

COURT OF APPEALS  
FAIRFIELD COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

ROBERT JOURDAN	:	JUDGES:
	:	Hon: John F. Boggins, P.J.
	:	Hon: W. Scott Gwin, J.
Plaintiff-Appellant	:	Hon: John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 2005CA26
LANCASTER GLASS	:	
CORPORATION	:	
And	:	<u>OPINION</u>
ADMINISTRATOR, BUREAU OF		
WORKERS' COMPENSATION		
Defendant-Appellee		

CHARACTER OF PROCEEDING: Administrative appeal from the Fairfield County Court of Common Pleas, Case No. 2003CV00079

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: November 18, 2005

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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*Gwin, J.,*

{¶1} Plaintiff Robert Jourdan appeals a judgment of the Court of Common Pleas of Fairfield County, Ohio, entered in favor of defendants Lancaster Glass Corporation and the Administrator of Bureau of Workers' Compensation. Appellant assigns a single error to the trial court:

{¶2} "I. THE TRIAL COURT ERRED IN SUSTAINING DEFENDANT'S MOTION FOR DIRECTED VERDICT AT THE END OF PLAINTIFF'S OPENING STATEMENT REFUSING PLAINTIFF THE OPPORTUNITY TO PROCEED TO PROVE HIS CLAIM FOR ADDITIONAL CONDITIONS OF L5-S1 DISC PROTRUSION AND L4-5 SPONDYLOLISTHESIS BY WAY OF AGGRAVATION OR DIRECT CAUSATION SET FORTH IN HIS AMENDED COMPLAINT."

{¶3} The record indicates appellant suffered an injury on July 30, 2001, while working for Lancaster Glass. Appellant received worker's compensation for lumbar contusion. Subsequently, appellant applied to add disc herniation as a result of the injury. The claim was first approved, but on further review, the Industrial Commission disallowed the additional claim for a herniated disc at L4-5. Appellant appealed the matter to the court of common pleas.

{¶4} At some point, appellant amended his complaint to include additional claims of spondylolisthesis and bulging disc at L4-5, and L5-S1 disc protrusion. The matter proceeded to trial, but the court dismissed appellant's action after opening statement, finding appellant must first present additional claims in the Workers' Compensation system before the court of common pleas may review them.

{¶5} At the time the parties briefed this issue, the Supreme Court had accepted the case of *Ward v. Kroger Company*, Jefferson App. No. 03JE40, 2004-Ohio-3637, but it was still pending. On July 27, 2005, the Ohio Supreme Court announced its opinion in *Ward v. Kroger Company*, 106 Ohio St. 3d 35, 2005-Ohio-3560. The Supreme Court held: “The claimant in an R.C. 4123.512 appeal may seek to participate in the Workers’ Compensation Fund only for those conditions that were addressed in the administrative order from which the appeal is taken.” Syllabus by the court.

{¶6} The Supreme Court explained the requirement that Workers’ Compensation claims be presented first for administrative determination is a necessary and inherent part of the overall adjudicative framework of the Workers’ Compensation Act. The statute contemplates withholding judicial review until the administrative hearings process provided by R.C. 4123.511 has been exhausted. The Supreme Court concluded to allow consideration of additional conditions to originate at the judicial level would place the common pleas court in the role of a claims processor.

{¶7} We find the *Ward* case applies, and conclude the trial court correctly found it could not consider any conditions not first considered by the Industrial Commission.

{¶8} The assignment of error is overruled.

{¶9} For the foregoing reasons, the judgment of the Court of Common Pleas of Fairfield County, Ohio, is affirmed.

By Gwin, J.,

Boggins, P.J., and

Wise, J., concur

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JUDGES

WSG:clw 1109

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

ROBERT JOURDAN	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
LANCASTER GLASS CORPORATION	:	
	:	
AND	:	
	:	
ADMINISTRATOR, BUREAU OF	:	
WORKERS' COMPENSATION	:	
	:	
Defendants-Appellees	:	CASE NO. 2005CA26

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Fairfield County, Ohio, is affirmed. Costs to appellant.

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JUDGES