

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

**Question: Does the Industrial Commission err when granting disability compensation based upon medical evidence which mentions non-allowed conditions, and which does not explicitly link the disability to an allowed condition?**

A condition that may be related to an industrial injury must be formally recognized in the claim if that condition will be a basis for an award of compensation. *State ex rel Jackson Tube Services, Inc. v. Indus. Comm.*, 99 Ohio St.3d 1, 2003-Ohio-2259. Recently, the Ohio Court of Appeals, 10<sup>th</sup> Appellate District, considered a *mandamus* action which questioned whether medical evidence which did not enumerate allowed conditions and cited non-allowed conditions could constitute “some evidence” of permanent total disability (“PTD”).

The facts giving rise to *State ex rel. Dana Driveshaft Mfg., LLC v. Ford*, 2013-Ohio-4053, are complicated, but essentially involve a fall at work which aggravated a prior hip replacement. The claimant was a worker who had knee and hip replacements before being injured in a fall in 1999. As a result of the fall, the claimant’s hip replacement was damaged, necessitating surgical revision. Complications arose from that surgery (including a MRSA infection and a stress fracture), necessitating replacement No. 3. Eventually, the claimant would undergo five (5) more surgical procedures on his hip. In the meantime, the claimant developed pain in his right (previously replaced) knee and sacroiliac joint as a result of a limp associated with his hip, but no new conditions were added to the claim for these body parts. In 2011, the claimant filed a motion seeking PTD compensation, which was supported by a MEDCO-14 and a report from his surgeon describing ongoing problems with the hip and buttocks. Both of these documents also mentioned the non-allowed knee and back conditions, and both failed to explicitly link PTD to the allowed hip condition. PTD was nonetheless granted by an SHO, prompting a *mandamus* action in the Tenth District. A Magistrate made findings of fact and law recommending that the PTD award be vacated and a new order issued denying PTD, which prompted objections from the IC and the claimant.

The 10<sup>th</sup> District adopted the Magistrate’s recommendation that the award of PTD be vacated, but referred the matter back to the IC for further review. In affirming the Magistrate’s findings, the court cited the reference to non-allowed conditions, and distinguished the existing exceptions to the rule that only allowed conditions can be the basis for treatment or compensation, including *Jackson Tube, supra* (exploratory surgery compensable) and *State ex rel. Miller v. Indus. Comm.* (obesity treatment warranted despite no allowance for obesity). The Court noted that although the doctor’s report discussed symptoms that were seemingly attributable to the hip, it would not impute knowledge of the allowed conditions to the doctor based upon these symptoms. The claimant was unable to produce any records from the surgeon listing the allowed conditions, and no indication that he was aware that the knee and sacroiliac conditions were not allowed in the claim. The Court did authorize a limited writ of *mandamus* to consider non-medical factors.

*Dana Driveshaft* stands for the proposition that any request for disability compensation must be specifically linked to an allowed condition. When medical evidence submitted references non-

allowed conditions, a motion should be made to disregard that evidence. If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, please feel free to contact me.

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