

EMPLOYMENT SERVICES ALERT

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Ohio Supreme Court Rules Concurrent Benefit Awards Not Authorized by Law

By **Jonathan Miller**, Associate

Yesterday, in a 5-2 opinion, the Ohio Supreme Court ruled that the Ohio Industrial Commission had abused its discretion when it awarded concurrent benefits to an injured worker (*State ex rel. Ohio Presbyterian Retirement Servs., Inc. v Indus. Comm., Slip Opinion No. 2016-Ohio-8024*). Henceforth, injured workers may not receive a permanent partial award if they have been granted permanent total disability within the same claim.

In the case, two types of compensation were discussed:

1. Permanent partial disability pursuant to R.C. 4123.57 (A) is compensation award based on a percentage of the injured worker's permanent disability. It is intended to compensate claimants who are, or who can, still work.
2. Conversely, permanent total disability pursuant to R.C. 4123.58 (A) is intended to compensate injured workers who are unable to complete sustained remunerative work for the remainder of their lives. The purpose of R.C. 4123.58 (A) is to compensate that injured worker for the loss of his or her earning capacity for the remainder of their life. While the Ohio Revised Code does authorize the receipt of concurrent benefits under the same claim in certain circumstances (e.g. scheduled loss and permanent total, permanent partial and temporary total), the code is glaringly mute on the subject of permanent total and permanent partial benefits. This created a situation where injured workers and their representatives were filing for permanent partial disability awards subsequent to an award of permanent total disability in the event permanent total was granted on one, but not all of the allowed conditions.

In yesterday's opinion, the court reinforced the legislative intent of these dual provisions indicating that the purpose of permanent total disability compensation is to replace the impairment of earning capacity. Permanent total disability is a lifetime benefit paid to the injured worker as a result of the allowed conditions in the claim. The opinion states: "*It logically follows that a claimant who is receiving permanent-total-disability compensation is ineligible for concurrent permanent partial disability based on a different condition in the same claim.*"

So, what does this mean for employers? Simply put, if an injured worker has been previously granted permanent total disability, he or she may not receive a permanent partial disability award in that claim. Of course, many injured workers have more than one claim and yesterday's ruling does not disturb an injured worker from filing for a permanent partial disability award in any claim where permanent total disability was not awarded. While at face value this remains somewhat paradoxical for employers, the purpose of yesterday's ruling was to eliminate injured workers from receiving the proverbial "two bites of the apple" within the same claim.

If you have any questions about this topic, please contact one of the listed Roetzel attorneys.

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