

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

Question: Can a denial of an application to re-activate a claim result in an appeal to common pleas court?

R.C. §4123.512 provides for administrative appeals to common pleas court from decisions other than those involving the “extent of disability,” such as treatment or compensation issues. Recently, the Ohio Court of Appeals, Eighth Appellate District, was asked to decide whether a denial of an employee’s request to re-activate a claim in order to receive treatment was a decision as to the “extent of disability,” or amounted to a denial of the right to participate.

Brown v. Bur. of Workers' Comp. (8th Dist. No. 96209), 2011-Ohio-3695, concerned a claimant who injured his left knee in 1995. The original claim was allowed, and after attempting to return to work, the claimant took full disability leave in 1997. The claimant managed his injury with over-the-counter medications for the next 13 years. In 2010, the claimant’s orthopedic doctor submitted a request to re-activate the 1995 claim, anticipating additional treatment under this claim. This request to re-activate was denied by the employer, and the decision was affirmed at every level administratively. The claimant then filed an appeal pursuant to *R.C. §4123.512*, alleging a denial of a “right to participate.” The employer filed a motion to dismiss the appeal based upon the lack of subject matter jurisdiction, arguing that *R.C. §4123.512* precludes the appeal because the decision was based on the “extent of disability.” The trial court granted the motion, and the claimant appealed.

The Eighth District Court of Appeals affirmed, holding that the decision not to re-activate was one concerning “extent of disability,” and not a “right to participate.” Once the right to participate for a specific condition is determined, no subsequent rulings, except a ruling that terminates the right to participate, are appealable to court. In the case at hand, the claimant’s attempt to characterize his appeal as one of termination was not well taken because the “right to participate” for the allowed conditions was not affected. The decision denying coverage for the specific treatment would not prevent the claimant from filing subsequent requests for additional benefits under the claim, which would require re-activation. Since the issue was actually based on “extent of disability,” the proper forum for appeal was by writ of *mandamus*, and as such the appeal was properly dismissed.

This decision confirms the limited nature of statutory appeals. If a condition is not specifically allowed or denied, *mandamus* is generally the only method of appeal. If you have any specific questions, or would like to discuss this or any other workers’ compensation issues, you can contact me or Adam Sadowski from our Toledo office.

Donald G. Drinko, Esq.
Certified Workers’ Compensation Specialist,
Ohio State Bar Association
Gallagher Sharp
1501 Euclid Avenue

Cleveland, OH 44115
Direct: 216.522.1326
ddrinko@gallaghersharp.com

Adam P. Sadowski, Esq.
Gallagher Sharp
420 Madison Ave., Suite 1250
Toledo, OH 43604
Direct Dial 419.241.4864
asadowski@gallaghersharp.com