

Ohio Supreme Court Denies Permanent Partial Award in Workers' Compensation PTD Claims

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The Ohio Industrial Commission does not have authority to award an injured worker permanent partial disability (PPD) compensation when the worker has been previously found to be permanently and totally disabled (PTD) in the same claim. On December 8, 2016, the Ohio Supreme Court held that an injured worker cannot receive PPD when there had been a prior award of PTD in the same claim.

Claimant Sherry Redwine sustained an industrial injury on August 13, 2003. She filed a workers' compensation claim that was allowed for physical as well as psychological conditions. Redwine applied for PTD compensation and the Industrial Commission determined that, due to impairment caused by the allowed psychological condition in her claim, Redwine could not perform sustained remunerative employment as of July 12, 2010. In August 2013, Redwine applied for PPD compensation, conceding that she was not entitled to PPD for her psychological condition (for which she has been awarded PTD) but she remained eligible for an award based upon the physical conditions allowed in her claim.

The Industrial Commission initially denied Redwine's PPD application based on a lack of statutory authority for concurrent awards of PPD and PTD. The District Hearing Officer noted that the physical and psychological conditions were the result of the same workplace injury and held that caselaw prohibited Redwine from receiving PPD and PTD simultaneously.

However, on reconsideration, an Industrial Commission Staff Hearing Officer concluded that Redwine could receive PPD concurrently if it was based on conditions that were not the basis for the prior finding of PTD.

Redwine's employer appealed, and the Franklin County Court of Appeals concluded that, because the psychological condition formed the basis of the PTD award, Redwine's physical conditions could be the basis for an award of PPD. The Ohio Supreme Court disagreed.

The Ohio Supreme Court began its analysis by discussing the differences between PPD and PTD. The former compensates an injured worker for "the percentage of the employee's permanent disability...based upon that condition of the employee resulting from the injury or occupational disease and causing permanent impairment." The latter compensates an injured worker when "the allowed

conditions either alone or with nonmedical disability factors render the claimant unable to do sustained remunerative work.” The Supreme Court contrasted the purpose of PPD (compensating injured claimants who can still work) with the purpose of PTD (compensating an injured worker who cannot return to work.)

The *Redwine* court discussed two “limited instances” where Ohio’s General Assembly has provided for payment of concurrent awards. However, the court noted that nothing “expressly authorizes concurrent payment of permanent-partial-disability and permanent-total-disability compensation.” Accordingly, the court held that “the conspicuous absence of any reference to concurrent payment of benefits in the statute ‘evinces a legislative intent to prohibit simultaneous receipt of these benefits.’” Finding no statutory basis for concurrent benefits, the court rejected *Redwine*’s call for a “liberal construction” of the PPD and PTD laws in her favor holding that the code does not authorize courts to alter the meaning of unambiguous statutory language.

In practical terms, *Redwine* may provide some injured workers and their attorneys with a strategic choice to make: Pursue permanent total disability compensation and potentially forego an award of permanent partial disability, or postpone an application for permanent total disability while a request for permanent partial disability is processed. As the *Redwine* court makes clear, the injured worker cannot receive both in the same claim.

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