

OPINIONS OF THE SUPREME COURT OF OHIO

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The State ex rel. Hamlin, Appellee, v. Industrial Commission of Ohio et al., Appellants.

[Cite as State ex rel. Hamlin v. Indus. Comm. (1993), Ohio St.3d .]

Workers' compensation -- Denial of claimant's occupational disease claim -- Death of claimant during pendency of appeal abates action.

(No. 92-2388 -- Submitted September 14, 1993 -- Decided December 8, 1993.)

Appeal from the Court of Appeals for Franklin County, No. 91AP-1133.

On December 20, 1989, a district hearing officer of appellant Industrial Commission of Ohio allowed the occupational disease claim of appellee-claimant, Mary A. Hamlin, finding that she had contracted bilateral carpal tunnel syndrome in the course of her employment with appellant, Inland Division, General Motors Corporation. On appeal, the regional board of review vacated the hearing officer's order and disallowed the claim. On August 12, 1991, commission staff hearing officers affirmed the board. It is undisputed that on September 16, 1991, an unsigned copy of the original signed staff hearing officers' order was mailed to the claimant.

Claimant filed a complaint in mandamus in the Court of Appeals for Franklin County, alleging evidentiary and procedural deficiencies in the staff hearing officers' order. In response, appellants filed alternative motions for dismissal and summary judgment that asserted, among other things, that claimant had an adequate remedy at law by way of an R.C. 4123.519 appeal. The appellate court agreed that an R.C. 4123.519 appeal was available, but found that the sixty-day appeal period had not yet begun to run. The court reasoned that the unsigned copy of the staff hearing officer's order did not constitute notice of the commission's decision and, therefore, its receipt by claimant could not have triggered the appeal period. Finding further that a declaratory judgment action could not compel the commission to provide claimant with a signed copy of the staff hearing officers' order, the court issued a writ of mandamus ordering the commission to "issue

proper notice to relator regarding its decision herein by mailing to relator a signed copy of the final decision issued by the staff hearing officers with respect to relator's right to participate in the state insurance fund."

This cause is now before this court upon an appeal as of right. On March 18, 1993, this court was notified of claimant's death from non-industrial causes.

Sambol & Associates and Marylee Gill Sambol, for appellee.

Lee I. Fisher, Attorney General, Cordelia A. Glenn and Gerald H. Waterman, Assistant Attorneys General, for appellants Industrial Commission and Patrick G. Mihm, Administrator, Bureau of Workers' Compensation.

Thompson, Hine & Flory, Janis B. Rosenthal and Philip B. Cochran, for appellant Inland Division, General Motors Corporation.

Per Curiam. This controversy was generated by the commission's denial of claimant's workers' compensation claim. No one disputes that the commission's decision involves claimant's "right to participate" in the workers' compensation program and is, therefore, appealable. *Afrates v. Lorain* (1992), 63 Ohio St. 3d 22, 584 N.E.2d 1175. Underlying this dispute is a single question: Has claimant's time for appeal to the common pleas court run?

Claimant's death moots that inquiry. Admittedly, the procedural issue before this court was initiated by the employer, and, as a general rule, an employee's death does not destroy the employer's right to appeal a ruling adverse to it. *Seabloom Roofing & Sheet Metal Co. v. Mayfield* (1988), 35 Ohio St.3d 108, 519 N.E. 2d 358. In *Seabloom*, the district hearing officer had allowed the claimant's workers' compensation claim and, during the course of the employer's appeal to the Industrial Commission, claimant died from unrelated causes. We upheld the employer's right to continue its cause of action and preserved the employer's opportunity to prove that claimant's earlier injury was unrelated to his employment.

In the present case, however, the employer's appeal is an outgrowth of the occupational disease claim that claimant sought to keep alive. If claimant were to prevail on the issue before us, it would simply mean that claimant could, if she were alive, appeal the claim's disallowance to common pleas court. This underlying "right to participate" question, however, has been abated by claimant's death. We find the following language persuasive: "Where there is a denial of benefits to an employee and upon appeal * * * he dies before disposition of the action, the action abates by force of the Workmen's Compensation statutes and the general statutes of abatement and revivor, i.e., R.C.2311.21 and 2311.26, are inapplicable." *Ratliff v. Flowers* (1970), 25 Ohio App. 2d 113, 116, 54 O.O.2d 213, 215, 266 N.E.2d 848, 850.

Accordingly, the judgment of the court of appeals is reversed and the writ of mandamus is denied.

Judgment reversed.

Moyer, C.J., A.W. Sweeney, Douglas, Wright, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.