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Gallagher Sharp Shop Talk: Workers' Compensation

Question: What evidence is necessary for a judge to grant a motion for a new trial when that judge did not preside over the trial?

After a trial, it is common for the losing party to file a motion for a new trial pursuant to Ohio Civil Rule 59. Recently, the Ohio Court of Appeals, Eighth Appellate District, was faced with the question of what evidence is necessary for a subsequent judge to properly rule on a motion for a new trial.

Thornton v. Conrad (8th Dist. No. 95982), 2011-Ohio-3590, concerned a claimant who lost at trial and filed a motion for a new trial. The claim began on January 1, 2001, when the employee, while walking with a noticeable limp, approached his supervisor and asked under what conditions a drug test would be required if he sought medical attention. The supervisor stated that a drug test was required for any at-work injury, however, no such testing would be required if the requested medical attention was not work-related. The claimant then reported that he had injured his foot earlier that day, but prior to coming to work. The claimant was taken to the emergency room where he confirmed his story on how the injury occurred. Seven days later, the claimant stated that the injury to his foot occurred while he was at work. The claim was denied administratively and the claimant filed a common pleas appeal. A visiting judge presided over the trial and the jury returned a verdict for the employer. The claimant moved the court for a new trial and the visiting judge granted the motion without providing the grounds for the ruling. The Court of Appeals reversed the trial court and remanded due to the lack of explanation for the trial court's ruling. Five years passed since the case had been remanded and during that time, the visiting judge that presided over the trial had passed away. The claimant eventually requested the originally assigned judge to rule on the motion for a new trial. Once again, the originally assigned judge granted the motion for a new trial and the employer appealed.

The Eighth District Court of Appeals reversed, holding that the trial court's decision to grant a new trial was improper because the judge had not been presented with the trial transcript and the judge had not presided over the trial. Therefore the judge did not have sufficient evidence to make such a ruling. The claimant argued that the briefs submitted to the court by the parties quoted trial testimony and that this would suffice. However, the court held that it was the claimant's duty as the movant to ensure that the trial court had sufficient evidence to rule upon his motion. As the claimant did not supply the trial transcript to the new judge, there was no evidence to support his motion and it should have been denied.

This decision illustrates the potential pitfalls of post-trial and appellate briefing. The failure to file the trial transcript was the ultimate fact that stopped the claimant from getting the new trial that he had twice been granted. 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.

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