

Depositions

R90-6-6

To Obtain Opinion on Disability

June 13, 1990

WHEREAS, pursuant to Section 4123.09 of the Ohio Revised Code, the Commission may cause deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions in the Court of Common Pleas; and

WHEREAS, Rule 4121-3-09(B)(5)(d) of the Ohio Administrative Code provides procedures for obtaining a deposition of an examining physician; and

WHEREAS, the Supreme Court of Ohio in cases of *State, ex rel. General Motors Corporation v. Industrial Commission* (1976), 47 Ohio St. 2d 244, *Williams v. Moody of Dayton, Inc.* (1982), 1 Ohio St. 3d 238, and *State, ex rel. Firestone Tire and Rubber Company v. Industrial Commission* (1989), 47 Ohio St. 3d 78 rendered opinions on standards to be used by the Industrial Commission in determining whether to permit depositions to be taken of examining and reviewing physicians; and

WHEREAS, the Supreme Court of Ohio in the cases of *State, ex rel. Lawrence v. American Lubricants Company* (1988), 40 Ohio St. 3d 321 and *State, ex rel. Woods v. Industrial Commission* (1990), 50 Ohio St. 3d 227, has stated that the question of disability is for the Commission to determine, that disability is not a proper subject for medical reports and that examining physicians should confine their opinions to the question of medical impairment; and

WHEREAS, the Medical Examination Manual issued by the Industrial Commission of Ohio in July of 1988 provides that where the purpose of an examination is to evaluate an injured worker making application for permanent total disability the evaluating physician is to determine the permanent medical impairment the injured worker has as a result of the allowed conditions and must include an opinion as to whether the medical impairment, by itself, is sufficient to preclude the patient from engaging in sustaining remunerative employment.

THEREFORE BE IT RESOLVED that should a request to take the deposition of an examining or reviewing physician or to serve interrogatories on an examining or reviewing physician selected by the Industrial Commission be filed, such request will not be granted where the purpose of the request is to depose or to serve interrogatories on the Commission physician is to obtain an opinion as to disability.

BE IT FURTHER RESOLVED that should a request to depose a Commission reviewing or examining physician or to serve interrogatories on an examining or reviewing physician selected by the Industrial Commission is permitted and a question is directed to the Commission examining or reviewing physician on the issue of disability, the Commission examining or reviewing physician is not to answer the question posed.