

Important Workers' Comp Decision by the Ohio Supreme Court

On April 15, 2020, the Ohio Supreme Court handed down its opinion in the case of *State ex rel. Neitzelt v. Indus. Comm.*, 2020-Ohio-1453. In its ruling, the Supreme Court reversed the court of appeals' decision. The court of appeals had denied the employer's request to have an additional condition removed from a claim, when subsequent surgery showed that the condition did not exist.

Neitzelt sustained a lumbar strain at work in July 2015. Her claim was later additionally allowed by the Industrial Commission for L4-5 disc herniation, based on an MRI. The employer did not appeal that Commission order to court and the 60 day appeal period lapsed. In 2016, Neitzelt had surgery for the L4-5 herniation; however, no herniation was found during the surgery.

Therefore, shortly thereafter, on October 27, 2017, 16 months after the L4-5 herniation was allowed, the employer requested that the Commission invoke its continuing jurisdiction under R.C. 4123.52 to vacate the herniation. R.C. 4123.52 permits the Commission to modify or change former orders when there is evidence of (1) new and changed circumstances, (2) fraud, (3) clear mistake of fact, (4) clear mistake of law, or (5) error by an inferior tribunal.

The DHO agreed with the employer and disallowed the herniation. The SHO affirmed, indicating that the employer met its burden to prove new and changed circumstances, as well as a clear mistake of fact. However, the court of appeals vacated that order, holding that the Commission abused its discretion in exercising continuing jurisdiction to disallow the herniation. The court concluded that the Commission's continuing jurisdiction ceased after the 60 days to appeal to court had passed.

In reversing the court of appeals' decision, the Supreme Court held that under the plain language of R.C. 4123.52(A), the Commission did not abuse its discretion by invoking continuing jurisdiction, even though the 60 days to appeal to court under R.C. 4123.512(A) had passed.

This is an important decision for employers because it is not unusual for conditions that appear on radiographic imaging such as MRIs to, in fact, not exist. The Supreme Court's decision in *Neitzelt* provides an avenue to correct mistakes by the Commission and have claims be recognized for only the correct conditions, without having to file a common pleas court appeal every time the employer suspects an additional condition does not exist. Employers may now file a motion to have a condition disallowed when it is later established that the condition did not exist.



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