

From: Don Drinko  
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**Gallagher Sharp Shop Talk: Workers' Compensation**

**Question: Does a failure to file an administrative appeal to an Industrial Commission order preclude a later action in mandamus to reverse the order?**

Industrial Commission decisions involving "extent of disability," such as the amount or nature benefits granted or denied, cannot be appealed to common pleas court as a matter of right pursuant to R.C. 4123.512. In many of these situations, the only alternative is to file an action in *mandamus*, which seeks an order (or writ) issued in the name of the state to an inferior tribunal commanding the performance of an act. R.C. 2731.01 Generally, for an action in *mandamus* to lie, the following elements must be present: (1) a complaint filed in the proper jurisdiction; (2) no adequate legal remedy available; (3) the exhaustion of all administrative remedies; and (4) no laches. Venue is proper in Franklin County, Ohio, and most (but not all) workers' compensation practitioners file *mandamus* complaints in the Tenth District Court of Appeals, because there will be an appeal as of right to the Supreme Court of Ohio.

Recently, the Supreme Court was asked to decide whether a failure to file an administrative appeal from an "extent of disability" order in a workers' compensation claim precluded an action in *mandamus* as a matter of law. In *State ex rel v. National Employers Network Alliance, Inc. v. Ryan*, 125 Ohio St.3d 11, 2010-Ohio-578, the employer sought a writ of *mandamus*, but acknowledged that it had failed to file an administrative appeal of the order in question. The Administrator moved for judgment on the pleadings, which was opposed by the employer. In a *per curiam* opinion, the Court granted the Administrator's motion, concluding that an administrative appeal generally constitutes an "adequate remedy at law." See also, *State ex rel Harshaw Chemical Co v. Zimpher* (1985), 18 Ohio St.3d 166, 480 N.E.2d 452.

As a practical matter, and at times even if the employer agrees with the decision, it is always advisable to file administrative appeals from IC decisions that concern "extent of disability." Appeals are not complicated, can be done online, and information may be developed while an appeal is pending. For the same reason, employers should advise their claim representatives to resist the suggestion by injured workers' counsel, or in some cases hearing officers, that they "withdraw" their appeals at the hearing table.

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