

**From:** Don Drinko  
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**QUESTION: Is a finding that an “aggravated” condition has returned to pre-injury status appealable pursuant to R.C. § 4123.512?**

Ohio’s workers’ compensation system provides three (3) main avenues for court appeals: direct appeals to common pleas court pursuant to R.C. § 4123.512, a *mandamus* action before the Tenth District Court of Appeals, or a declaratory judgment action under R.C. Chapter 2721. Matters involving a “right to participate or to continue to participate” are appealable pursuant to R.C. § 4123.512, while matters involving “extent of disability” must be appealed by *mandamus*. Recently, the Supreme Court of Ohio agreed to hear a case from the First Appellate District involving the question of whether an order that a “substantially aggravated” shoulder injury had returned to pre-injury levels is appealable pursuant to R.C. § 4123.512.

*Clendenin v Girl Scouts of W. Ohio*, Slip Opinion No. 2017-Ohio-2830, involved a claimant who suffered multiple injuries to her right shoulder in 2008. The allowed conditions ultimately included a “substantial aggravation of pre-existing dermatomyositis.” In 2013, the BWC filed a “motion to abate” this condition, an SHO affirmed alleging that it had returned to a level that would have existed without her workplace injury. A DHO granted the BWC’s motion and terminated benefits relating to that condition, and an SHO affirmed. The claimant subsequently filed a Notice of Appeal and Complaint in the Hamilton County Court of Common Pleas, pursuant to R.C. § 4123.512 alleging that her benefits should continue. The BWC moved to dismiss the Complaint, arguing that “medical abatement” of a substantially aggravated condition is an “extent of disability” issue, and therefore not subject to direct appeal. The trial court agreed and dismissed the appeal, but the First District Court of Appeals reversed, finding that the abatement order in effect terminated the claimant’s “right to continue to participate” for the condition, and thus was subject to a direct appeal. The Supreme Court of Ohio accepted a discretionary appeal in 2016.

The Supreme Court reversed, finding that a decision that a “substantial aggravation” claim had returned to baseline involved “the extent of a claimant’s disability,” and is therefore not subject to R.C. § 4123.512. The Court acknowledged that the language of the statute itself was problematic, because it grants appeals to ongoing questions involving “the right to participate or to continue to participate” in the workers’ compensation system. The claimant argued that her right to “continue to participate” was affected because her treatment for the condition would no longer be paid. However, the Court found that “extent of disability” has been determined to refer to the amount of compensation paid for the allowed condition, which included the termination of compensation. The condition at issue was still allowed, but abated, a decision which would decrease compensation or benefits, and therefore refers to “extent of the claimant’s disability.” The Industrial Commission’s Order continued to refer to the condition as allowed, did not affect the underlying relationship between the condition and claimant’s work, and did not preclude payment of other compensation.

The Court in *Clendenin* was consistent with precedent in adopting a narrow view of the right to appeal under R.C. § 4123.512. Employees can utilize “motions to abate” in cases involving

“substantial aggravation” claims without worry of a court appeal and the costs associated therewith.

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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