

From: Don Drinko
Sent: Thu 9/5/2013 4:08 PM
Gallagher Sharp Shop Talk: Workers' Compensation

Question: Are claimants who represent themselves afforded the same leeway in a court appeal?

In administrative hearings before the Industrial Commission, Civil Rules of Evidence do not apply. *R.C. §4121.36*. Hearing officers can and often do afford *pro se* claimants substantial leeway in procedural and evidentiary matters, *State ex rel. Roberts v. Indus. Comm.*, 10 Ohio St3d 1, 460 N.E.2d 201 (1984). However, as a recent decision by the Second Appellate District shows, this “leeway” disappears when a claimant chooses to proceed without an attorney in a court appeal.

Cole v. Appleton Papers, Inc., 2013-Ohio-3756, concerned a claimant who was initially injured in 1999. A workers' compensation claim was filed, and allowed for a number of soft-tissue injuries. In 2008, and again in 2009, the claimant filed C-86 motions seeking to have the claim additionally allowed for several additional conditions. Both motions were denied, prompting a court appeal pursuant to R.C. §4123.512. The employer filed a motion for summary judgment on several conditions, alleging that they were barred by the two-year statute of limitations. The Court initially denied the motion and permitted the appeal to go to a bench trial, which resulted in a verdict for the employer on some of the conditions. The trial court then granted the employer's summary judgment motion for the remaining conditions, finding that the claimant did not satisfy his evidentiary burden. The claimant, now proceeding *pro se*, filed an appeal from this decision in the Second District Court of Appeals.

In considering the claimant's appeal, the Court never considered the claimant's argument because he failed to comply with Ohio Rules of Appellate Procedure. First, the claimant's appellate brief did not include any assignment of error, as required by App.R.10(A). Without an assignment of error, the Court noted that it could not determine what the claimant was appealing from, and that claimants who choose to proceed *pro se* are held to the same standards as other litigants. *Preston v. Shutway*, 2nd Dist. o. 2012 CA-24, 2013-Ohio-185, ¶12. Similarly, the claimant neglected to provide a transcript from the trial, as required by App.R.9(B). Because of these deficiencies, the Court was forced to assume that the proceedings before the Trial Court were regular and supported by evidence.

Cole demonstrates that once an appeal is taken to Court, the claimant loses whatever leeway that is afforded to him before the Industrial Commission. A failure to fully comply with rules of evidence and procedure will almost certainly result in a dismissal of a claim.

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.

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