



Mar 14, 2024

Categories:
[Publications](#)

Authors:
[Julie M. Bruns](#)
[Joanne Wissman Glass](#)
[Katherine I. Reid](#)
[Noel C. Shepard](#)

TTD Tango: Ohio Supreme Court Swings in Employers' Favor!

On March 5, the Ohio Supreme Court issued a decision that permits employers to request termination of temporary total disability (TTD) compensation, effective from the date of an independent medical examination in which a doctor opines a maximum medical improvement^[1] (MMI) finding. *State ex rel. Dillon v. Indus. Comm.*, Slip Op. No. 2024-Ohio-744. The court's ruling also allows employers to seek reimbursement for any TTD compensation paid between the date of the MMI opinion and the date of the Ohio Industrial Commission hearing. The Ohio Supreme Court's *Dillon* decision represents a departure from decades of case law, which had previously delayed the termination date of TTD compensation until the hearing date, as established in *State ex rel. Russell v. Indus. Comm.* ^[2] Moving forward, this shift will undoubtedly have implications not only for injured workers and employers but also for the administrative authority within Ohio's workers' compensation system.

Background

In *Dillon*, the injured worker sustained injuries to her lower back while pushing carts at work. In April 2019, the Ohio Bureau of Workers' Compensation ("BWC") issued an order allowing the claim for a lumbar strain/sprain, and the employer appealed. At that time, the injured worker filed an application for TTD compensation. The injured worker's treating physician also submitted a request to expand the claim, seeking allowance for lumbar disc displacement conditions and sciatica. In June 2019, a district hearing officer issued an order that (1) allowed the claim for a lumbar strain/sprain, (2) disallowed the additionally requested lumbar conditions, (3) required payment of ongoing TTD compensation upon submission of supporting disability documentation, and (4) indicated the injured worker had not yet reached MMI for the allowed conditions. The injured worker appealed the disallowance of the additional conditions.

On August 8, 2019, the employer obtained an independent medical examination, at which time the examining physician issued a report, finding the injured worker had reached MMI for the allowed conditions. In October 2019, a staff hearing officer ordered, among other findings, that the injured worker had reached MMI on August 8, 2019, the date of the employer's independent medical examination. The hearing officer, therefore, terminated TTD compensation as of that date. Following this decision, the BWC sought recoupment of TTD benefits paid to the injured worker after the August 8, 2019, MMI determination. Subsequently, the injured worker appealed the overpayment order issued by the BWC, and the Ohio Industrial Commission ultimately deemed the recoupment of benefits appropriate.

The injured worker filed a writ of mandamus in the Tenth District Court of Appeals, requesting the court to compel the Industrial Commission to vacate the order declaring an overpayment of TTD compensation and to issue a new order dissolving the overpayment. The injured worker argued that recoupment was not appropriate, relying on *State ex rel. Russell v. Indus. Comm.*, 82 Ohio St.3d 516, 696 N.E.2d 1069 (1998). In *Russell*, the Ohio Supreme Court held that the appropriate date on which to terminate disputed TTD compensation, based on MMI, is the date of the hearing. Furthermore, the *Russell* court concluded that the Ohio Industrial Commission may not declare an overpayment for payments received by the injured worker before that date. In denying the injured worker's writ, the Tenth District held that *Russell* was inapplicable in this instance as the injured worker's request for benefits was for an *initial* period of TTD compensation, which was distinguishable from the facts in *Russell* that involved the termination of an *established* TTD compensation award.

Dillon's New Standard for Overpayment of TTD Compensation

Upon appeal, the Ohio Supreme Court upheld the Tenth District's judgment in denying the injured worker's writ. However, rather than merely distinguishing the precedent set by *Russell*, the court took a more decisive step. It overruled the *Russell* decision by emphasizing

the plain language of both R.C. 4123.51(K) and R.C. 4123.56(A). The court found that this plain language contradicted the reasoning in *Russell*. R.C. 4123.56(A), which provides that “payment shall not be made for the period when ... the employee has reached the maximum medical improvement.” The court reasoned that if an injured worker receives TTD compensation after attaining MMI status, then the injured worker has received benefits to which he or she is not entitled under R.C. 4123.56(A), and, as such, those benefits may be recouped as an overpayment pursuant to R.C. 4123.51(K).

Impact of *Dillon* for Ohio Employers

The Ohio Supreme Court’s ruling in *Dillon* clarified the application of relevant statutes and affirmed the Industrial Commission’s determination regarding the overpayment of TTD compensation. Accordingly, employers now can argue for termination of TTD compensation at an earlier stage, as of the date of the examination finding in favor of MMI, instead of waiting for the hearing date to terminate compensation. Given this decision, injured workers and their representatives may challenge decisions more frequently, resulting in increased appeals and litigation that may prolong the resolution of claims. This ruling may also prompt the Ohio Legislature to revisit the relevant statutes and assess whether the Supreme Court’s interpretation aligns with legislative intent and assess any unintended consequences that may arise. Balancing administrative efficiency with fairness to injured workers will be a key consideration for policymakers.

Lastly, the *Dillon* decision specifically impacts IC Resolution 98-1-04 and Memo D2 of *Adjudications Before the Ohio Industrial Commission* (Hearing Officer Manual), as both relate to Termination Date-MMI and Jurisdiction over the Issue of Maximum Medical Improvement, respectively. This manual provides guidance to hearing officers on conducting hearings, addressing issues, and ensuring fairness. To promote uniformity in case adjudications, the manual’s policies and resources will need revision or clarification to align with the Ohio Supreme Court’s recent ruling.

Frost Brown Todd will keep you updated on any edits to the IC Resolutions and Hearing Officer Manual based on the *Dillon* decision. If you have any questions about this decision or other Ohio workers' compensation issues, please contact the authors or any attorney in Frost Brown Todd's [Workers' Compensation](#) group.

[1] OAC 4121-3-32(A)(1) defines maximum medical improvement as a "treatment plateau (static or well-stabilized) at which no fundamental functional or physiological change can be expected within reasonable medical probability in spite of continuing medical or rehabilitative procedures. An injured worker may need supportive treatment to maintain this level of function."

[2] See *State ex rel. Russell v. Indus. Comm.*, 82 Ohio St.3d 516, 517, 696 N.E.2d 1069 (1998).

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.