

# COMP CONNECTION

BUGBEE &amp; CONKLE | v16 | MARCH 2016

## Supreme Court to Hear Two Important Cases for Employers

On March 23, 2016, the Supreme Court accepted appeals in [Ferguson v. State of Ohio, 2015-Ohio-4499](#) and [Clendenin v. Girl Scouts of Western Ohio, 2015-Ohio-4506](#). In *Ferguson*, the 8th District Court of Appeals held the provision of R.C. 4123.512(D) which requires claimants to obtain the consent of employers to voluntarily dismiss a complaint in court in an employer appeal was unconstitutional. The State of Ohio appealed because of its interest in preserving the statute. In *Clendenin*, the 1st District Court of Appeals held the Commission's order terminating compensation and benefits under R.C. 4123.54 was an appealable order under R.C. 4123.512. This will mark the Supreme Court's first opportunity to examine the workers' compensation statute since the law was amended by Senate Bill 7 in 2006. We will provide updates on the progress of these cases in future editions of the Comp Connection or through separate posts on our website, LinkedIn, Twitter, or Facebook.

## 9th District Court of Appeals Finds R.C. 4123.512(D) Constitutional

As noted above, the Ohio Supreme Court has accepted the *Ferguson* appeal, which found R.C. 4123.512(D) unconstitutional. Prior to the Court decision to accept the appeal, the 9th District Court of Appeals addressed the constitutionality of R.C. 4123.512(D) in [Dillard v. Automation Tool and Die, Inc., 2016-Ohio-529](#).

In *Dillard*, an employer court appeal, the claimant filed a notice of voluntary dismissal of his complaint under Civ.R 41(A)(1)(a), but did not obtain consent from the employer. The employer moved to strike

the dismissal, arguing R.C. 4123.512(D) prohibits voluntary dismissal without the employer's consent. The trial court agreed, granting the employer's motion.

The claimant appealed the trial court's judgment entry to the court of appeals, arguing among other things, that R.C. 4123.512(D) is unconstitutional because it violates the doctrine of separation of powers.

Workers' Compensation cases are special statutory proceedings, which are exempt from the Civil Rules.

The claimant argued that under this doctrine, the General Assembly lacks authority to modify the Civil Rules, which rules are exclusively in the purview of the Ohio Supreme Court. The court of appeals rejected the claimant's appeal because the trial court's judgment entry was not a final appealable order. Nevertheless, the court discussed the claimant's constitutional argument at length. The court wrote that workers' compensation cases are special statutory proceedings, which are exempt from the Civil Rules. Therefore, the General Assembly was free to modify the application of the Civil Rules to workers' compensation appeals.

The claimant appealed *Dillard* to the Ohio Supreme Court on March 23, 2016, the very same day the court accepted jurisdiction over the *Ferguson* appeal. Although the *Dillard* court discussed the constitutionality of R.C. 4123.512(D), such discussion was not central to the court's decision. It is unlikely the Supreme Court will accept the *Dillard* appeal. Nevertheless, the reasoning employed by the court of appeals provides a compelling argument the State may adopt when challenging the *Ferguson* decision.

## Don't Miss the Upcoming Webinars

Obtaining a favorable independent medical evaluation (IME) is important to defending a workers' compensation claim. But, choosing the right doctor, asking the right questions, and obtaining the right medical evidence is critical to the outcome of the IME. On April 6, 2016 from 1:00 - 1:30, Rob Solt will present a webinar on IME Considerations. Webinar registration is filling up, so [register today](#). You can submit questions for Mr. Solt to consider in advance of the webinar by clicking [here](#).

Two weeks later, on April 20, 2016 at 2:00 p.m., Tybo Alan Wilhelms will dedicate a half hour to answering your questions on terminations, the FMLA, and other employment law issues. You can submit questions for Mr. Wilhelms to consider in advance by clicking [here](#).

[Register now!](#)

## Voluntary Abandonment Doctrine Applies Even When Conduct Not Willful, Court of Appeals Finds

In [\*Barnes v. Indus. Comm., 2016-Ohio-824\*](#), the claimant, who was a transportation aide for Head Start, sustained an injury to her low back. After a period of convalescence, she returned to work. One year after her injury, Head Start terminated her for leaving a child unattended outside a classroom, a violation of the school's child safety policy. The claimant unsuccessfully filed a grievance with the union, but, received unemployment benefits. Later, she underwent surgery for her low back and filed a motion for temporary total disability compensation. The Commission denied the motion on the ground she voluntarily aban-

doned her job by violating the company's written work rule, despite the fact that the claimant alleged she inadvertently broke the work rule.

The claimant filed a mandamus action in the 10th District Court of Appeals, arguing she should not be held accountable for an inadvertent act, even though it was a violation of the policy. The court's magistrate and the court of appeals rejected this argument. The court reasoned the claimant must be presumed to intend the natural consequences of her actions. Although her actions may not have been willful, they rose to the level of indifference and disregard for workplace rules and policies. The court found that a violation of a work rule or policy does not necessarily need to be willful or deliberate. It merely needs to be a voluntary act that the employee knew or should have known may lead to termination of employment.

If you have any questions concerning any of the topics in this issue of *Comp Connection*, please contact a member of our Workers' Compensation practice group at (419) 244-6788.

COMP CONNECTION is not intended to provide legal advice, but is intended as a service to the clients of Bugbee & Conkle, LLP and to alert them to recent developments affecting the employment relationship, with a particular emphasis on the perspective of the employer.

[www.bugbeelawyers.com](http://www.bugbeelawyers.com)