

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

**QUESTION: If a claimant fails to file a complaint in response to a Notice of Appeal filed by the employer, can the underlying claim be dismissed?**

Either party has the ability to perfect an appeal of administrative decisions, other than those concerning extent of disability, to a court of common pleas. R.C. 4123.512 governs these appeals, and specifically mandates that it is incumbent upon the claimant to file a Complaint even in cases where the employer has appealed. Recently, the Ohio Court of Appeals, First Appellate District, considered a case involving an employer's appeal, and whether a pro se claimant who failed to file a complaint or make an appearance, and failed to oppose a motion to dismiss, may have his underlying claim denied.

*Smith v. SOCI Petroleum, Inc.*, 2017-Ohio-7224, involved a claimant who was injured in the course of and arising from his employment when he fell getting out of a truck. A workers' compensation claim was filed, which was allowed for several injuries. The employer appealed the decision to the common pleas court pursuant to R.C. 4123.512 by virtue of a Notice of Appeal. In response, the claimant failed to file a complaint within thirty (30) days, as required by the statute. When no complaint was forthcoming, the employer filed a motion to dismiss. The claimant also failed to attend case management conferences and a hearing scheduled by the trial court on the motion to dismiss. At that point, the trial court granted the employer's motion and dismissed the claim with prejudice. This prompted an appeal as of right to the First District Court of Appeals, in which time the claimant argued that the trial court should have *sua sponte* notified him that his claim would be dismissed, and that the BWC should have filed a complaint.

The First District held that the trial court did not abuse its discretion when it granted the employer's motion to dismiss. Once a notice of appeal has been filed, be it by the claimant or by the employer, the claimant has an affirmative duty to file a petition within 30 days. *See R.C. 4123.512(D)*. The claimant bears the burden of demonstrating his right to participate, regardless of whether the Industrial Commission allowed his claim. *Bennett v. Administrator*, 2012-Ohio-5639. While there appeared to be some dispute as to whether the claimant actually received a copy of the notice of appeal, there is no dispute that he failed to file a petition, nor did he respond to numerous court notices setting hearings on these issues. "The law does not . . . permit a claimant to disregard with impunity the statutory obligation to timely prosecute his claim." *Zuljevic v. Midland-Wascorp*, 62 Ohio St. 2d 116 (1980).

*Smith's* argument was essentially two-fold: that the trial court had an affirmative duty to notify him that it would dismiss his complaint, a duty that was rejected by the Court; and that the BWC had an obligation to file a petition. The Court found no requirement exists, and it chose not to create one.

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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