

## OPINION NO. 1290

**Syllabus:**

1. A claim for compensation for total disability which has been denied by the Administrator of the Bureau of Workmen's Compensation and upon timely appeal allowed by the Regional Board of Review may be paid pending an appeal to the Industrial Commission.

2. An appeal from a judgment of a court of common pleas initially allowing participation in the workmen's compensation fund on the basis of a claim for death benefits disallowed by the Industrial Commission will operate as a stay of execution of the judgment if the requirements for a stay of execution set forth in Section 2505.09 to 2505.12, inclusive, Revised Code, are met by the appellant.

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**To: M. Holland Krise, Chairman of Industrial Commission of Ohio, Columbus, Ohio**

**By: William B. Saxbe, Attorney General, August 13, 1964**

Your request for my opinion reads as follows:

"The Industrial Commission has directed the writer to request from your office a formal opinion with reference to the following subject matter:

"I. Involves the legality of making payment of compensation from an order of disallowance by the Administrator of the Bureau during the time that the claim is pending on an Appeal before the Regional Board of Review and/or the Industrial Commission of Ohio. The answer to this question will presumably be found in Sections 4123.515 through 4123.519 of the Revised Code of Ohio.

"Hypothetically, a claim for total disability compensation was denied by the Deputy Administrator which claim was, on Appeal to a Regional Board of Review, allowed. The claim is now pending before the Industrial Commission on Appeal from the Board of Review. By virtue of the order of allowance of the Regional Board, claimant was granted total disability compensation in the amount of \$2982.00.

"We would like your opinion as to whether or not the order paying compensation under these circumstances is legal and valid.

"II. We would also like your opinion on

a question involving the consideration of the same statutes heretofore named. However, these facts involve a claim that had been disallowed at each administrative level, and the claimant appealed to the Common Pleas Court where a trial was had and the claimant was given a verdict which entitled him to participate in the State Insurance Fund. The claimant is a widow and the claim obviously a death claim. An Appeal to the Court of Appeals is being perfected from the judgment of the Common Pleas Court and during the pendency of this Appeal, the Commission is asked to commence payment of death benefits pursuant to the judgment of the Common Pleas Court.

"We would like your opinion as to whether or not, particularly under Section 4123.519 of the Revised Code of Ohio, whether such payments may or should be properly commenced with such payments to the widow may or should be properly commenced during the pendency of the Appeal to the Court of Appeals."

Initial consideration will be given your inquiry regarding payment of compensation for total disability, which claim has been denied by the Administrator of the Bureau of Workmen's Compensation and allowed by a Regional Board of Review on appeal, when an appeal from the order of the Regional Board of Review is pending before the Industrial Commission. The fact that the claim was denied by the Administrator would have no bearing on the question, except that the order denying the claim furnishes a basis of appeal to the Regional Board of Review under the provisions of Section 4123.516, Revised Code.

Section 4123.516, which provides for an appeal from the Administrator's decision to the Regional Board of Review, further provides in part as follows:

\* \* \* \* \*

"The decision of a regional board of review shall be the decision of the commission, except for purposes of appeal under section 4123.519 of the Revised Code, unless the commission upon application of the administrator, the claimant or the employer, made within twenty days after the date of the receipt of the decision of the regional board of review allows an appeal to the commission.

\* \* \* \* \*

(Emphasis added)

In the case State, ex rel. Hatfield v. Industrial Commission, 83 Ohio Law Abs., 114, the Franklin County Court of Appeals had occasion to pass upon an analogous question; the second paragraph

of the syllabus reads as follows:

"When a claim is 'allowed' by the Regional Board of Review, an award, the amount of which is within the sole jurisdiction of the bureau, is to be immediately determined and paid or ordered to be paid by a self-insurer."

(Emphasis added)

In the Hatfield case, supra, the order of the Regional Board of Review was timely appealed to the Industrial Commission. Subsequently, the Industrial Commission affirmed the decision of the Regional Board of Review. In stating the opinion of the court, Judge Skeel makes the following comment at pages 117 and 118:

"The primary issue for determination is whether after the Columbus Board of Review had determined (upon the appeal of the relator) that 'The claim is allowed,' the respondents may be directed by mandamus to complete the order allowing the relator's claim by fixing the compensation to be paid on the award and directing its payment, pending appeal of the relator's right to participate in the Workmen's Compensation Act, as provided by Section 4123.518 R.C., and Section 4123.519 R.C.

\* \* \*

\* \* \*

\* \* \*

"Citation of authorities is unnecessary to support the statement that the Industrial Commission, through its administrator or other reviewing agencies, has the sole power to fix the award to be paid a claimant after the right to participate in the insurance fund has been determined by such administrator or the regional board of review or the commission or the court. In this case the Regional Board of Review found and recorded its finding that: 'The claim is allowed \* \* \*. The claimant is entitled to compensation for the time lost while being treated for her nervous condition \* \* \*.' The sections of the Act, quoted and described above, make no mention of the phrase - 'The claim is allowed.'"

The Court of Appeals has ruled that when a claim is "allowed" by the Regional Board of Review an award is to be immediately determined and paid or ordered to be paid by a self-insurer. I can find no reason to reach a contrary conclusion based on the distinction between a self-insurer (the Hatfield case) and a contributor to the Workmen's Compensation Fund. The Court of Appeals chose to emphasize the word immediately in commenting on when the award is to be determined and paid; therefore, it is my opinion that in the hypothetical situation presented in your first question, it must be answered in the affirmative.

The second question presented calls for an interpretation of Section 4123.519, Revised Code, which provides in part as follows:

\* \* \* \* \*

"\* \* \* The court, or the jury under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in the fund upon the evidence adduced at the hearing of such action.

"The court shall certify its decision to the commission and such certificate shall be entered in the records of the court and appeal from such judgment shall be governed by the law applicable to the appeal of civil actions.

\* \* \* \* \*

"If the finding of the court or the verdict of the jury is in favor of claimant's right to participate in the fund the commission and the administrator shall thereafter proceed in the matter of the claim as if such judgment were the decision of the commission, subject to the power of modification provided by section 4123.52 of the Revised Code.

"An appeal from a decision of the commission in which an award of compensation has been made shall not stay the payment of compensation under such award or payment of compensation for subsequent periods of total disability during the pendency of the appeal. In the event payments are made to a claimant which should not have been made under the decision of the appellate court, the amount thereof shall be charged to the surplus fund under division (B) of section 4123.34 of the Revised Code. In the event the employer is a state risk such amount shall not be charged to the employer's experience. In the event the employer is a self-insurer such amount shall be paid to the self-insurer from said surplus fund. All actions and procedures under this section which are the subject of an appeal to the court of common pleas or the court of appeals shall be preferred over all other civil actions except election causes, irrespective of position on the calendar.

\* \* \* \* \*

(Emphasis added)

It will be noted that in every case the Court's decision is to be certified to the Commission and also entered in the records of the Court, and that an appeal from a judgment is governed by

the law applicable to the appeal of civil actions. Secondly, if the finding of the Court or verdict of the jury is in favor of the claimant's right to participate, the Commission is to proceed as if such judgment were the decision of the Commission.

It is clearly expressed that the judgment in these cases shall be subject to ordinary civil appellate procedure. However, if the commission prior to the completion of appellate proceedings is to consider the Court's decision as its own, the claim could be paid. This in effect would be to effectuate the Common Pleas Court's decision prior to appellate determination. In my opinion such a result was not intended by the legislature.

The statute makes specific reference to the manner of appeal of the judgment and it further specifies which laws govern appeals.

Section 4123.519, Revised Code, expressly provides that "an appeal from a decision of the commission in which an award \* \* \* has been made shall not stay the payment of compensation \* \* \* during the pendency of the appeal." It must be assumed that similar language would have been used had the legislature intended that an appeal from a decision of the court of common pleas would under no circumstances act as a stay. However, the statute specifically provides that appeals from the judgment of a court of common pleas "shall be governed by the law applicable to the appeal of civil actions." It follows that whether a judgment in a given case is stayed on appeal depends on the ordinary rules of appellate procedure.

The Ohio Supreme Court has had occasion to consider Common Pleas Court judgments in workmen's compensation cases. In the case Piascik v. Industrial Commission, 109 Ohio St., 570, Chief Justice Marshall states as follows at page 576:

"\* \* \* \* \*"

"When a judgment is entered upon the verdict it becomes the judgment of the court, in all respects like any other judgment, and if it is rendered against the employer it must be paid by the employer, like any other judgment, and therefore within the meaning and purview of the term 'judgment' as employed in Section 6, Art. IV, of the Constitution. \* \* \*

"\* \* \* \* \*"

The opinion further reads as follows at page 577:

"\* \* \* \* \*"

"Either party \* \* \* shall have the right to prosecute error as in the ordinary civil cases.'

"Those words have been a part of the section ever since the original enactment of that section February 26, 1913, and have been carried through all subsequent amendments thereof.

If any former decision of this court may be construed as throwing any doubt upon the right to prosecute error from the court of common pleas to the Court of Appeals, we do not at this time approve of such construction. On the other hand, scores of important cases have been heard and decided and reported by this court which have been prosecuted on error to the Court of Appeals from a judgment against the Industrial Commission in the court of common pleas, and many additional scores of cases have been heard and decided in the Court of Appeals which have never reached this court.

\* \* \* \* \*

The Court has long been committed to the proposition that workmen's compensation judgments are treated for the purpose of appellate proceedings just as civil judgments.

The second paragraph of the syllabus in the case State, ex rel. Gaddis v. Industrial Commission, 133 Ohio St., 553, reads as follows:

"2. Where judgment upon such finding is entered by the Court of Common Pleas and certified to the Industrial Commission for payment in accordance with law, it is the duty of the commission to recognize it as an award of some disability compensation. Unless such award is vacated or reversed by a court of competent jurisdiction, or its operation suspended by proceedings in appeal the commission must proceed to exercise its discretion by inquiring into the extent of disability and determining the amount of compensation to be paid therefor."

(Emphasis added)

Thus, the Supreme Court again has recognized that appellate proceedings are such as to suspend the Common Pleas judgment under proper circumstances in Workmen's Compensation cases.

Consideration must next be given to the laws applicable to the appeal of civil actions. Section 2505.09, Revised Code, reads as follows:

"No appeal shall operate as a stay of execution, except as provided in sections 2505.11 and 2505.12 of the Revised Code, until a supersedeas bond is executed by the appellant to the adverse party with sufficient surety and in such sum, not less than the amount of the judgment and interest, as is directed by the court making the order which is sought to be superseded or by the court to which the appeal is taken. Such

bond shall be conditioned as provided in section 2505.14 of the Revised Code."

However, Section 2505.12, Revised Code, provides in part as follows:

"The bond mentioned in section 2505.09 of the Revised Code need not be given by:

\* \* \* \* \*

"(B) The state and any political subdivision thereof authorized to sue and be sued;

\* \* \* \* \*

These statutes concerning appeals eliminate the condition precedent that a supersedeas bond be filed by the state or a subdivision of the state authorized to be sued. Certainly, the Administrator of the Bureau of Workmen's Compensation would come within this classification and not be required to execute the bond. Therefore, upon proper compliance with the statute relative to civil appeals, the judgment of the Common Pleas Court is stayed or suspended pending appeal to the Court of Appeals.

In view of the discussion set forth hereinabove, it is my opinion that:

1. A claim for compensation for total disability which has been denied by the Administrator of the Bureau of Workmen's Compensation and upon timely appeal allowed by the Regional Board of Review may be paid pending an appeal to the Industrial Commission.

2. Under the provisions of Section 4123.519, Revised Code, when a claim for death benefits has been disallowed at each administrative level, and the claimant has appealed to a Common Pleas Court, wherein a verdict was returned that the plaintiff could participate in the Workmen's Compensation Fund and thereafter the Defendant-Administrator of the Bureau of Workmen's Compensation appealed to the Court of Appeals, the judgment of the lower court is stayed or suspended if all requirements of the appeal are properly conformed with, and the Industrial Commission cannot order compensation for death benefits paid during the pendency of the appeal to the Court of Appeals.