[Cite as *State ex rel. LTV Steel Co. v. Indus. Comm.*, 85 Ohio St.3d 75, 1999-Ohio-205.]

THE STATE EX REL. LTV STEEL COMPANY, APPELLEE, *v.* INDUSTRIAL COMMISSION OF OHIO; GRECU, APPELLANT.

[Cite as *State ex rel. LTV Steel Co. v. Indus. Comm.* (1999), 85 Ohio St.3d 75.]

Workers' compensation — Signature-stamped physician's report constitutes a signed report that may be relied upon by the Industrial Commission in deciding whether to award compensation.

(No. 97-208 — Submitted July 15, 1998 — Decided March 24, 1999.)

APPEAL from the Court of Appeals for Franklin County, No. 95APD12-1622.

This case revolves around the reports H.W. Kang, M.D., prepared on behalf of appellant, George Grecu ("claimant"), for his workers' compensation claims. Nearly all of Dr. Kang's reports were authenticated with a signature stamp. These reports also contained the stamped statement, "Signed in my absence to avoid delay in mailing." The appellate court considered the reports to be unsigned, and found that the reports therefore could not constitute evidence upon which the commission could award compensation.

Claimant sustained two injuries while employed by relator, LTV Steel Company ("LTV"). On July 18, 1966, claimant sustained an injury while working as a saw operator. His claim for workers' compensation was recognized for "lumbar region of the back, herniated disc L5, left side" in claim No. 430329-22. Over the years, the extent of claimant's permanent partial disability attributable to his 1966 injury worsened from twenty-five percent to forty-two percent by 1991.

Claimant's second claim for workers' compensation, claim No. 980508-22, resulted from an injury he suffered on July 9, 1988. He was working as a power dispatcher doing sedentary work, but tripped and fell, injuring his left shoulder and right knee. The claim was recognized for "sprain, left shoulder with possible

rotator cuff tear; aggravation L5 radiculitits [*sic*], left; contusion right knee." Claimant received temporary total disability compensation for a number of months. He then returned to his power dispatcher position, which involved the monitoring of meters and gauges.

In April 1989, claimant remained at his power dispatcher position when Republic Engineered Steels, Inc. ("Republic") took over the LTV plant. Dr. Kang examined claimant on March 6, 1990 and prepared a report dated March 20, 1990. The report was signed with a signature stamp, and contained the stamped statement, "Signed in my absence to avoid delay in mailing." Dr. Kang stated in the report:

"I have been treating George Grecu for many years for the above industrial injuries. He was last examined on March 6, 1990. He was about the same, right knee osteoarthritis, back degenerative changes, spondylosis and spinal stenosis.

"As far as the back is concerned, he is 65% permanent partial. As far as [the] shoulder is concerned, he has an additional 35%. His overall percentage of disability is 100%. I do not believe that he will ever recover sufficiently to return to the work force in any capacity."

Despite the fact that Dr. Kang opined that claimant could never return to the work force, claimant was in fact working at Republic at the time of the report. Dr. Kang issued another report, authenticated in the same manner as the March 20, 1990 report, on May 22, 1990. In that report, Dr. Kang stated:

"George Grecu has terrible degeneration of the spine, severe spondylosis, limited range of motion in the back, positive neurological deficit, continuous pain, and requires assistance for activities of daily living. Therefore, he has a permanent partial disability of 65% for the back. His shoulder rang [*sic*] of motion

is 30% of normal, weakness is 50% of normal, and he has constant pain. Therefore his percentage of parmanent [*sic*] partial disability is 35%."

On June 6, 1990, in a signed report, Dr. Kang again stated that claimant was permanently and totally disabled. In that report, Dr. Kang recognized that claimant was still employed:

"At the present time I understand his work involves more or less supervising electric panels which does not require lifting, pushing, or pulling and he is able to walk around some to loosen his back and also mostly sitting."

In October 1990, claimant applied for retirement benefits from LTV, which were granted. In submitting that retirement application, claimant chose not to apply for pension benefits on the basis of any physical disability. His retirement was based upon twenty-five years of active service. Claimant continued to work for Republic.

By orders of May 7, 1991 and October 2, 1991, the commission determined that, in regard to the 1988 injury to the shoulder and right knee (with aggravation of the allowed back injury), claimant's permanent partial disability was forty-five percent.

In October 1991, when he was seventy-two years old, claimant applied for retirement from Republic, indicating that he was seeking a "normal" retirement. He did not apply on the basis of "permanent incapacity" or "physical disability." The application was granted, and claimant ceased working on November 16, 1991.

On September 23, 1992, Dr. Kang submitted another report, an addendum to his 1990 reports. It, too, was authenticated in the same manner as the March 20, 1990 report. The September 1992 report stated:

"This is an addendum to my previous letters concerning the permanent partial impairments for George Grecu's industrial claims. He has 47% for left [*sic*]

which is 20% for decreased range of motion, 20% for weakness, and 7% for mild osteoarthritis. The back has 45% which is 20% for deficiency LS spine, and 25% for decreased range of motion with weakness and left radiculitis. This is a total of 92% permanent partial."

On October 20, 1992, claimant filed an "IC-2" application for permanent total disability compensation in his two workers' compensation claims. In support of the application, claimant attached the March 1990 and June 1990 reports of Dr. Kang.

On November 16, 1992, the commission dismissed the application based upon the 1988 injury, claim No. 980508-22:

"There is a lack of substantial, competent proof justifying the processing of said IC-2 Application.

"The report dated March 20, 1990, attached to the IC-2 Application, indicates claimant will not be able to return to work. However, the report dated June 6, 1990, attached to the IC-2 Application, indicated the claimant was working. No other medical proof is attached to the IC-2 Application."

In December 1992, the commission also dismissed the claim based upon the 1966 injury, claim No. 430329-22, for the same reason.

Dr. Kang reexamined the claimant on June 29, 1993. In a July 21, 1993 letter regarding that examination, Dr. Kang reported that the claimant was "completely permanently and totally disabled for his left shoulder, lower back, and other industrial injuries." The letter was signed with the signature stamp and contained the same stamped statement as the above reports.

Dr. Kang reexamined claimant yet again on August 10, 1993. In an August 19, 1993 letter, authenticated in the same manner as the March 1990 report, Dr. Kang stated:

"I last examined George Grecu on 8-10-93. He was doing about the same as far as the back was concerned and the shoulder was the same with severe limitation of motion. * * * He is to return in six weeks for possible further injections.

"I believe that the patient is permanently and totally disabled as a result of his low back and shoulder problem. Considering his age, he is not a candidate for vocational rehabilitation."

On September 10, 1993, claimant filed a second application for permanent total disability compensation. In support thereof, he attached the July 21, 1993 and August 19, 1993 reports of Dr. Kang.

On March 29, 1994, commission specialist, W. Jerry McCloud, M.D., concluded that claimant was "capable of work activities." Dr. McCloud wrote:

"[Claimant] is not capable of his 1988 employment. The changes are permanent and he has reached a level of maximum medical improvement and in 980508-22 he demonstrates a permanent partial impairment of 30%. * * * There is 0% impairment in 430329-22."

On July 26, 1994, Dr. Kang prepared another report, again authenticated in the same way as the above-referenced reports:

"The reason that he has retired is becuase [*sic*] of the inability to work. * * * He continues having problems with the left shoulder, back and the right knee.

"I do realize the extent of the percentages according to the published guidelines either by airmail [*sic*] or other sources. However, considering the human factor, I strongly suggest to allow him to obtain 100% permanent total allowance for his multiple injuries."

Two staff hearing officers heard claimant's application on August 3, 1994, and they awarded permanent total disability compensation from August 19, 1993.

The hearing officers found that the claimant was "unable to perform any sustained remunerative employment." The order was based "particularly upon the report(s) of [Dr.] Kang."

On August 26, 1994, LTV appealed the order to the Industrial Commission. On October 11, 1994, LTV filed an affidavit from claimant's supervisor at Republic, who stated that claimant performed his duties of monitoring electrical gauges and equipment without complaint until the time of his retirement in November 1991.

On October 13, 1994, claimant also submitted an affidavit, in which he stated that the new company changed the power room equipment in 1991, placing some meters close to the floor, so that he had to get on his hands and knees to read them. He also claimed that he had to move and climb ladders to read meters up to twelve feet high. He also stated that he was asked to do heavy tasks such as snow-shoveling, and that he "finally decided to quit in November, 1991."

On November 3, 1994, the commission refused LTV's appeal. On December 18, 1995, relator LTV commenced an action in mandamus in the court of appeals below. That court referred the case to a magistrate, who, on August 30, 1996, entered a decision setting forth her findings of fact and conclusions of law.

The magistrate concluded that contrary testimony existed in the record as to the voluntariness of claimant's second retirement in 1991. A voluntary retirement would preclude the claimant from receiving permanent total disability compensation. *State ex rel. Chrysler Corp. v. Indus. Comm.* (1991), 62 Ohio St.3d 193, 580 N.E.2d 1082. The magistrate found that the commission abused its discretion in failing to make an express determination of the voluntariness of claimant's retirement in its award of permanent total disability compensation. She

recommended that the cause be returned to the commission for consideration of that issue.

The magistrate also found fault with the commission's non-specific reliance on "the report(s) of Kang." She cited potential evidentiary problems with some of Dr. Kang's reports, including the fact that several of the reports appeared to be unsigned by Dr. Kang. The magistrate recommended that the cause be returned to the commission for clarification as to which reports it relied upon in making its award.

The court of appeals adopted the magistrate's determination of facts, but rejected her conclusions of law. Instead of remanding the cause as the magistrate had recommended, the court granted relator's writ, ordering the commission to vacate its order granting claimant's application for permanent total disability compensation.

The court of appeals' decision was premised entirely on its finding that Dr. Kang's reports could not support an award of permanent total disability compensation. The court found that Dr. Kang filed a total of seven reports on behalf of claimant and that six of those were unsigned.

Despite the fact that the reports had been mechanically signed, the court nonetheless considered them "unsigned," and held that an unsigned report cannot constitute some evidence to support a commission decision, citing *State ex rel. Case v. Indus. Comm.* (1986), 28 Ohio St.3d 383, 387, 28 OBR 442, 445, 504 N.E.2d 30, 35, and *State ex rel. Brown v. Indus. Comm.* (1983), 13 Ohio App.3d 178, 179, 13 OBR 213, 214, 468 N.E.2d 777, 778.

As to Dr. Kang's lone signed report of June 6, 1990, the court held that the March and June 1990 reports had been expressly rejected in the commission's 1992 order denying compensation. The court held that pursuant to *State ex rel.*

Zamora v. Indus. Comm. (1989), 45 Ohio St.3d 17, 543 N.E.2d 87, the commission could not rely on those same reports for a later determination awarding compensation.

The court of appeals thus held that "because none of the seven reports Dr. Kang submitted constitute some evidence in support of the commission's decision, the commission abused its discretion in granting claimant permanent total disability compensation in reliance on his reports."

The cause is now before this court upon an appeal as of right.

Willacy, LoPresti & Marcovy, Aubrey B. Willacy and *M. Scott Young*, for appellee.

Lonas & McGonegal and *Terrance J. McGonegal*, for appellant.

PFEIFER, J. Because the reports filed by Dr. Kang should have been considered signed, the court of appeals erred below. Dr. Kang's reports could constitute some evidence upon which the commission could base its order. However, we agree with the magistrate below that the cause should be returned to the commission to determine the voluntariness of claimant's retirement.

The appellate court based its decision on several cases that dealt with reports that were completely unsigned. In *State ex rel. Brown v. Indus. Comm.* (1983), 13 Ohio App.3d 178, 179, 13 OBR 213, 214, 468 N.E.2d 777, 778, the report at issue was dictated "but not read or signed." The court held that an unsigned report could not be proper evidence, stating that "[t]he potential for inaccuracy is too great to depend upon such a statement." 13 Ohio App.3d at 179, 13 OBR at 214, 468 N.E.2d at 778.

In *State ex rel. Smith v. Indus. Comm.* (1986), 26 Ohio St.3d 128, 129, 26 OBR 110, 110-111, 498 N.E.2d 447, 447-448, a workers' compensation case, this court refused to consider as evidence a report that was inscribed "DICTATED BUT NOT READ."

In *State ex rel. Case v. Indus. Comm.* (1986), 28 Ohio St.3d 383, 387, 28 OBR 442, 445, 504 N.E.2d 30, 35, this court stated that "[i]t is well-settled that an unsigned medical report is not reliable evidence upon which the commission can base its determination as to extent of disability."

The significant difference in this case is that the reports of Dr. Kang are, in fact, signed. The signatures were not made by Dr. Kang's own hand, but they were done at his direction. Under Ohio statutes governing commercial paper (which mirror the Uniform Commercial Code), a signature need not be made by the hand of the signer:

"A signature may be made manually or by means of a device or machine and by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing." R.C. 1303.41(B).

Pursuant to R.C. 1301.01(MM), " 'signed' includes any symbol executed or adopted by a party with present intention to authenticate a writing."

Ohio statutory law on wills, too, does not require a testator's signature to be his own. Pursuant to R.C. 2107.03, the signature of a testator on a will may be made by another person in the testator's presence at the testator's direction.

We see no reason to hold a doctor's report in a workers' compensation case to a higher standard than a piece of commercial paper or a will. We find that a signature-stamped report constitutes a signed report that may be relied upon by the Industrial Commission in deciding whether to award compensation.

We believe that the appellate court overstated the potential problems of signature-stamped reports when it wrote that "[a signature stamp] allows the author to repudiate the report as having been stamped and mailed without his or her approval." In this case, the stamp "Signed in my absence to avoid delay in mailing" indicates that Dr. Kang knew about the signature affixed to the report and intended for it to authenticate the report. A signature stamp provides indicia of legitimacy that an unsigned report lacks. Also, truly falsified reports would likely bear more damning evidence of unreliability than the mere unauthorized use of a signature stamp. For instance, a lack of consistency with other reports filed by the same doctor, a dramatic worsening of a condition, or the sudden appearance of a new condition would be telling. Also, in the end, each report is subject to repudiation by an opposing party's doctor's report.

Relator did not question the authenticity of the reports at the hearing officer level or in its appeal to the Industrial Commission. To now allow relator to prevail on this issue would be honoring form over substance. This is especially the case where the procedural posture of the matter leaves the respondent unable to defend the integrity of the document. For instance, in this case, after the record closed, Dr. Kang wrote in a January 16, 1997 letter to claimant's counsel that "the letters you received from this office under my name on behalf of Mr. Grecu are letters that have been sent under my direction and responsibility and, even though the signature was stamped, it is authentic under my authorization."

We find that the three reports filed before the commission's 1992 order denying compensation could in fact have been properly relied upon in awarding claimant's claim.

However, we agree with the magistrate that the commission abused its discretion in not addressing the question of whether claimant's 1991 retirement

was voluntary. As this court stated in *State ex rel. Baker Material Handling, Inc. v. Indus. Comm.* (1994), 69 Ohio St.3d 202, 215, 631 N.E.2d 138, 148-149:

"Where an employee retires prior to becoming permanently and totally disabled, such employee is precluded from eligibility for PTD compensation only when the retirement is voluntary and constitutes an abandonment of the entire job market."

Since claimant's retirement predates by nearly two years the date the commission set as the inception of his disability period, the voluntariness of his retirement is a very germane question. There is evidence in the record that suggests claimant's retirement was voluntary. As this court did in *State ex rel. Chrysler Corp. v. Indus. Comm.* (1991), 62 Ohio St.3d 193, 580 N.E.2d 1082, and *State ex rel. Consolidation Coal Co. v. Yance* (1992), 63 Ohio St.3d 460, 588 N.E.2d 845, we return this cause to the commission for further inquiry into the nature of the claimant's retirement. We accordingly reverse the judgment of the court of appeals and return the cause to the commission.

Judgment reversed

and cause returned.

MOYER, C.J., RESNICK, F.E. SWEENEY, COOK and LUNDBERG STRATTON, JJ., concur.

DOUGLAS, J., concurs in judgment only.