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

Question: When the Industrial Commission issues findings of fact and conclusions of law, must the order include the factual basis of those findings?

Industrial Commission orders are, by necessity, often a mixture of law and facts. When making findings of fact, hearing officers are supposed to cite the evidence adduced at the hearing which formed the basis for those findings. *State ex rel Noll v. Indus. Comm.*, 57 Ohio St.3d 203, 367 N.E.2d 245 (1991). The Supreme Court of Ohio recently considered a case arising from an order denying temporary total disability compensation, and more specifically, whether the order sufficiently identified the evidence relied upon in making that denial.

State ex rel Cline v. Abke Trucking, Inc., 137 Ohio St.3d 557, 2013-Ohio-5159, concerned a truck driver who was injured on the job and received temporary total disability. The claimant then served a period of light duty at the American Red Cross, where he was required to report his hours. Before returning to full duty, the claimant was required to renew his CDL, and as part of that process the claimant allegedly lied about an unrelated medical condition. Two days after returning to work, the employer terminated the driver, citing in a letter the medical issue, as well as an allegation that he had misrepresented his hours at the American Red Cross. When the claimant later sought additional temporary total, the employer contested the request, alleging that the claimant had "abandoned" his employment. A DHO granted the compensation, but on appeal an SHO vacated that order, concluding that the claimant had abandoned his employment by violating unspecified "written work rules." The claimant filed a *mandamus* action, and the Tenth District Court of Appeals vacated the order, concluding that the Industrial Commission had abused its discretion in finding that the claimant had "abandoned" his employment by lying about his medical condition and by falsifying time cards. A dissenting opinion noted that the SHO order was also deficient because it failed to specifically state the evidence ruled upon, citing *Noll*. The Industrial Commission appealed as of right to the Supreme Court.

The Court reversed the Court of Appeals on the abandonment issue, but agreed with the dissent that the Industrial Commission had abused its discretion in failing to comply with *Noll*. The Court found that the SHO order summarily concluded, without direct reference to any evidence in the record, that the claimant was terminated for violating written work rules. The SHO did not identify any evidence relied upon, but merely stated her conclusion that the claimant had done so. "The Commission must issue an order that contains sufficient detail of its reasoning and the evidence supporting it to indicate the grounds . . . [and] its failure to do so constitute abuse of discretion. *Noll, supra*; *State ex rel Kinnear Div. Harsco Corp v. Indus. Comm.*, 77 Ohio 3d 258 (1997). The Court remanded the matter back to the Industrial Commission for a new order stating the evidence relied upon in making its decision.

While *Cline* is a victory for the claimant, it may be a short-lived one. *Cline* also stands for the proposition that it is good practice to ensure that the record contains sufficient evidence (ideally, a transcript in a case involving disputed issues of fact) upon which a hearing officer can base her order.

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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