell's office notes indicate relator was capable of returning to full duty work from March 19 through April 6, 2010 and from April 29 through May 6, 2010. As such, there certainly is a conflict in the evidence that ultimately would have been supplied. Further, relator and his employer entered into an agreement for him to perform a modified job on May 6, 2010. As such, to the extent that Dr. Bell's portion of the C-84 indicates that relator returned to work on May 19, 2010, it appears Dr. Bell was unaware that relator returned to work two weeks earlier. Further, none of the parties treated Dr. Bell's portion of the C-84 as an application for TTD compensation. As noted previously, relator had already returned to work and waited three and one half years to file the first page of the C-84 despite the fact that, on that page, he indicates the last date he worked anywhere was November 8, 2011. Even applying a liberal construction as mandated by R.C. 4123.95, the magistrate finds the commission did not abuse its discretion when it determined the BWC's order awarding relator TTD compensation beyond two years from the filing of the first page of the C-84 did constitute a clear mistake of law, and the commission did not abuse its discretion when it exercised its continuing jurisdiction to correct that error. Further, the commission's order denying relator's request for TTD compensation did not constitute an abuse of discretion.

{¶ 51} Based on the forgoing, it is this magistrate's decision that relator has not demonstrated that the commission abused its discretion when it exercised its continuing jurisdiction and denied relator TTD compensation, and this court should deny relator's request for a writ of mandamus.

/S/ MAGISTRATE
STEPHANIE BISCA

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).