

EMPLOYMENT SERVICES ALERT

11/13/15

Court of Appeals Upholds Trial Court Decision in *Ferguson v. State of Ohio*

In March of this year, we advised that a Cuyahoga County (Cleveland, Ohio) Judge had ruled Ohio Revised Code 4123.512(D) unconstitutional. This Code section prohibits an injured worker from voluntarily dismissing an employer's court appeal without the consent of the employer. [See, "[Cuyahoga County Judge Strikes Down Workers' Comp Statute as Unconstitutional, Hinders Employers Challenging Claims in Court](#)"]

In *Shannon Ferguson v. State of Ohio*, the employer filed an appeal to the Cuyahoga County Court of Common Pleas regarding the compensability of Ms. Ferguson's workers' compensation claim. Counsel for the plaintiff filed a declaratory judgment action seeking a determination that R.C. 4123.512(D) be held unconstitutional as it conflicted with Ohio Civil Rule 41(A)(1); it violated the Equal Protection Clause; and it deprived the injured worker of due process. The Court of Common Pleas ruled the statute unconstitutional, because, among other things, it conflicted with the Ohio Rules of Civil Procedure, and specifically Rule 41(A), which permits a plaintiff to dismiss their complaint and re-file same within one year of the dismissal, commonly referred to as the savings statute. The State of Ohio appealed this decision.

In a unanimous decision, the Eighth District Court of Appeals upheld the trial court's determination that R.C. 4123.512(D) is unconstitutional. While the State argued that the Civil Rules are inapplicable to workers' compensation proceedings because such proceedings are "special proceedings" under Civil Rule 1(C)(7), the Court of Appeals stated that the Ohio Supreme Court in *Kaiser v. Ameritemps, Inc.*, had previously addressed the issue and held workers' compensation proceedings do not constitute "special proceedings" under the exceptions set forth in Civ.R.1(C)(7). The Court of Appeals also held the statute violated the Equal Protection Clause as well as depriving the injured worker of due process.

As such, the affirmation of this decision by the Eighth District Court of Appeals permits an injured worker to voluntarily dismiss an employer's appeal without the employer's consent. In a prior decision, the court held that employers could rely upon the fact that they could recoup premium or benefits paid while the appeal was dismissed once the allowance was overturned. Though the Court of Appeals has determined otherwise, we still disagree that an employer, either state funded or self-insured, is, or will be, able to necessarily recoup the paid medical and/or disability benefits now that R.C. 4123.512(D) has been declared unconstitutional.

We do expect the State to file an appeal to the Ohio Supreme Court. Until then this decision is binding on the courts within the Eighth District (Cuyahoga County). Additionally, it will be interesting to see if the Bureau adopts any rules that will permit a state funded employer to remain in a Group Rating, or other premium reduction program, pending an employer's court appeal.

We will continue to monitor this important case and provide updates as developments occur. For questions or additional information, please contact one of the following attorneys:

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