

Bugbee & Conkle, LLP

Workers' Compensation News

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COURT OF APPEALS CONTRADICTS ITSELF ON ISSUE OF PAYMENT OF PARTIAL DISABILITY DURING PENDENCY OF COURT APPEAL FILED PURSUANT TO R.C. 4123.512

In May, 2009, this publication reported the 10th District Court of Appeals' decision in *State ex rel. Leto v. Indus. Comm.*, 180 Ohio App.3d 17, 2008-Ohio-7056, wherein the court held the processing of a scheduled loss application under R.C. 4123.57(B) should not be stayed during the pendency of an appeal to court filed pursuant to R.C. 4123.512. This publication commented that the court of appeals' decision seemed to conflict with the Ohio Supreme Court's decision in *State ex rel. Saunders v. Indus. Comm.*, 101 Ohio St.3d 125, 2004-Ohio-339, which held R.C. 4123.512 authorizes the commission to stay the payment of *partial* disability compensation during pending litigation. Of note, the Commission's Policy Memo I5 provides a scheduled loss application shall be stayed during pending litigation.

On June 16, 2009, the 10th District issued a decision in direct conflict with

its decision in *Leto*. In *State ex rel. Parzych v. Indus. Comm.*, 10th Dist. No. 08 AP-906, 2009-Ohio-2853, the court followed *Saunders* in holding that an application for partial disability, and in particular an application for scheduled loss, may be stayed during the pendency of an R.C. 4123.512 court appeal. The court's opinion did not mention the *Leto* case decided only six months previously.

Leto is currently pending in the Supreme Court and has been scheduled for mediation. *Parzych* has not been appealed to the Supreme Court as of this publication. Considering the court of appeals' conflicting opinions, the status of the law regarding the processing of partial disability applications under R.C. 4123.57 remains unclear. Nevertheless, until the Supreme Court clarifies the law, it seems likely the Commission will continue to enforce Policy Memo I5.

COMMISSION CLOSES/CONSOLIDATES OFFICES

Effective June 29, 2009, the Commission closed its Canton office, consolidating it with the Akron office. This marks the second office closure in 2009, as the Commission consolidated its Springfield and Dayton offices in March, 2009. According the Commission's website, the office consolidations are intended to reduce costs and increase efficiency.

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CHIROPRACTOR, PHYSICIAN, CLAIMANT SENTENCED FOR WORKERS' COMPENSATION FRAUD

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In April, 2009, Cleveland chiropractor, Thomas Kavounas, was sentenced to six months in jail suspended, two years of community control and 50 hours of community work service after pleading guilty to workers' compensation fraud and intimidation. Surveillance showed Dr. Kavounas' clinic was billing for services by Dr. Kavounas when the actual examination was performed by his partner Dr. Richard Mulcahy, who had previously been decertified as a workers' compensation medical provider. Investigators also determined the partners were billing for no-show appointments and for services that were never received. The Bureau is currently investigating Dr. Mulcahy.

In June, 2009 Cincinnati physician Walter G. Broadnax was sentenced to five years probation and ordered to pay restitution in the amount of \$56,246 for over-billing the Bureau of Workers' Compensation for evaluation and management services rendered to claimants. Dr. Broadnax upcoded or upcharged billing codes to obtain a higher reimbursement amount from the Bureau. In addition, Dr. Broadnax was persuaded by his attorney, Kenneth L. Lawson, to begin an instant prescription-writing conspiracy to obtain Percodan, Oxycotin and Percocet, all Schedule II controlled substances, wherein he wrote prescriptions for persons who were not his patients and had not been medically examined by him. Lawson was later sentenced to 24 months in federal prison.

In April, 2009, a Mansfield man was sentenced to five years community control and ordered to pay over \$30,000 to the Bureau for workers' compensation fraud. The claimant had been awarded permanent total disability compensation for an alleged total loss of use of his arms and legs. A Bureau investigation found the man operating a motor vehicle, driving long distances, walking, opening and closing doors, holding items and writing.

COURT OF APPEALS FINDS CLAIMANT MAY PURSUE CLAIM AS INJURY OR OCCUPATIONAL DISEASE AT TRIAL

On May 18, 2009, in *Steele v. Crawford Machine, Inc.*, 3rd Dist. No. 07-CV-0177, 2009-Ohio-2306, the Third District Court of Appeals held a workers' compensation claimant may pursue his claim as an injury or occupational disease in R.C. 4123.512 litigation.

Administratively, the claimant filed a FROI-1 claim application for bilateral carpal tunnel syndrome, wrist tendonitis, and ganglion cysts. The adminis-

trative record did not clearly indicate whether the claimant was pursuing her claim as an injury or an occupational disease. Ultimately, a staff hearing officer allowed the claim as either an injury or occupational disease.

Because it appeared the claimant pursued alternative theories of recovery administratively, the court found she was not bound to a particular theory at trial.

The information contained in this publication is not intended to serve as legal advice, but merely to alert readers to developments in the law. If you have any questions, either call at the address listed above left or email us through our website. The website can be accessed by clicking the link below.

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