IN THE SUPREME COURT OF OHIO

THE STATE ex rel. KASSI TCHANKPA,	:	Case Number: 2024-0096
Appellant,	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
v.	:	
INDUSTRIAL COMMISSION OF OHIO, et al.,	:	Court of Appeals Case Number: 20AP-259
Appellees.	:	

BRIEF OF APPELLEE, INDUSTRIAL COMMISSION OF OHIO

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INTRODUCTION

This case arose as an original action in mandamus in the Tenth District Court of Appeals ("Tenth District"). Pro se Appellant, Kassi Tchankpa ("Tchankpa") sought a writ of mandamus to compel the court to vacate the October 7, 2014, and May 28, 2021, orders of the Appellee, Industrial Commission of Ohio ("commission"). The Tenth District correctly found that the commission issued lawful and proper orders on October 7, 2014, and May 28, 2021. Tchankpa failed to prove to the Tenth District that he was entitled to relief through a writ of mandamus on any of his numerous alleged grounds. Tchankpa's objections to this Court do not provide this Court with any grounds upon which to grant relief either. There were no mistakes of fact, no mistakes of law, no new and changed circumstances, and/or no fraud present in this case. Tchankpa's allegations of error or propositions of law continue to show Tchankpa's misunderstandings of the administrative and legal processes in Ohio's Workers' Compensation system. Tchankpa's Appeal must be denied and the Tenth District's decision to deny the request for a writ of mandamus must be upheld.

STATEMENT OF THE CASE AND FACTS

On December 21, 2012, Tchankpa claimed he was injured in the course of and arising out of his employment with Appellee, Ascena Retail Group ("Ascena"). Following his alleged injury, Tchankpa did not file an application for workers' compensation benefits until October 11, 2013. (Respondents' Certified Record at p. 10, hereinafter RCR p. __). On his application, Tchankpa listed the description of injury as "Lifted laptop and felt pop left shoulder." (RCR p. 3).

Ascena was a self-insuring employer under Ohio's workers' compensation law. Since Ascena contested the claim, the claim proceeded through various levels of administrative hearings and appeals as required by R.C. 4123.511. (RCR p. 10).

An employer representative for Ascena completed an Injury Incident Report on May 9, 2013. (RCR p. 4). This report, completed by Loss Prevention Officer Nick Lawrey, indicates that Tchankpa approached him at 1:30 p.m. and told him that on December 21, 2012, he

> * * * was getting ready to go home for the evening and was packing up his belongings. When he lifted his laptop computer with his left hand he felt a 'pop' in his left shoulder. At the time he did not think anything of it. Later on Kassi began to experience pain in the shoulder and has since seen 3 doctors for the injury on the dates 1/2/13-Dr. John W. Diehl 2/1/13-Dr. Benjamin N. Hagan 2/26/13-Dr. Brian Davidson. Kassi told me the pain is still persisting.

(*Id.*).

The matter was set for before a commission District Hearing Officer ("DHO") on November 19, 2013, but the hearing was continued due to Tchankpa's delay in returning a signed medical release to Ascena's legal counsel. (RCR pp. 11-12). At the time, Tchankpa was represented by legal counsel, who consented to a continuance of that hearing while the records were requested. (RCR p. 12). Ascena attempted to collect Tchankpa's medical records and submit them to the file. (RCR pp. 30-164). Although Ascena asked for a suspension of the claim while it waited on Tchankpa to provide a signed medical release, that request was denied by the Hearing Administrator's Compliance Letter. (RCR p. 11; Tchankpa Records p. 80.)

Tchankpa sent Ascena a letter dated November 29, 2013, which was his two-week notice that he intended to "leave" Ascena effective December 13, 2013. (RCR p. 206). The letter did not mention his alleged injury on December 21, 2012, or any medical reasons for his leaving but rather referred to his perception of being the "victim of unfair and preferential treatments combined with unfounded accusations." (RCR p. 206).

Ascena had Tchankpa evaluated by Gerard Papp, D.O, on or about January 22, 2014, on the alleged diagnoses, including "left shoulder sprain/strain; left shoulder adhesive capsulitis; left rotator cuff syndrome; pain the left shoulder joint; cervical sprain and/or pain; left shoulder

bursitis/tendonitis; arthrofibrosis left shoulder; and subacromial impingement left shoulder." (RCR pp. 165-172). Dr. Papp reviewed the records of Dr. Hagan, Dr. Diehl, and Dr. Davison, as well as performed an examination. Dr. Papp opined that none of the alleged conditions were the result of the alleged workplace injury on December 21, 2012. (RCR pp. 169-172).

The re-set DHO hearing on the issue of the initial allowance of the claim was ultimately held on July 1, 2014. (RCR p.185-186). By DHO order mailed on July 13, 2014, the claim was allowed for the conditions of "left shoulder sprain/strain, left shoulder adhesive capsulitis, and left shoulder rotator cuff syndrome." (RCR pp.187). The DHO further ordered Ascena to pay Temporary Total Disability ("TTD") compensation for the period from December 14, 2013, to July 1, 2014, less any sickness and accident benefits received. (*Id.*). The DHO ordered TTD compensation to continue pending further submission of proof. (*Id.*).

Ascena timely filed an appeal to that DHO order on July 3, 2014, noting that it did not agree with the order as it was contrary to the facts and law. (RCR p. 189). The appeal also noted that Ascena had timely paid compensation/benefits in accordance with R.C. 4123.511 and that it planned to submit new evidence. (*Id.*). Ascena timely submitted additional medical records on July 21, 2014. (RCR p. 190).

The commission set Ascena's appeal for hearing before a commission Staff Hearing Officer ("SHO") on August 8, 2014. (RCR pp. 191-192). But before that date, the parties began settlement negotiations. Ascena filed a continuance request for that hearing. (RCR p.193). The continuance request read, in pertinent part:

> All parties have agreed to this continuance and waive the time frames as set forth in Section 4123.511 and other applicable provisions of the Ohio Revised Code. Representatives certify that their respective clients have been informed of the time frames and have agreed to waive the same.

(*Id.*). This waiver was only of the timeframes for the hearings to be held on the allowance issue and was not a waiver of any previously exercised right to appeal. The August 8, 2014, SHO hearing was continued. (RCR p. 194-195). Tchankpa dismissed his attorney on August 7, 2014. (RCR p. 196).

Settlement negotiations were unsuccessful and Ascena filed a C-86 Motion to have the SHO hearing rescheduled. (RCR p. 197). The BWC, in turn, referred the matter back for hearing. (RCR p. 198). Ascena's third party representative sent notification letters to several medical providers that had sent billing invoices to Ascena notifying them of denial as Ascena's appeal to the original allowance of the claim was still pending. (RCR pp. 199-205). In accordance with the statute, there was no obligation to pay the medical bills until Tchankpa received an SHO order that required Ascena to pay the medical bills.

The re-set SHO hearing was held on September 15, 2014. The entire DHO order was vacated, Ascena's appeal was granted, and Tchankpa's claim was disallowed. (RCR pp. 210-211). The SHO found insufficient evidence to support the claim. The SHO explicitly identified the reasons for this reversal, which included: (1) Tchankpa's reference to prior left shoulder complaints in Dr. Hagan's records on October 10, 2012, which were prior to the alleged date of injury; (2) multiple and inconsistent dates and descriptions of injury between the records of Dr. Diehl, Dr. Hagan, and Dr. Davison; and (3) a credibility determination that Dr. Papp's report on behalf of Ascena was more persuasive than the reports of Tchankpa's treating providers. (*Id.*). The SHO also denied payment of any related medical bills and TTD compensation. (*Id.*)

Tchankpa appealed the SHO decision on September 22, 2014. (RCR p. 212). The commission reviewed the appeal and refused any further hearing by order issued October 7, 2014. (RCR pp. 213-214).

Pursuant to R.C. 4123.512, Tchankpa filed a Notice of Appeal and Complaint to the Franklin County Court of Common Pleas. (RCR pp. 272-283). That Appeal and Complaint was regarding Tchankpa's right to participate in the workers' compensation fund on the allowance of his workers' compensation claim. According to R.C. 4123.512, "right to participate issues" are heard exclusively by the trial court.

At that time, Tchankpa was again represented by legal counsel. Ascena and the BWC, as the statutory parties to the Appeal, were named and served, and both filed Answers to Tchankpa's Complaint. Prior to trial or other resolution of that court appeal, Tchankpa again dismissed his attorney and, on June 21, 2016, Tchankpa filed a Notice of Voluntary Dismissal. (RCR pp. 285-288). This dismissal would allow Tchankpa to re-file his Complaint within one year of the dismissal, or by June 21, 2017.

Although a review of the Franklin County common pleas court docket, the docket for the Tenth District, and the docket for the Supreme Court of Ohio reflect several other court filings by Tchankpa since the June 21, 2016 Notice of Voluntary Dismissal in Case Number 14CV010861, none of those dockets reflect any attempt to or an actual re-filing of his Complaint in Case Number 14CV010861 within the one-year date (June 21, 2017). By operation of law, the failure to re-file the Complaint resulted in a final order of the commission that disallowed Tchankpa's right to participate for any benefits or compensation for the alleged December 21, 2012, date of injury.

Tchankpa then filed a Complaint for a writ of mandamus on August 1, 2019, which became known as Franklin County Court of Appeals Case Number 19AP-508. Unrepresented, Tchankpa filed a Notice of Voluntary Dismissal of that case on or about August 13, 2019. (RCR pp. 289-292). Tchankpa listed the reason for the dismissal to be that he had filed an "original action in mandamus in the Ohio Supreme Court" on August 12, 2019. (RCR p. 291).

Tchankpa's Complaint for a writ of mandamus in this Court alleged an "abuse of discretion" on the part of the commission. His Complaint contained 34 paragraphs and allegations, with a three-page affidavit and multiple exhibits. (RCR pp. 293-375). The exhibits included many documents that had not been a part of the claim file at the time of the initial commission hearings and/or were not in existence at that time. Both Ascena and the commission filed Motions to Dismiss this case before this Court. (RCR pp. 379-414). This Court granted both Motions to Dismiss by order/entry dated November 6, 2019. (RCR p. 378).

On May 11, 2020, Tchankpa filed another Complaint for a writ of mandamus, which is currently before this Court (Case Number 20AP-259). Although the commission and Ascena filed timely Answers to this Complaint, the matter was stayed for several months for bankruptcy matters involving Ascena and because Tchankpa was pursuing additional administrative motions before the commission on what he alleged were new evidentiary matters.

On June 22, 2020, seven and a half years after Tchankpa's alleged date of injury, and four years after he voluntarily dismissed his Complaint in the Franklin County Court of Common Pleas Case Number 14CV010861, and failed to refile it, Tchankpa, again acting Pro Se, filed a C-86 Motion with the commission asking it to exercise continuing jurisdiction in this disallowed claim. (RCR pp. 215, 216-243). The motion sought relief from the "denial of additional temporary total disability payments based upon a clear mistake of fact and a clear mistake of law," and "new and changed circumstances." (RCR p. 215). He asked for the commission to vacate its September 15, 2014 order, to reinstate its prior order from July 3, 2014, awarding payments until he is no longer eligible, and to pay medical bills going back to December 21, 2012. (RCR pp. 241-242).

That motion for the exercise of continuing jurisdiction was set for hearing on November 10, 2020, but was continued at Tchankpa's request while he again sought new legal counsel. (RCR

pp. 246-250). It was then re-set for January 25, 2021, before a DHO. (RCP 244-245). The DHO denied the motion noting that there was no jurisdiction to address the C-86 motion.

> * * * The claim was previously disallowed by a Staff Hearing Officer's decision issued 09/18/2014. An appeal was filed, and by order issued 10/7/2014, the Industrial Commission refused the appeal.
>
> Employer's Counsel stated the Claimant filed an appeal of the denial order to the Franklin County Common Pleas Court on 10/21/2014. Thereafter, the Claimant dismissed the appeal but failed to refile it within the one years (sic) savings statute. Therefore, the Common Pleas Court lost jurisdiction over the right to participate issue. Next, the Injured Worker filed a Complaint in Mandamus, which was ultimately dismissed by the Ohio Supreme Court for lack of jurisdiction, as there was no extent of disability issue.
>
> This finding is based upon the Staff Hearing Officer's decision issued 9/18/2014; the Industrial Commission Refusal order issued 10/7/2014; and the Ohio Supreme Court Judgment Entry dated 11/6/2019; the Employer's Motion to Dismiss and the Industrial Commission's Motion to Dismiss; and the 4 litigation packets filed 7/6/2020, Imaged as "Evidence."

(RCR pp. 251-252). Tchankpa filed an appeal to this decision. (RCR p. 253).

The commission set that appeal for an SHO hearing on May 5, 2021. (RCR p. 254-255). The SHO issued an order that denied the appeal, affirmed the DHO order, and dismissed the motion. The SHO added the following explanation in the decision:

> The Claimant's motion requests that the Industrial Commission exercise continuing jurisdiction based upon a "mistake of fact" and a "clear mistake of law" and "new and changed circumstances" and reconsider payment of temporary total disability compensation which the Claimant alleges was previously denied when the Staff Hearing Officer denied the FROI-1 Application.
>
> The R.C. 4123.52 grant of continuing jurisdiction gives the Industrial Commission, in part, power to modify prior orders. However, the Staff Hearing Officer finds that the Industrial Commission does not have jurisdiction to consider the Claimant's request for the exercise of continuing jurisdiction because of the final status of the Claimant's Complaint in the Court of Common Pleas.
>
> * * *
>
> Firstly, the Staff Hearing Officer finds that the Claimant, having waited over five years to file his motion for continuing jurisdiction, failed to file within a reasonable

> period of time. Even when a legitimate basis exists to invoke continuing jurisdiction, "continuing jurisdiction must still be exercised within a reasonable time. *State ex rel. Smith v. Indus. Comm.* (2002), 98 Ohio St.3d 16. See, also, *State ex rel. Gordon v. Indus. Comm.* (1992), 63 Ohio St. 3d 469 (four-year delay between the initial District Hearing Officer allowance of the claim and the bureau's motion to exercise continuing jurisdiction was not reasonable).
>
> Secondly, the Staff Hearing Officer finds that the Industrial Commission has jurisdiction to reconsider prior decisions that have denied FROI-1 Application up until a party files an Appeal to the Court of Common Pleas. See *State ex rel. Rodriquez v. Indus. Comm.*, (1993), 67 Ohio St.3d210; The Industrial Commission's continuing jurisdiction "ceases once a mandamus action has been commenced."
>
> Given that the instant claim has been disallowed over five years ago without the possibility of re-filing in the Court of Common Pleas, the Staff Hearing Officer concludes there is no jurisdiction to rule upon the instant motion filed by the Claimant.
>
> However, assuming that the Claimant can have the 9/15/2014 Staff Hearing Officer reviewed under continuing jurisdiction, the Staff Hearing Officer finds that the Claimant has failed to submit persuasive evidence of a clear mistake of fact, a clear mistake of law, or any other basis upon which continuing jurisdiction may be exercised.

(RCR pp. 256-257).

Tchankpa filed a "Motion for Reconsideration" of the SHO order on May 24, 2021. (RCR pp. 258-269). That motion was construed as an appeal by the commission, and that appeal was refused by order issued May 28, 2021. (RCR pp. 270-271).

Tchankpa then filed an Amended Complaint for a writ of mandamus in the case before the Tenth District (20AP-259) on June 21, 2021, once prior stays were lifted on June 11, 2021. While the commission and Ascena both opposed this Amended Complaint, the Tenth District ultimately allowed Tchankpa to file an Amended Complaint to add the second set of commission orders to the case.

Both the commission and Ascena filed Motions to Dismiss the original May 11, 2020 Complaint requesting a writ of mandamus. The Tenth District's Magistrate's Decision dated

August 18, 2021, granted both Motions to Dismiss. Tchankpa filed several objections to the Magistrate's Decision, and the Tenth District, upon review, granted one of the six objections. It remanded the matter back to the magistrate for further action.

The commission and Ascena were ordered to file answers to the Amended Complaint. Tchankpa then filed a second Amended Complaint. The commission and Ascena filed Answers to all of the Complaints/Amended Complaints before the Tenth District.

Tchankpa filed his own "Stipulated Record," which was *not in fact stipulated to by the commission or Ascena.* There were documents included that the parties could not agree to as the documents were either not before the commission at the time of its orders, inaccurately or inappropriately labeled/described in the index, duplicates, or not added by Tchankpa despite the request of the commission. When an impasse was reached, the commission and Ascena prepared and filed "Respondents' Certified Record," which has been extensively cited in this Statement of the Case and Facts. The commission represents to the Court that the RCR is a true and accurate set of copies of the contents of the commission's file at the time of the hearings. It has been certified as true and accurate copies by the BWC records custodian.

Before the commission and Ascena could file the RCR in this matter, Tchankpa filed his Relator's Brief on May 19, 2022. However, after the RCR was filed, Tchankpa filed an Amended Brief on June 13, 2022. The commission and Ascena filed their responsive briefs and Tchankpa filed his Reply Brief to Tchankpa's Amended Brief only. By a decision issued May 16, 2023, a magistrate issued a 24-page recommendation to deny the requested writ of mandamus. Tchankpa, still Pro Se, filed eight stated objections to that recommendation. No oral argument was held. On January 11, 2024, the Tenth District issued its Decision and Judgment Enty that overruled

Tchankpa's objections, adopted the Magistrate's Decision as its own, and denied the requested writ of mandamus. (Appendix A).

On January 17, 2024, Tchankpa filed his Notice of Appeal with this Court. On January 29, 2024, the Clerk of Courts received the certified record. By February 15, 2024, Tchankpa, Pro Se, filed his Brief. The commission now files its Brief and requests the Court deny Tchankpa's Appeal and uphold the Tenth District's decision to deny a writ of mandamus.

LAW AND AGUMENT

Mandamus is an extraordinary legal remedy "commanding the performance of an act which the law specially enjoins as a duty * * *." R.C. 2731.01. To be entitled to a writ of mandamus, a relator must demonstrate (1) a clear legal right to the requested relief, (2) a corresponding clear legal duty on the part of the commission, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Moore v. Malone*, 96 Ohio St.3d 417, 2002-Ohio-4821, 775 N.E.2d 812, ¶ 20. Here, Tchankpa has failed to show that he is entitled to the writ. He has no clear legal right to the requested relief. The commission has no clear legal duty to provide that relief. Tchankpa had a legal remedy in his R.C. 4123.512 Appeal but failed to timely refile the case. Under *Moore*, he has failed to show his entitlement to the requested writ.

Tchankpa raised at least ten objections in his Brief, but it is difficult to address each allegation. He alleges mistakes of fact, mistakes of law, new and changed circumstances, fraud, and that the magistrate exceeded the scope of his authority. In sum, Tchankpa argues that the Tenth District decided his case on "technicalities" and not the merits. However, the "technicalities" that Tchankpa complains about are the very laws that have been enacted by the General Assembly, applied by the BWC and the commission, and enforced by Ohio's courts. This case is about the proper understanding and application of the law. While Tchankpa is dissatisfied

with the ultimate result, that does not mean that any of his objections have merit. Tchankpa has chosen to represent himself for most of the past 12 years in his various court proceedings, including the past four years in this current mandamus matter. As a Pro Se litigant, it is well settled that he is held to the same legal standards as an attorney. (*State ex rel. Neil v. French*, 153 Ohio St.3d 271, 2018-Ohio-2692, 104 N.E.2d 764 ¶10, citing to *State ex rel. Gessner v. Vore*, 123 Ohio St.3d 96, 20009-Ohio-4150, 914 N.E.2d376, ¶5; *State ex rel. Fuller v. Mengel,* 100 Ohio St.3d 352, 2003-Ohio-6448, 800 N.E.2d 25 ¶10, quoting *Sabouri v. Ohio Dept. of Jobs Family Serv*., 145 Ohio St. 3d 651, 654, 763 N.E. 2d 1238.)

Proposition of Law No. 1:

The Ohio Civil Rules provide a uniform set of general rules to be followed and applied by all the courts to the litigation before it

Tchankpa frames his first proposition of law as support for the notion that the Tenth District disregarded his Stipulation of the Record and instead relied solely upon the RCR filed by the commission and Ascena. This is the same objection he made to the Tenth District to the Magistrate's Decision. There is no evidence that the Tenth District ignored the content of his version of the Stipulated Record, which was never "stipulated to" by the other parties. A stipulation is an agreement between the parties. The parties could not reach an agreement as to the documents that should or would be included in a joint Stipulated Record. As Tchankpa's Brief concedes, however, some of the evidence was the same in his Stipulation and the RCR, but there were others that the parties could not agree on. (Tchankpa's Brief at 8). The Ohio Civil Rules, and more specifically the Tenth District's Local Rules, are clear.

Local R. 13(G) states in pertinent part:

> When the evidence to be considered consists of all or part of an official record or the record of proceedings before an administrative agency, such as the Industrial Commission claim file, a stipulated or certified copy, rather than the original, must

> be submitted pursuant to Civ. R. 44 and Evid. R. 902 and 1005. *Unless the parties enter into a stipulation concerning the evidence to be submitted to the court and attach to the stipulation legible copies of such evidentiary materials relevant to the determination of the action, each party shall file with the court legible certified copies of evidentiary materials the party finds relevant to the issues before the court*. * * * Two copies of the stipulated evidence, *or of each parties' evidence in the event that a stipulation cannot be agreed upon,* shall be filed with the clerk of this court.

(Id., Emphasis added.) Tchankpa has the burden of proof in this case, but this does not mean that he gets to unilaterally decide what the evidence will be, what evidence will be agreed to, or what evidence will be relied upon. Nor can he decide what evidence is more credible, trustworthy, or reliable such that his version of the record is the only one relied upon by the courts.

As the Tenth District determined, there was no evidence "any relevant evidence was ignored by the magistrate." (Tenth District's Decision at ¶6). Tchankpa may have accumulated eight years' worth of documentation, but this does not mean that all those documents were necessary, relevant, accurate, or, most importantly, before the commission when it made its decisions that Tchankpa now challenges via his mandamus amended Complaint.

Tchankpa alleges the magistrate erred by not citing to any of the documents that he unilaterally filed as the "Stipulation of Evidence." Again, the set of records Tchankpa filed was not agreed to in its totality by either the commission or Ascena. As such, the commission and Ascena were forced to obtain certified copies of the documentation they believed to be relevant to this matter and submitted same with an affidavit. The commission vehemently denies that its attorney "knowingly and purposely removed" evidence to affect the outcome of this case. (Tchankpa's Brief at 9). The commission submitted the documents it felt were "relevant" to the issue at hand, just as Tchankpa did. There was no collusion between the commission and Ascena. Since Tchankpa was unwilling to consider the suggested changes, deletion of the records, or modification of the naming of the documents, the commission and Ascena were forced to submit

a separate record. That those two parties could agree to a set of documents that Tchankpa could not, did not mean there was any unjust, illegal, or improper behavior by the parties or the Tenth District. The mere fact that the Tenth District did not cite specific documents that were solely in Tchankpa's stipulated record does not mean that there was error. This does not go to the merits of the decision and should be overruled/denied.

Proposition of Law No. 2:

The commission is a quasi-judicial administrative agency that exists solely to adjudicate disputes between the parties in a workers' compensation claim and lacks jurisdiction to issue orders on matters not properly before it

Tchankpa goes on at great length and detail to discuss medical or chiropractic services and billing payments for those services. While that may be a part of his concerns over the years, he lost the ability to contest those issues when his claim was administratively denied by the commission's final order of October 7, 2014. At that point, any matters that had been granted to him in prior preliminary orders or through administrative processing were vacated. Neither the BWC nor Ascena had any duty to pay for medical or chiropractic services that Tchankpa had incurred once the claim was disallowed. While Tchankpa then properly appealed to the Franklin County Court of Common Pleas under R.C.4123.512, again, when he voluntarily dismissed and failed to refile that Compliant with the court under R.C. 2305.19, he forever lost his right to any treatment, bill payment, or compensation associated with his alleged December 2012 date of injury.

The legal effect of that failure to timely re-file that complaint within one year of the June 21, 2016, voluntary dismissal is chilling. Tchankpa was fully within his rights to employ the voluntary dismissal und Civ. R. 41(A). He was fully within his rights to use the one-year time frame provided for by the savings statute under R.C. 2305.19. However, once the one-year time

window closed and he failed to timely re-file his dismissed complaint, it became fatal to his claim for workers' compensation benefits for any alleged December 12, 2012, date of injury. Case law is clear that a claimant's failure to refile his complaint or petition within one year prevents any further entitlement to benefits and that the employer is entitled to judgment in its favor. (See, *Kaiser v. Ameritemps, Inc.,* 84 Ohio St. 3d 411 (1999), *Bennett v. Admr. Bur. Of Workers' Comp*. 134 Ohio St.3d 329, 2012-Ohio-5639 ¶19, fn 3*; Robinson v. Kokosing Const. Co.,* 10th Dist. No. 05AP-770, 2006-Ohio-1532, ¶12; *Yates v. G&J Pepsi-Cola Bottlers,* 4th Dis. No. 15CA3711, 2016-Ohio-1436 ¶10 citing *Lewis v. Connor,* 21 Ohio St.3d 1 (1985). Thus, with Tchankpa's workers' compensation claim denied legally both administratively and at the trial court level, leaves no requirement or duty of Ascena (or the BWC) to pay any compensation or benefits. There is no requirement to pay on-going bills or compensation in a disallowed claim.

The Tenth District did not err by failing to address the issues of the medical or chiropractic care/billing on the C9 Requests for Medical Authorization forms ("C-9"). There is no relevance of any of the correspondence from the commission about the C9's once the claim was disallowed. Tchankpa lost the right to complain about those payments when he failed to refile his Complaint. Additionally, the commission cannot issue orders on any application that may be found in Tchankpa's claim file. Had Tchankpa succeeded in having his claim finally and fully allowed, he could have requested the C9's be adjudicated. But with the disallowance of the entirety of his claim, this proposition of law is without merit and moot.

Proposition of Law No. 3:

The commission legally and properly followed the administrative procedures promulgated by Ohio's workers' compensation statute

It is not clear what portion of Ascena's appeal, filed July 3, 2014 that Tchankpa does not understand. (RCR p. 189). Ascena timely appealed the DHO order that had allowed the claim.

Ascena did not agree with the DHO order and argued the DHO order was contrary to the facts and law. (*Id*.) It matters not (as Tchankpa argues) that the court was mistaken when it stated that he had filed the appeal instead of Ascena. Assuming that error is true, it is of no relevance. Once an appeal was filed by any party, there was a right to have a hearing before a SHO on the matter.

R.C.4123.511(D) instructs that commission hearings be held within 45 days of the filing of the appeal. However, the waiver that was signed by legal counsel for both Tchankpa and Ascena in conjunction with their continuance request is evidence that the parties waived those hearing timeframes to allow negotiation for a possible settlement at that time. (RCR p. 193). The waiver, in no way, can be read as a withdrawal of Ascena's timely filed appeal on July 3, 2014. This was not about the commission attempting to usurp the statute. This was about legal counsel for both the parties reaching a mutual agreement to pause the on-going initial allowance adjudication to discuss resolution of all issues through settlement. That the hearing was conducted 63 days after Ascena filed its appeal is irrelevant because the parties waived those time frames to pursue settlement. (RCR 193).

The Tenth District properly disposed of Tchankpa's arguments. "Ascena filed a C-86 motion after settlement negotiations stalled and Tchankpa had terminated his counsel, requesting a hearing be set before a commission staff hearing officer ("SHO") on the allowance of the claim. Ascena had properly appealed the DHO order, and the motion was not an appeal." (Tenth District's Decision at ¶ 10).

Tchankpa continues to misunderstand the plain and simple language of the documents and instead pursues avenues of argument that involve convoluted principles and misapplications of the law. This allegation of error and his proposition of law must be overruled.

Proposition of Law No. 4:

The commission's hearing as a matter of right under R.C. 4123.511(D) is not a request for continuing jurisdiction under R.C. 4123.52

Tchankpa's argument that the commission failed to state which of the five grounds under R.C 4123.52 was the basis to hold the September 15, 2014 SHO hearing is misplaced. The SHO hearing held on September 15, 2014, was not held pursuant to a motion under R.C.4123.52. (RCR p. 210-211). It was held pursuant to the timely filed appeal (by Ascena) on July 3, 2014. (RCR p. 189). This SHO hearing was scheduled pursuant to R.C. 4123.511(D). It was a matter of right on an appeal that was properly and timely filed. Ascena's August 20, 2024 motion, once settlement negotiations had stalled, merely requested for the normal administrative process needed to be re-started. i.e., that the SHO hearing be held after all. (RCR p. 197). The commission is not required to state any reason for continuing jurisdiction when the hearing being held is an appeal pursuant to R.C. 4123.511.

Tchankpa's argument continues in his mistaken belief that the Hearing Administrator's Compliance Letter was a final determination of the compensability of his entire claim. Again, a reading of the four corners of that document plainly indicates that the Hearing Administrator was solely addressing/denying Ascena's request to suspend the claim for failure to provide signed medical releases as Tchankpa had since complied and provided the releases. (RCR, p. 11, Tchankpa Records, p. 80.) A commission Hearing Administrator, acting upon a request to suspend a claim when an employer is seeking signed medical releases, does not have jurisdiction to adjudicate the compensability of a claim. R.C. 4121.36 (H)(2). Tchankpa misapplies the clear language of the statute and rules.

Proposition of Law No. 5:

When the right to participate in a Workers' Compensation claim is properly appealed under R.C. 4123.512, a claimant's right to compensation and benefits will be forfeited if the claimant does not prevail before the court

Tchankpa is correct that R.C. 4123.512 establishes the Common Pleas Courts' jurisdiction to adjudicate a claimant's right to participate in the Ohio Workers' Compensation fund. Right to participate issues involve the underlying compensability of claim determinations while matters regarding extent of disability (payment of medical bills, treatment, amounts of compensation, etc.) are not before a trial court. Extent of disability issues become irrelevant if the claimant/plaintiff does not prevail at the trial court level. If analogized as building a multiple story house, if a claimant/plaintiff does not win at the trial court level (i.e., lay the foundation and ground floor), they never get to address medical treatment, compensation, benefits (i.e. get to the second floor). It is akin to a house of cards. Without the first level, no upper levels will stand.

Tchankpa recycles his arguments about the C-9s and processing/payment of medical bills that he raised in his third proposition. Those arguments were not persuasive there and are not persuasive here. By failing to re-file his original Complaint at the trial court level within one year after he voluntarily dismissed it in 2016, he forfeited any right or entitlement to compensation, benefits, treatment, etc. No matter how unfair that feels to Tchankpa, it is the law. Once Tchankpa lost the basic compensability of his claim and the allowance was vacated, he can never go upstairs in this house he tried to build with his workers' compensation claim. Tchankpa's fifth proposition of law must be denied.

Proposition of Law No. 6:

There is no evidence that the employer breached any of its statutory obligations for payment of workers' compensation benefits in a disallowed claim

The Tenth District did not err when it did not address Tchankpa's allegations of intentional, willful, malicious, wrongful, deliberate, unlawful, or bad faith because Ascena refused to pay benefits. Again, Ascena was under no legal obligation to pay or retroactively pay medical expenses until there was a final order that ordered it to do so. The DHO order may have allowed the claim, payment of benefits and compensation, but it was timely and properly appealed by Ascena. There was no obligation to pay medical bills until such time as he could prevail by final commission orders. Ascena did pay some compensation through August 14, 2014.

Since the DHO order was overturned, there was no legal obligation to pay until Tchankpa could prevail at the court level. Once the claim became permanently, irrevocably, and forever denied with Tchankpa's failure to refile the Complaint, all Tchankpa's arguments became moot. No matter how many times Tchankpa claims otherwise, the only *final* orders in his claim were (1) the October 7, 2014 order that denied the claim; (2) his failure to re-file the Complaint in the year after it was voluntarily dismissed (which resulted in the denied claim); and (3) the May 28, 2021 refusal of continuing jurisdiction by the commission as the claim was denied and more than five years had elapsed. There is no obligation to pay benefits or compensation in a denied claim and there was never a final order that allowed Tchankpa's claim.

Additionally, while Tchankpa argues that the termination of his TTD compensation was improper under *State ex rel. Russell v. Indus. Comm.*, 82 Ohio St.3d 516, 696 N.E.2d 1069 (1998), this Court has recently overruled *Russell* and all its progeny in *State ex rel. Dillon v. Indus. Comm.*, Slip Opinion No. 2024-Ohio-744., ¶¶ 13-17. Thus, any arguments under *Russell* must be disregarded.

Proposition of Law No. 7:

The trial court lacks jurisdiction to address issues other than the "right to participate" issues as provided in R.C. 4123.512

While the statutes and case law are clear that only a trial court can address right to participate issues under R.C. 4123512, it is also clear that those laws do not require the commission to order the BWC or a self-insuring employer like Ascena to address any other extent of disability issues in a disallowed claim. Tchankpa wants to take issue with every action of the commission in his claim in 2013 and 2014. While some of those arguments may have been relevant had he ever received a final order allowing him the right to participate in the workers' compensation system for compensation and benefits but Tchankpa does not have an allowed claim. The ultimate disallowance of his right to participate for his December 2012 alleged shoulder injury trumps all those other preliminary decisions that were made in his claim, including payment of medical/chiropractic bills or compensation.

The Tenth District correctly applied the laws to the facts. Despite Tchankpa's 12 years of failed litigation and failed attempts to have his workers' compensation claim allowed the orders of the commission in this case have been proper, lawful, supported by some evidence, and not an abuse of discretion.

Proposition of Law No. 8:

There is no fraud in the facts of this case to support any mandamus relief

Tchankpa presents this issue as a matter of employer fraud and the actions of Ascena's attorney. The commission cannot comment on actions or events that it was not a party to historically in several years of bitter litigation between Tchankpa and Ascena. Suffice it to say that the commission's actions in this matter were not the result of any collusion, fraud, bad faith, or other improper actions. The commission is an independent impartial adjudicatory agency that is not categorically aligned with either party in workers' compensation actions. It serves to resolve

disputes between the parties. The commission had no independent role in the payment of actual benefits or compensation to Tchankpa by Ascena.

And contrary to Tchankpa's allegations, the commission's order was not the "sophisticated, deceptive, deceiving, fraudulent, and falsified order" that Tchankpa argues that it was. (Tchankpa's Brief at 25). Tchankpa continues to misunderstand the administrative process. The contents of the SHO's September 15, 2014 order refers to his claim as a new claim because the stated issue was the original allowance of the claim, which was disputed by Ascena. It was not a re-filed claim. It was an SHO hearing that had once been set, then continued, then re-set on Ascena's appeal. For Tchankpa to make these allegations about the commission's order shows the level of Tchankpa's misunderstanding that has persisted since 2014. His arguments about the payment of TTD compensation for an eight-month period of time are likewise illogical and unsupported.

Further, as to the commission's order dated May 8, 2021, it is also a lawful, proper, and correct order that summarized the procedural history, the timeline of events, and the ultimate limitations on exercising continuing jurisdiction under R.C. 4123.52. While Tchankpa complains that it does not feel fair, just, or right, the law was appropriately applied and explained by the commission. The commission appropriately explained its orders pursuant to the relevant law.

Proposition of Law No. 9:

The court's decision contained no material error that would have altered the underlying conclusion that the commission's orders were proper

The Tenth District's standard of review in this mandamus case is not de novo. The standard of review is whether there was some evidence in the record that supported the commission's orders. The Tenth District cannot re-weigh the evidence. There is nothing in the Tenth District's order that was the result of improper review. By the evidence and dates argued by Tchankpa, the last

date of payment of TTD compensation was August 14, 2014, which Ascena admitted. Whether that information came from Ascena, Judy Grossman, counsel, or any other source, no one disputes that date. Given that the accepted date of August 14, 2014, is the last date of any payment, under the version of R.C.4123.52 in effect at that time, more than five years had elapsed before Tchankpa filed his motion for continuing jurisdiction on June 25, 2020.

Prior to finding the Judy Grossman affidavit, Tchankpa may not have known the exact date that Ascena issued the last check for compensation in his case. It is, however, safe to say, that as educated a person as Tchankpa is, he fully understood that he had not received any compensation since 2014 or had not had any medical bills paid since that time. Common sense tells us that Tchankpa certainly has known since 2014 that he has not received any compensation or that none of his medical/chiropractic providers have had bills paid. It is disingenuous to claim that his learning in June 2021 or some other date, that the exact last date of payment was August 14, 2014, is suddenly new evidence, or evidence of fraud/falsification. There is no extension or tolling of the five-year period under R.C. 4123.52 because Tchankpa now alleges that he did not know when he was last paid. Tchankpa presumably manages his own funds but argues that because Ascena paid his TTD compensation by direct deposit, that he was unaware of the last date he received payment of TTD compensation. (Tchankpa's Objections to Magistrate's Decision at 14). Tchankpa's management of his funds or lack of knowledge of what monies were being direct deposited into his own banking accounts is not the responsibility of the commission or Ascena. It does not provide grounds to toll any statute of limitations under R.C. 4123.52. This allegation of error or proposition of law as stated by Tchankpa must fail. The Tenth District did not make any material or prejudicial errors.

Proposition of Law No. 10:

No grounds existed for the exercise of jurisdiction under R.C. 4123.52 and the commission's order properly addressed the timeliness issues

Tchankpa's final allegation of error concerns the commission's exercise of R.C. 4123.52 continuing jurisdiction. He first cites a portion of the May 8, 2021 commission decision. (Tchankpa's Brief at 32). In that portion, the commission took the position that it was without jurisdiction to consider Tchankpa's request because of the final status of the Complaint that was not re-filed in the Court of Common Pleas. (RCR 252-253). While Tchankpa's first amended Complaint addressed only his objection to the commission's October 2014 order, the second amended Complaint included the May 8, 2021 order. Although the commission and Ascena filed motions to have the complaints dismissed, the magistrate initially agreed. (Magistrate's Decision dated Aug. 19, 2021 at 4). The Tenth District was unwilling to summarily dismiss the matter in its totality at that time. A reading of that decision indicates that the Tenth District struggled to understand Tchankpa's brief or arguments. However, the Tenth District concluded:

> Upon review of the magistrate's decision, an independent review of the record, and due consideration of the fifth objection, we adopt the magistrate's findings of facts but decline to adopt the conclusions of law and decline to dismiss the amended complaint on the grounds set forth by the magistrate. We sustain the fifth objection to the magistrate's decision and render moot the remaining objections. We remand this case to the magistrate to consider other grounds for dismissal, if any, or the merits of the amended complaint as determined appropriate by the magistrate.

(Tenth District's Decision dated Feb. 8, 2022 at ¶ 15). This decision is not the final decision in Tchankpa's favor that he claims it is. The Tenth District remanded the case to the magistrate to consider the arguments not addressed in his "fifth objection"; it was not a final determination that the commission's May 8, 2021 order was invalid.

Once the matter was again fully briefed to the magistrate, the magistrate found other grounds justified the denial of the requested writ of mandamus. It is that decision and the ensuing

Tenth District's decision on January 11, 2024, that brings this back to this Court's attention now. Nothing in the current Notice of Appeal or Tchankpa's Brief undermines the strength of the lower court's resolution of this matter. The commission's May 8, 2021 order addressed not only the timeliness of the request for continuing jurisdiction but also commented on the merits of the case and the persuasiveness of the evidence. It was not for the Tenth District or for this Court to re-weigh the evidence. The commission is the exclusive finder of fact, assessor of credibility, and evaluator of the weight of the evidence. The commission did not abuse its discretion in its determination that Tchankpa's evidence was not persuasive.

CONCLUSION

Tchankpa's claim was disallowed by a final administrative order. When he appealed that to court and failed to refile after dismissal, that was the final order. No compensable claim exists. There is no legal or factual mistake by the Tenth District that would alter these truths or facts. To have this Court decide any of the "extent of disability" issues that Tchankpa raises, he first needs an allowed claim. He has none.

The commission's jurisdiction is not without limits in an allowed claim—five years from the last payment. Here, the last payment was in August of 2014. Tchankpa's knowledge of the last payment of TTD compensation is not relevant since R.C. 4123.52 does not have any language to toll the five-year time limit based upon when a claimant learns the exact date of the last payment.

Nor do any of his allegations of error in the Tenth District's Decision provide him with the relief he seeks—to have his claim allowed and his compensation and medical bills paid. The language of the May 8, 2021 SHO order does not bear any discrepancy. Tchankpa inexplicably demands this Court to use either June 30, 2021 or May 23, 2022, as the five-year temporal starting point when in truth he knew as of 2014. There is no justification under the statute, laws, or facts

to support his arguments. Neither does it undo the fact that the workers' compensation claim is denied by Tchankpa's failure to refile the original R.C. 4123.512 appeal in 2017.

Further, Tchankpa has failed to show the Tenth District's decision contains any errors that justify any further action by this Court. Tchankpa's arguments are not clear or convincing proof of any errors that entitle him to a writ of mandamus. The Tenth District's Decision should be adopted in its entirety, the objections overruled, and the Complaint (and amended complaints) for a writ of mandamus must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Appellee, Industrial Commission of Ohio, was served on this 28th day of March, 2024, to:

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