

[Cite as *Harmon v. Powertrain Div., Gen. Motors Corp.*, 2004-Ohio-4166.]

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
ALLEN COUNTY**

JOE L. HARMON

PLAINTIFF-APPELLANT

CASE NO. 1-04-21

v.

**POWERTRAIN DIVISION, GENERAL
MOTORS CORPORATION, ET AL.**

O P I N I O N

DEFENDANTS-APPELLEES

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court**

JUDGMENT: Judgment Affirmed

DATE OF JUDGMENT ENTRY: August 9, 2004

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CUPP, J.

{¶1} Appellant, Joe Harmon, appeals the judgment of the Allen County Court of Common Pleas, granting summary judgment in favor of appellee, Powertrain Division General Motors (hereinafter “Powertrain”).

{¶2} Appellant was employed with Powertrain from approximately 1955 to 1975. During the course of his employment, he was exposed to asbestos. In 2001, as a result of his exposure to asbestos, appellant filed an application with the Bureau of Workers’ Compensation (hereinafter “BWC”) to participate in the Workers’ Compensation Fund, alleging he had contracted the occupational disease of asbestosis.

{¶3} Appellant’s claim was scheduled to be heard by an Industrial Commission District Hearing Officer on May 16, 2002. On May 13, 2002, appellant’s counsel sent a letter to the District Hearing Officer, informing him that appellant had previously submitted a “B-reader” and that the appellant was in the process of “obtaining additional medical information to facilitate the referral of this matter to a BWC medical specialist pursuant to Industrial Commission

Resolution R96-1-01.”¹ The letter, however, did not request a continuance. The letter further informed the District Hearing Officer that neither appellant nor appellant’s counsel would appear at the hearing.

{¶4} On the day of hearing, neither appellant nor appellant’s counsel appeared and additional medical evidence was not submitted. Due to the appellant’s failure to provide the medical evidence required by Resolution R96-1-01, the District Hearing Officer denied appellant’s claim.

{¶5} The appellant appealed his claim to the Staff Hearing Officer and a hearing was scheduled for July 24, 2002. On July 16, 2002, appellant’s counsel mailed a letter to the Staff Hearing Officer that was nearly identical to the one sent to the District Hearing Officer. At the hearing before the Staff Hearing Officer, neither appellant nor appellant’s counsel appeared and additional medical evidence was not submitted. Due to the appellant’s failure to submit the required evidence pursuant to Resolution R96-1-01, the Staff Hearing Officer denied appellant’s claim.

{¶6} The appellant appealed his claim to the Industrial Commission, which declined to hear the appeal. Appellant, therefore, appealed the matter to the Allen County Common Pleas Court.

¹ Resolution R96-1-01 requires that a claimant provide a certified “B-reader,” pulmonary function studies and an opinion of causal relationship by a licensed physician before the claimant can be referred to a qualified medical specialist.

{¶7} After filing an answer to appellant’s complaint, Powertrain filed a motion for summary judgment claiming appellant failed to exhaust his administrative remedies, based on appellant’s failure to obtain the mandatory qualified medical specialist examination. Powertrain argued that the examination was a condition precedent to participation in the Workers’ Compensation Fund and the failure of the condition was due to appellant’s “blatant disregard of [Resolution R96-1-01].”

{¶8} The trial court subsequently granted Powertrain’s motion for summary judgment, finding that the failure to obtain a qualified medical specialist examination precludes appellant from participation in the benefits of workers’ compensation.

{¶9} It is from this decision that appellant appeals, setting forth one assignment of error for our review.

ASSIGNMENT OF ERROR NO. I

The Trial Court erred when it granted Defendant Employer’s Motion for Summary Judgment as a Matter of Law based solely upon a finding that Plaintiff Employee did not attend an examination by a state medical specialist when no such exam was scheduled by the state and therefore no refusal to attend could take place.

{¶10} Appellant asserts that he cannot be barred from participating in the Workers’ Compensation Fund for the failure to attend a qualified medical specialist examination because no such exam was ever scheduled. Therefore,

appellant claims, the trial court erred in granting summary judgment in favor of Powertrain.

{¶11} After a review of the record, we find that the essential facts and legal arguments of this case are identical in all meaningful respects to those involved in our recent decision in *Anders v. Powertrain Division, GMC, et al.*, Defiance App. No. 4-03-16 through 4-03-47, 2004-Ohio-2469. Therefore, on the authority of *Anders*, we hold that the trial court did not err in granting summary judgment in favor of Powertrain.

{¶12} Accordingly, appellant's assignment of error is overruled.

{¶13} Having found no error prejudicial to appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment affirmed.

SHAW, P.J., and BRYANT, J., concur.