

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State ex rel. Susan L. Spotleson,	:	
Relator,	:	
v.	:	No. 21AP-362
Medlab Ohio Inc. et al.,	:	(REGULAR CALENDAR)
Respondents.	:	

---

D E C I S I O N

Rendered on July 18, 2023

---

**On brief:** *Rummell, Curry & Regginello Co., L.P.A.*, and *Robert J. Curry*, for relator.

**On brief:** *Dave Yost*, Attorney General, and *Andrew J. Alatis*, for respondent Industrial Commission of Ohio.

---

IN MANDAMUS  
ON OBJECTIONS TO THE MAGISTRATE’S DECISION

MENTEL, J.

{¶ 1} Relator, Susan L. Spotleson, requests this court issue a writ of mandamus ordering respondent, Industrial Commission of Ohio (“commission”), to vacate its July 7, 2020 order denying her request for temporary total disability compensation (“TTD”), and reinstate its May 26, 2020 order that granted her request for TTD.

{¶ 2} Pursuant to Civ.R. 53(D) and Loc.R. 13(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued the appended decision, including findings of fact and conclusions of law. On February 21, 2023, the magistrate denied relator’s original action finding there was “some evidence in the record to support the [Staff Hearing Officer]’s order denying claimant’s request for TTD compensation for the period of February 28, 2017, through February 26, 2018.” (Feb. 21, 2023 Mag.’s

Decision at 4.) Specifically, the magistrate found that because the only application for compensation before the Staff Hearing Officer (“SHO”), was the February 27, 2020 C-86 motion, the SHO was precluded from granting TTD compensation beyond the two-year statutory period in R.C. 4132.52.

{¶ 3} Relator filed two objections to the magistrate’s decision. Accordingly, we must independently review the decision to determine whether “the magistrate has properly determined the factual issues and appropriately applied the law.” Civ.R. 53(D)(4)(d). We “may adopt or reject a magistrate’s decision in whole or in part, with or without modification.” Civ.R. 53(D)(4)(b).

{¶ 4} Relator first objects to the magistrate’s findings of fact claiming that he failed to “include that in connection with Relator filing C-84 Requests for continued temporary total compensation, she also filed treatment notes from her physician of record, Dr. David P. DeSantis, D.C., which documented that she was to remain at decreased activity and off work.” (Relator’s Objs. at 8.) Upon review, the magistrate did, in fact, discuss Dr. DeSantis’ treatment notes in his decision writing:

The motion indicated that the evidence to support the motion included Dr. DeSantis’[] office notes/records dated December 13, 2016, January 26, 2017, May 4, 2017, May 18, 2017, July 26, 2017, August 8, 2017, August 23, 2017 and September 25, 2017.

(Mag.’s Decision at 2.) As the above referenced evidence was discussed in the decision, relator’s first objection is overruled.

{¶ 5} Relator’s second objection contends that the magistrate erred finding that there was some evidence that relator’s application for the payment of TTD compensation for the period between February 28, 2017 through February 26, 2018, was not made within the two-year filing requirement under R.C. 4123.52.

{¶ 6} TTD compensation awarded under R.C. 4123.56 is compensation for wages lost as a result of a claimant’s injury that prevents a return to their prior position of employment. *State ex. rel. Hamilton v. Indus. Comm.*, 10th Dist. No. 19AP-510, 2021-Ohio-1824, ¶ 23. R.C. 4123.52(A), however, provides for a two-year limitation period as follows:

The commission shall not make any 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 therefor.

{¶ 7} In the case sub judice, relator filed C-84 forms dated February 25, 2017, March 25, 2017, April 25, 2017, May 25, 2017, June 25, 2017, and July 25, 2017. Relator, however, failed to submit another C-84 form until February 27, 2020. As the magistrate noted, “[b]ecause the only application for compensation before the SHO was the February 27, 2020 C-86 motion, the two-year limitation in R.C. 4123.52 prohibited the SHO from granting TTD compensation from February 28, 2017, through February 26, 2018.” (Mag.’s Decision at 5.) Because R.C. 4123.52 precludes any award of TTD compensation for a back period in excess of two years prior to the date of filing application, we agree that there was some evidence to support the SHO’s determination that TTD compensation was time barred from February 28, 2017 through February 26, 2018.

{¶ 8} Relator cites *State ex rel. Gen. Refractories Co. v. Indus. Comm.*, 44 Ohio St.3d 82 (1989) and *State ex rel. Cobble v. Indus. Comm.*, 92 Ohio St.3d 22 (2001) for the proposition that R.C. 4123.52 should be liberally interpreted to favor the employee. In *General Refractories*, the Supreme Court of Ohio considered whether the claimant’s motion for allowance of an additional condition could be construed as an application for compensation under R.C. 4132.52. *Gen. Refractories Co.* at 83. The *General Refractories* court found that the application in that instance met the statutory requirements and the “application for compensation” language in R.C. 4123.52 should be liberally construed in favor of the employee. *Id.* at 84. The Supreme Court in *Cobble* explained that “[w]hile the term ‘application’ is undefined by pertinent Revised or Administrative Code sections, clearly a petition or request for a specific act--whether on a bureau/commission form or as a motion--is an ‘application.’ Moreover, given the liberal-construction mandate, surely, in some instances, the definition of ‘application’ can be less rigid.” *Id.* at 25. However, the issue in this case is not whether relator’s filing constitutes an application, but whether the application was filed in a timely manner. In fact, *Cobble*, addressed this very point. A brief review is instructive.

{¶ 9} In *Cobble*, the claimant was injured in the course of his employment on March 24, 1986. *Cobble* at 23. In 1987, a claims examiner set the claimant’s average weekly wage (“AWW”). In 1997, the claimant moved to reset his AWW based on information that

was available when the AWW was originally set. *Id.* The claimant asked that all past compensation be adjusted based upon the new calculation. The hearing officer found that, pursuant to R.C. 4123.52, the AWW could only be modified going back two years prior to the date of the motion. *Id.* at 24. The Supreme Court agreed concluding that regardless of which document constituted the “application,” the claimant waited ten years before trying to take any corrective measures. *Id.* at 26. Thus, the two-year limitation period under R.C. 4123.52 barred the claimant from a full recalculation. *Id.*

{¶ 10} R.C. 4123.52 is explicit in its terms. As was the case in *Cobble*, even accepting that the commission should liberally construe the type of documents that constitute an application, there is no room for interpretation as to the date that relator filed her C-84 form and C-86 motion. Here, relator was awarded TTD compensation from February 27, 2018 through May 26, 2020, inclusive, and to continue upon submission of medical proof. However, because the only application for compensation was the February 27, 2020 C-86 motion, the two-year limitation period in R.C. 4123.52 precluded the SHO from granting TTD compensation from February 28, 2017 through February 26, 2018.

{¶ 11} Appellant’s second objection is overruled.

{¶ 12} Following our independent review of the record, pursuant to Civ.R. 53, we find the magistrate has properly determined the facts and applied the appropriate law. Accordingly, finding no error of law or other defect in the magistrate’s decision, we adopt the magistrate’s decision as our own, including the findings of fact and conclusions of law therein. In accordance with the magistrate's decision, the requested writ of mandamus is denied.

*Objections overruled;  
writ of mandamus denied.*

BOGGS, and LELAND, JJ., concur.

---

**APPENDIX**

## IN THE COURT OF APPEALS OF OHIO

## TENTH APPELLATE DISTRICT

State ex rel. Susan L. Spotleson,	:	
Relator,	:	
v.	:	No. 21AP-362
Medlab Ohio Inc. et al.,	:	(REGULAR CALENDAR)
Respondents.	:	

---

## MAGISTRATE'S DECISION

Rendered on February 21, 2023

---

*Rummell, Curry & Regginello Co., L.P.A., and Robert J. Curry, for relator.*

*Dave Yost, Attorney General, and Andrew J. Alatis, for respondent Industrial Commission of Ohio.*

---

## IN MANDAMUS

{¶ 13} Relator, Susan L. Spotleson (“claimant”), has filed this original action requesting this court issue a writ of mandamus ordering respondent Industrial Commission of Ohio (“commission”) to vacate its July 7, 2020, order that denied her request for temporary total disability (“TTD”) compensation, and to reinstate its May 26, 2020, order that granted her request for TTD.

**Findings of Fact:**

{¶ 14} 1. On October 13, 2010, claimant sustained an injury in the course of and arising out of her employment at Medlab Ohio, Inc. (“employer”), when a vehicle she was driving was struck by another vehicle. Her workers' compensation claim was allowed for the following conditions: left shoulder sprain; neck sprain; head injury no loss of consciousness; disc protrusion C6-C7 level; substantial aggravation of pre-existing disc protrusion C5-C6; reflex sympathetic dystrophy bilateral upper arm; left neoplasm uncertain behavior lower neck from previous cervical surgery; complex regional pain syndrome of left lower limb; chronic regional pain syndrome of the face; myelomalacia C3-C4 and C7; and cervical disorder with myelopathy C3-C4 and C7.

{¶ 15} 2. In March 2012, the Ohio Bureau of Workers' Compensation (“BWC”) issued an order granting TTD compensation beginning on February 22, 2012, and to continue based on the submission of medical evidence. The BWC paid claimant TTD compensation through February 27, 2017.

{¶ 16} 3. Claimant submitted C-84 forms dated February 25 (filed February 27), March 25 (filed March 30), April 25 (filed May 1), and May 25, 2017 (filed June 1, 2017). In addition to the C-84 forms, claimant submitted a January 31, 2017, physician report of work ability MEDCO-14 signed by David DeSantis, D.C., estimating a potential return to work date of February 28, 2017.

{¶ 17} 4. On June 5, 2017, the BWC issued a letter informing claimant that she had not submitted a physician report of work ability MEDCO-14 or any other medical evidence to support the most recent period of TTD compensation. The letter also indicated that if the requested documentation was not submitted, TTD compensation would end on February 27, 2017.

{¶ 18} 5. Claimant submitted C-84 forms dated June 25 (filed July 3) and July 25, 2017 (filed July 28, 2017).

{¶ 19} 6. On February 27, 2020, claimant submitted a C-84 form and C-86 motion, requesting TTD compensation from February 28, 2017, through February 27, 2020. The C-84 included a February 25, 2020, physician report of work ability MEDCO-14 form, which indicated an estimated return to work date of March 31, 2020. The motion indicated that the evidence to support the motion included Dr. DeSantis's office notes/records dated

December 13, 2016, January 26, 2017, May 4, 2017, May 18, 2017, July 26, 2017, August 8, 2017, August 23, 2017, and September 25, 2017.

{¶ 20} 7. On May 26, 2020, a hearing was held before a District Hearing Officer (“DHO”) on claimant's request for TTD compensation, and in a May 26, 2020, order, the DHO found the following: (1) claimant's February 27, 2020, C-86 motion requesting TTD compensation is granted; (2) TTD compensation is awarded from February 28, 2017, through May 26, 2020, and to continue with supporting medical proof; (3) the allowed conditions have prevented claimant from returning to her former position of employment during the specified period of disability; and (4) claimant has not reached maximum medical improvement. The BWC appealed.

{¶ 21} 8. On July 7, 2020, a hearing was held before a Staff Hearing Officer (“SHO”), and in a July 7, 2020, order, the SHO found the following: (1) the DHO's order is vacated; (2) TTD compensation is denied from February 28, 2017, through February 26, 2018, inclusive; (3) TTD compensation shall be paid from February 27, 2018, through May 26, 2020, inclusive, and to continue upon submission of medical proof; (4) TTD is not payable from two years prior to the date that the motion was filed pursuant to R.C. 4123.52, which prohibits the commission from making any modification, change, finding, or award that awards compensation for a back period in excess of two years prior to the date of filing the application; and (5) the application at issue is claimant's C-86 motion filed February 27, 2020. Claimant appealed.

{¶ 22} 9. On July 27, 2020, the commission refused claimant's appeal.

{¶ 23} 10. On July 22, 2021, claimant filed a petition for a writ of mandamus.

#### Conclusions of Law and Discussion:

{¶ 24} The magistrate recommends that this court deny claimant's writ of mandamus.

{¶ 25} In order for this court to issue a writ of mandamus, a relator must ordinarily show a clear legal right to the relief sought, a clear legal duty on the part of the respondent to provide such relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141 (1967).

{¶ 26} A clear legal right to a writ of mandamus exists where the relator shows that the commission abused its discretion by entering an order that is not supported by any evidence in the record. *State ex rel. Elliott v. Indus. Comm.*, 26 Ohio St.3d 76 (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).

{¶ 27} TTD compensation awarded pursuant to R.C. 4123.56 is compensation for wages lost when 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) the claimant has returned to work; (2) the claimant's treating physician provides a written statement that the claimant is able to return to the former position of employment; (3) work within the physical capabilities of the claimant is made available by the employer or another employer; or (4) the claimant has reached maximum medical improvement. R.C. 4123.56(A); *State ex rel. Ramirez v. Indus. Comm.*, 69 Ohio St.2d 630 (1982).

R.C. 4123.52 provides, in pertinent part:

The commission shall not make any 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 therefor.

{¶ 28} In the present case, claimant argues that her submission of the February 25, March 25, April 25, May 25, June 25, and July 25, 2017, C-84 forms were sufficient to constitute an application for continued payment of TTD compensation for the period from February 28, 2017, through February 26, 2018. Claimant contends that the BWC failed to act on these C-84 requests for TTD compensation, necessitating her filing of the February 27, 2020, C-86 motion for continued payment of TTD compensation beginning February 28, 2017.

{¶ 29} After a review of the commission's DHO and SHO orders and the record, the magistrate finds there was some evidence in the record to support the SHO's order denying claimant's request for TTD compensation for the period of February 28, 2017, through



February 26, 2018. Importantly, the scope of the SHO hearing was narrow. The SHO's decision makes clear that the only application at issue before the SHO was the C-86 motion filed on February 27, 2020. The SHO does not address, or even mention, the C-84 applications completed on February 25, March 25, April 25, May 25, June 25, and July 25, 2017. Because the only application for compensation before the SHO was the February 27, 2020, C-86 motion, the two-year limitation in R.C. 4123.52 prohibited the SHO from granting TTD compensation from February 17, 2017, through February 26, 2018. The language in R.C. 4123.52 barring the commission from awarding compensation beyond two years prior to the date of the filing of the application is explicit and mandatory.

{¶ 30} The cases cited by claimant do not help him in this case and do not address the key issue here. Although these cases are cited for the proposition that the commission should liberally construe what type of document constitutes an application for compensation, that issue is irrelevant to the SHO's analysis. Whether the February 25 through July 25, 2017, C-84 requests should have constituted “applications” for compensation, as claimant argues, was not before the commission in the present matter. Instead, the C-86 motion filed by claimant requested payment of TTD compensation from February 28, 2017, through February 27, 2020, and to continue upon submission of appropriate proof. The SHO addressed that sole issue, awarding TTD compensation from February 27, 2018, through May 26, 2020, but denying compensation from February 28, 2017, through February 26, 2018, based upon the two-year limitation in R.C. 4123.52. If claimant desired to pursue compensation pursuant to the February 25 through July 25, 2017, C-84 requests, claimant needed to seek review of those C-84 requests from the commission within the two-year statutory limit imposed by R.C. 4123.52. Claimant failed to do so, and the 2017 C-84 requests were beyond the scope of what the SHO could address in the present matter based upon the clear language in R.C. 4123.52.

{¶ 31} Accordingly, it is the magistrate's recommendation that this court should deny claimant's petition for a writ of mandamus.

/S/ MAGISTRATE  
THOMAS W. SCHOLL III

**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).