

Bugbee & Conkle, LLP

Workers' Compensation News

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COURT OF APPEALS FINDS DEPARTMENT STORE EMPLOYEE ENTITLED TO BENEFITS WHEN HURT IN PARKING LOT AFTER WORK

In *Taylor v. Meijer, Inc.*, 182 Ohio App.3d 23, 2009-Ohio-1966, the Second District Court of Appeals found a department store employee who sustained slip and fall injuries in the store's parking lot after work hours was entitled to workers' compensation benefits.

The claimant finished her shift as a clerk and proceeded to do some personal grocery shopping. Thereafter, she left the store and slipped on ice when attempting to load the groceries into her car.

The Industrial Commission denied the claim, which denial the claimant appealed to court. The company and the claimant moved for summary judgment. The trial court denied the company's motion but granted the claimant's motion, awarding her the right to participate

for her injuries.

On appeal, the company argued the claimant was not entitled to benefits because her injuries did not occur "in the course of employment." The court rejected the company's argument, reasoning that under the totality of the circumstances the claimant's injuries occurred in the course of and arose out of employment. Because the claimant's shopping diversion was limited in time, space, and purpose, and because Meijer controlled the parking lot, the court held the act of placing the shopping bags in the claimant's car did not change the employment relationship.

The court's decision is consistent with other appellate districts and a trend to liberally construe the statutory definition of injury.

NEW COMMISSIONER APPOINTED

On July 1, 2009, Governor Ted Strickland appointed Jodie M. Taylor as the employer member of the Industrial Commission. Ms. Taylor's term will end in June 2015. From 1997-2000, Ms. Taylor served as staff attorney for the Commission. Thereafter, she represented state fund and self-insured employers while working for a Columbus law firm.

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COURT OF APPEALS HOLDS PARTIAL LOSS OF USE AWARD IS OFFSET BY PRIOR PERMANENT PARTIAL DISABILITY AWARD

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In *Honda of America Mfg., Inc. v. Indus. Comm.*, 2009-Ohio-4210, the Tenth District Court of Appeals held an award for partial loss of use under R.C. 4123.57(B) is offset by a prior permanent partial disability award.

The claimant, who had previously received a permanent partial disability award for partial paralysis of the fingers of his left hand, later filed separate applications for loss of use of parts of the fingers and total loss of use of the left hand. The Commission awarded loss of use of parts of the fingers, but, refused to offset the prior permanent partial award. Later, the Commission awarded a total loss of use of the left hand.

The employer filed a complaint in mandamus, arguing there was insufficient evidence for the total loss of use award and that an offset of the permanent partial disability award was required under the law. The court's magistrate recommended a partial writ, finding there was not "some evidence" to support the Commission's finding of total loss of use of the hand. The magistrate denied the employer's petition requesting the offset.

The court of appeals sustained the employer's objection to the magistrate's decision, finding that the law requires the permanent partial disability award be offset against the partial loss of use award to avoid double recovery.

FROI-1 CLAIM APPLICATION, BY ITSELF, IS NOT SUFFICIENT EVIDENCE OF MEDICAL CAUSATION

In *George v. Miracle Solutions, Inc.*, 2009-Ohio-3659, an unrepresented claimant appealed the disallowance of her claim to court. According to the court's pretrial order, parties were required to identify their experts and provide medical reports of such experts by a date determined by the court. When the claimant failed to disclose her expert and provide the expert's report, the Bureau and the employer filed a motion to dismiss the complaint on the ground that the claimant did not have medical evidence to support her claim.

The trial court converted the motion to dismiss to a motion or summary judgment and granted judgment in favor of the Bureau and the company.

The court of appeals upheld the trial court's decision.

In a workers' compensation trial, the claimant must prove, through expert testimony, an injury occurred, which proximately caused a physical condition. The court of appeals reasoned that the FROI-1, on which the doctor merely checked a box, does not satisfy the evidentiary requirement to prevail at trial.

It remains to be seen whether this court's decision will impact the administrative allowance of claims. The Rules of Evidence do not apply in Commission hearings and a more relaxed standard of proof has been accepted by Commission hearing officers.

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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