

# MEMORANDUM

VIA EMAIL (LSCHAFF@OHIOMFG.COM AND RBRUNDRETT@OHIOMFG.COM)

**TO:** Lisa Schaff and Robert Brundrett  
**FROM:** Sue A. Wetzel  
**DATE:** November 29, 2016  
**RE:** Recent Supreme Court Decision:  
*State ex rel. Manpower of Dayton, Inc. v. Indus. Comm., et al.*  
2016 – Ohio -7741

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In a recent decision, the Ohio Supreme Court upheld the lower court's decision denying Appellant, Manpower of Dayton, Inc. ("Manpower"), its request for a writ of mandamus that would compel Appellee, Ohio Industrial Commission ("Commission"), to vacate its award of permanent total disability ("PTD") compensation to Appellee, Inge Fox ("Fox").

In 2006, Fox injured her left arm and hand while working for Manpower when she was sandblasting. The sand went through a hole in the glove into her hand. Her worker's compensation claim was allowed for the following conditions: left wrist tendonitis; left wrist contusion; complex regional pain syndrome/reflex sympathetic dystrophy left upper extremity; complex regional pain syndrome/reflex dystrophy right upper extremity; reflex sympathetic dystrophy of the bilateral lower extremities; pain disorder associated with both psychological factors and general medical condition; and, dysthymic disorder.

In 2013, Fox applied for PTD compensation. In support of her application, she submitted two reports from psychologist and vocational expert Dr. Kenneth J. Manges. Dr. Manges reported that Fox "has marked psychological difficulties" that preclude her from performing even simple routine, repetitive tasks. Dr. James T. Lutz and, vocational expert, Dr. Thomas Heitkemper, examined Fox on behalf of the Commission; both determined that Fox had reached maximum medical improvement and was incapable of engaging in sustained remunerative employment. A Staff Hearing Officer for the Commission granted Fox's application based on the reports of Drs. Manges, Lutz, and Heitkemper and did not consider vocational factors in the analysis.

Manpower filed a Mandamus complaint in the Tenth District Court of Appeals ("Tenth District") claiming that the Commission abused its discretion by not entering an order supported by evidence in the record. Specifically, Manpower contended that the impairment report of Dr. Manges focused on nonmedical factors to support his opinions that Fox was disabled; Dr. Lutz's report was equivocal regarding Fox's physical capabilities; and, that Dr. Heitkemper's report did not constitute, at least, some evidence to support the Commission's decision, violating *Noll*. The

Tenth District held that the evidence in the record supported the Commission's decision to award PTD compensation and denied Manpower's request for a writ of mandamus. Manpower appealed the Tenth District's decision to the Ohio Supreme Court ("Supreme Court")

The Supreme Court agreed with the Tenth District's decision and again denied Manpower's request for a writ of mandamus. The Supreme Court concluded that Dr. Lutz's description of Fox's activities of daily living did not contradict his conclusion that she was unable to work. Dr. Lutz acknowledged that while Fox was capable of performing some light housework, she had constant pain with frequent episodes of severe flare-ups that rendered her functionless.

Additionally, the Supreme Court disagreed with Manpower regarding Dr. Manges' opinion. The Supreme Court found that his report constituted some evidence that Fox was totally disabled as a direct result of her impairments based on psychological conditions.

And finally, the Supreme Court also rejected Manpower's argument challenging the evidentiary value of Dr. Heitkemper's report. Dr. Heitkemper's use of the word "medical" when rendering his opinion did not invalidate his opinion. Ohio law specifically permits psychologists to consider medical evidence in support of an application for PTD compensation.

Thus, the Supreme Court held that the Commission's order granting PTD compensation specifically set forth the medical reports and evidence relied upon, and explained the reasoning for the decision in compliance with Ohio law. Manpower's request for a writ of mandamus was denied.

SAW/