

THE STATE EX REL. HAMPE, APPELLANT, v. MTD PRODUCTS, INC. ET AL.,

APPELLEES.

[Cite as *State ex rel. Hampe v. MTD Products, Inc.* (1999), ___ Ohio St.3d ____.]

Workers' compensation — Industrial Commission abuses its discretion in terminating temporary total disability compensation, when.

(No. 96-2734 — Submitted August 19, 1998 — Decided February 10, 1999.)

APPEAL from the Court of Appeals for Franklin County, No. 95APD11-1432.

Appellant-claimant, David J. Hampe, was injured on January 11, 1990 in the course of and arising from his employment with appellee MTD Products, Inc. (“MTD”), a self-insured employer. A workers’ compensation claim was allowed, and claimant began receiving temporary total disability compensation (“TTD”).

Dr. John W. Cunningham examined the claimant on MTD’s behalf. In a May 10, 1990 letter, Dr. Cunningham indicated that claimant had reached maximum medical improvement (“MMI”). Based on this report, MTD asked appellee Industrial Commission of Ohio to have claimant examined by the commission’s medical section to determine, among other things, whether claimant had reached MMI. Dr. Anthony D. Vamvas, Jr., examined claimant and opined that MMI had not been reached.

On December 7, 1990, a district hearing officer continued TTD. That order was affirmed by a regional board of review and staff hearing officers. On July 6, 1992, MTD sought reconsideration of the staff hearing officer’s order. The commission granted reconsideration, citing R.C. 4123.52 and “the possibility of an error in the previous Industrial Commission order.” Rehearing finally occurred on August 8, 1994, at which time, the commission terminated TTD as of December 7, 1990 based on the May 1990 Cunningham report.

Claimant filed a complaint in mandamus in the Court of Appeals for Franklin County, alleging that the commission had abused its discretion in terminating temporary total disability compensation. The court of appeals denied the writ.

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

Ben Sheerer Law Offices and Thomas R. Pitts, for appellant.

David R. Cook, for appellee MTD Products, Inc.

Betty D. Montgomery, Attorney General, and *Lisa A. Sotos*, Assistant Attorney General, for appellee Industrial Commission.

Stewart Jaffy & Associates Co., L.P.A., Stewart R. Jaffy and Marc J. Jaffy, urging reversal for *amicus curiae* Ohio Academy of Trial Lawyers.

Per Curiam. Claimant alleges that the commission abused its discretion in (1) asserting jurisdiction to reexamine the district hearing officer's December 7, 1990 TTD award and (2) setting a retroactive TTD termination date. We agree with both assertions.

State ex rel. Nicholls v. Indus. Comm. (1998), 81 Ohio St.3d 454, 692 N.E.2d 188, and *State ex rel. Russell v. Indus. Comm.* (1998), 82 Ohio St.3d 516, 696 N.E.2d 1069, support claimant's propositions. As to claimant's first proposition, *Nicholls* held that the possibility of unspecified error cannot sustain the exercise of continuing jurisdiction under R.C. 4123.52. *Russell*, as to claimant's other proposition, held that the date on which to terminate disputed TTD on the basis of having reached MMI is the date of the termination hearing. The commission, therefore, abused its discretion in both regards.

Accordingly, the judgment of the court of appeals is reversed, and the commission is ordered to vacate its orders of July 6, 1992 and August 8, 1994, and to reinstate its earlier award of TTD.

Judgment reversed.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER and COOK, JJ.,
concur.

LUNDBERG STRATTON, J., concurs in part and dissents in part.

LUNDBERG STRATTON, J., concurring in part and dissenting in part. I agree with the majority's determination that the date of the termination hearing is the proper date on which to terminate total temporary disability compensation; but I dissent from the majority's conclusion that the Industrial Commission did not have jurisdiction to reconsider its order under R.C. 4123.52.