

MEMORANDUM

ATTORNEY-CLIENT PRIVILEGED AND ATTORNEY WORK PRODUCT

TO: Lisa Schaff and Robert Brundrett
FROM: Sue A. Wetzel
DATE: December 27, 2016
RE: *State ex rel. BF Goodrich Co. v. Indus. Comm'n of Ohio*
2016-Ohio-7988

On August 12, 2011 Earles was injured in the course and scope of her employment with BF Goodrich. She returned to work on February 13, 2012 with temporary restrictions regarding climbing, heavy pushing, lifting and carrying, and performing overhead work. However, there were no restrictions on the number of hours she could work.

Earles was placed in BF Goodrich's light duty/restricted employee work program. The terms of the program were determined by a 2007 collective-bargaining agreement ("Agreement") between BF Goodrich and United Auto Workers of America, Local 128. A 2012 amendment to the Agreement provides that employees on light duty outside of their own job classification are not eligible for overtime.

Earles filed an application for wage-loss compensation based on a reduction in her earnings attributed to the lack of overtime in her light-duty position for the periods of February 13, 2012 through March 2, 2012 and March 12, 2012 through March 18, 2012. A District Hearing Officer denied the application. On appeal, a Staff Hearing Officer refused the appeal for lack of jurisdiction after finding that the appeal had not been timely filed. Earles appealed to the Commission where it accepted the appeal and awarded wage-loss compensation. The Commission determined that Earles' physical restrictions resulted from the allowed conditions of her claim, that she had worked overtime prior to her work related injury, and that when she returned to light-duty work, she was not eligible for overtime in that position under the 2012 Agreement.

On appeal to the Tenth District, BF Goodrich argued that there was no evidence that Earles' medical restrictions prevented her from working overtime. In addition, for Earles to be entitled to compensation for working-wage loss, her lack of overtime earnings must be directly caused by physical restrictions that specifically limit overtime work. Because Earles had physical restrictions but no restrictions regarding the amount of hours she could work, her wage loss was the result of the 2012 Agreement's prohibition on overtime, not her physical restrictions.

The Supreme Court did not agree with BF Goodrich's arguments. Instead, the Court held that Earles was eligible for wage-loss compensation because 1) she suffered a reduction in wages during the periods of time at issue, and 2) her placement in the light-duty program was causally related to the allowed conditions of her claims. The Court held that the Commission did not abuse its discretion when it concluded that Earles' wage loss was the direct result of her inability to return to her prior position due to the physical restrictions resulting from the allowed conditions. The Court held that even though Earles was not permitted overtime pay under the Agreement, Earles' enrollment in the restricted duty program was a consequence of her injury and the resulting prohibition on overtime pay was causally linked to her injury.

The Commission distinguished a 2007 Tenth District opinion *Daimler Chrysler v. Industrial Commission* in which an injured mechanic transferred to a different position due to injury and consequently received fewer overtime hours because the position had fewer overtime hours to offer. For Earles, the loss of overtime hours was due to injury resulting in placement in a restricted duty program that prohibits overtime. For the injured mechanic, there is no prohibition against overtime hours caused by his injury. Instead, there are simply fewer of overtime hours to be worked than in the prior position.

Justice O'Donnell dissented, and was joined by Justice Kennedy in stating that "the administrative rule mandates that the denial of overtime and resulting loss of wages must directly result from medical restrictions that prevent the employee from working longer hours, and therefore, wage-loss compensation is not available to an employee who is medically able to work overtime but who is prevented from doing so for nonmedical reasons."

SAW