

**From:** Don Drinko  
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**Gallagher Sharp Shop Talk: Worker's Compensation**

**Question: Is “substantial compliance” with R.C. 4123.512 sufficient to vest a trial court with subject matter jurisdiction over a workers’ compensation appeal?**

The requirements of R.C. 4123.512, the exclusive manner by which a party can appeal the orders of the Industrial Commission to common pleas court, are jurisdictional in nature. That is, a failure to fully comply with these requirements means that a trial court does not have subject matter jurisdiction over an appeal. *Brown v. Liebert Corp*, 10<sup>th</sup> Dist No 03AP-437, 2004-Ohio-841. Recently the Tenth Appellate District considered a case involving a claimant who claimed that a “petition” filed with the court containing all of the required information constituted “substantial compliance” with the statute, and whether his complaint was properly dismissed.

*Helton v. Admr. Bur of Workers’ Comp.*, 2015-Ohio-3570, involved a claimant who filed an application for benefits in July, 2013. On July 26, the BWC issued a tentative order denying the claim, which the claimant appealed. Subsequent administrative hearings affirmed the denial, and on May 1, 2014, the Industrial Commission issued an order refusing to hear further appeals. On June 26, 2014, the claimant filed a document titled “Complaint” in the Franklin County Court of Common Pleas. The Complaint named the Administrator and the employer as defendants, and claimed the right to participate. In July, 2014, the employer filed a motion to dismiss for lack of subject matter jurisdiction, alleging that the claimant had not first filed a Notice of Appeal, as required by the statute. The trial court granted the motion, and dismissed the case, prompting an appeal as of right to the Tenth Appellate District.

The Tenth District affirmed, finding that the trial court properly dismissed the claimant’s “complaint” for lack of subject matter jurisdiction. The claimant argued that R.C. 4123.512 does not require the filing of a document titled “Notice of Appeal,” and that his “complaint” contained all of the information required by the statute to invoke jurisdiction. This “substantial compliance” argument was rejected by the Court, who noted that the requirement of filing a “notice of appeal” is specifically set forth in the statute. *R.C. 4123.512(A)*. While the filing in this case was timely, it was not a “notice of appeal” as defined by the statute. Pursuant to the statute, the only act required to vest the trial court with subject matter jurisdiction is the filing of a notice of appeal. In this case, the document filed by the claimant also did not comply with the statutory requirements of a notice of appeal, as it did not state an intent to appeal from a particular order. Simply put, the Court found that R.C. 4123.512 requires the filing of two separate documents, and the claimant’s failure to do so doomed his appeal.

Why did the claimant in *Helton* fail to file a Notice of Appeal? Often, these mistakes are inadvertent, and can be made by claimants with counsel as well as those proceeding *pro se*. It is always advisable to confirm that both documents have been filed before proceeding with an answer, or at a minimum to preserve the defense of a lack of subject matter jurisdiction with the court.

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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