

WORKERS' COMPENSATION SHOP TALK

QUESTION: Can the Industrial Commission order a claimant to undergo a second medical examination against their will?

The Ohio Revised Code grants the Industrial Commission authority to require a claimant to submit to a medical examination “at any time, and from time to time, at a place reasonably convenient to the employee and as provided by the rules of the commission or the administrator of workers’ compensation.” R.C. §4123.56(A). If the employee refuses to submit or obstructs the examination, the employee’s claim may be suspended during the period of refusal. R.C. §4123.56(C). Broad discretion is normally granted to the Commission, and the statute itself is silent as to the specific number of examinations that may be scheduled. Recently, the Supreme Court of Ohio considered a case involving a claimant seeking permanent total disability (“PTD”) who objected to attending a second medical examination when the first one was deemed faulty, and whether the Industrial Commission had the power to demand that the claimant comply.

Mignella v. Indus. Comm., 2019-Ohio-463, involved a claimant who filed an application for “PTD” supported by a report from her treating chiropractor that stated she could no longer work. At the Commission’s request, the claimant underwent an examination by a medical doctor, who found that the claimant was capable of some light duty tasks. When the claimant took the deposition of the examining physician, she admitted that mistakes were made, including that the doctor did not conduct the examination in accordance with American Medical Association (“AMA”) guidelines. Because of these mistakes, an SHO issued an order referring the applicant back for a second medical examination before processing the request. When the claimant failed to attend the examination, the SHO issued an order suspending her claim. The claimant then filed an original action requesting a *writ of procendo*, essentially arguing that the Industrial Commission had no right to a second “bite at the apple,” and asking that the Industrial Commission rule on her application without the second examination. The Tenth District Court of Appeals denied the request for writ, prompting an appeal as of right to the Supreme Court of Ohio.

The Supreme Court affirmed, finding that the Industrial Commission was within its right to demand that the claimant submit to a second examination. The Court cited several previous decisions, including *State ex rel. Giel v. Indus. Comm.*, which also involved a first exam which did not comply with the AMA guidelines. The Commission was within its discretion to reject reports deemed inadequate and to refer the claimant for a new examination, particularly where the defect raises doubt as to the reliability of the report or the Commission’s ability to evaluate a PTD application. *See also State ex rel. Daniels v. CHS Greystone, Inc.*, 2012-Ohio-2268. (Internally inconsistent report merited second exam.). In the case at bar, the Commission determined that the original flawed examination precluded an accurate determination as to the claimant’s application, and therefore was within its right to demand a second examination. The

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SHO acted properly in referring the matter back, and in suspending the claim until the claimant complied. Finally, the Court rejected the claimant's argument that there was sufficient evidence already present to adjudicate the application, noting that this determination was clearly within the authority of the Commission.

Mignella highlights the fact that the Industrial Commission's role in making determinations as to whether sufficient evidence is present to adjudicate an application begins when competent evidence is gathered and presented, not simply when the hearing is scheduled. Courts have consistently found that defective evidence should be excluded if it is discovered before a hearing on the merits that take place, and if a second examination is required to cure a defect, it is within its power to order 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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