



HARRIS DOWELL FISHER & YOUNG L.C.

Management Labor-Employment Law/
Workers Compensation Defense

THE MISSOURI INDUSTRIAL COMMISSION – WHY IT MATTERS



By J. Bradley Young

What is the Industrial Commission

- 3 Person Panel: Employer Rep, Employee Rep, and the “neutral” Chairman of the Commission.
- Why, historically, the Chairman is rarely neutral.
- Elections have consequences – even in Labor Law.



Recent Changes at the Industrial Commission

- Reid Forrester was appointed to the Employer's Rep position in May, filling a seat that had been empty for more than 18 months.
- Why is an empty Employer Rep seat significant?



Recent Changes at the Industrial Commission

- At the end of August, Gov. Mike Parson appointed Robert Cornejo to a six (6) year term as the Chairman of the Industrial Commission.
- Chairman Larson was continuing to serve even though his term ended at the end of June.



Recent Changes at the Industrial Commission

- **Current Chairman Cornejo in an attorney, and a former Republican State Representative from St. Peters.**
- **Previously worked for Senator Jim Talent.**
- **He has only decided 1 published decision to-date.**



What Does The Industrial Commission Actually Do?

- 1st level of appeal for all unemployment compensation cases and workers compensation cases.
- After a decision from an Administrative Law Judge, the case can then be appealed to the Industrial Commission.
- Briefs are filed and oral arguments are held to decide workers compensation claims.



Why Is The Industrial Commission So Important?

- First, the Commission has what is called “de novo” authority over any appealed claim. This means that the Industrial Commission has complete authority to review the decision of an administrative law judge in any workers compensation claim.



Why Is The Industrial Commission So Important?

- Where appropriate, the Commission determines:
- The credibility of witnesses and the weight of their testimony
- Resolves any conflicts in the evidence
- Reaches its own conclusions on factual issues independent of the administrative law judge.



Why Is The Industrial Commission So Important?

- Upon its own motion or upon the application of any party in interest, the Commission may end, diminish, or increase the compensation awarded by the administrative law judge in the Commission's final award.

- So, how limited is the Industrial Commission in deciding ANY appealed workers compensation claim?



Why Is The Industrial Commission So Important?

- Second, the Court of Appeals has only limited power to review decisions from the Industrial Commission. *“We may only modify, reverse, remand for rehearing, or set aside the award of the Commission if we determine: 1) the Commission acted without or in excess of its powers; 2) the award was procured by fraud; 3) the facts found by the Commission do not support the award; or 4) there was insufficient competent evidence to warrant making the award.” (Missouri Court of Appeals)*



Why Is The Industrial Commission So Important?

- Unlike the Industrial Commission, which has “de novo” (virtually unlimited) power to decide a case, the Court of Appeals only has LIMITED jurisdiction.
- If the Court of Appeals only has a limited ability to overturn a decision from the Industrial Commission, what does that tell you about the ability of the Commission to “make law”?



Why Is The Industrial Commission So Important?

- Third, the most vital authority of the Industrial Commission is to determine the facts of a claim and the credibility of the witnesses. *“We (the Court of Appeals) must defer to the findings of fact, the credibility of the witnesses, and the weight given to conflicting evidence as determined by the Commission.”*
Gleason, 455 S.W.3d at 497.



Why Is The Industrial Commission So Important?

- *“In the absence of fraud, the commission's findings of fact shall be conclusive and binding.”* Section 287.495.1.



Why Is The Industrial Commission So Important?

- In fact, all appellate courts in Missouri, including the Missouri Supreme Court, must “*defer to the commission's findings on issues of fact, the credibility of the witnesses, and the weight given to conflicting evidence.*” Greer v. Sysco Food Service, 475 S.W.3d at 664 (Mo SupCt 2015).



Why Is The Industrial Commission So Important?

- What is so significant about the Court of Appeals being limited in what they can do?
- How does this limitation affect the ability of the Court of Appeals to reverse decisions based on the credibility of the witnesses? (pigeon case)



Why Is The Industrial Commission So Important?

- If the Industrial Commission determines that the claimant is NOT credible and is lying, can the Court of Appeals reverse that conclusion?
- If the Industrial Commission determines that the orthopedic surgeon hired by the Employer is LESS credible than the chiropractor hired by the Employee, can the Court of Appeals reverse that conclusion?



Why Is The Industrial Commission So Important?

- The Industrial Commission is important enough to justify the time I have spent over the past 2 years recruiting qualified candidates for all 3 positions on the Commission.
- Chairman Cornejo will be the Chairman of the Commission for the next 6 years, regardless of who the Governor may be.





HARRIS DOWELL FISHER & YOUNG L.C.

Management Labor-Employment Law/
Workers Compensation Defense

Questions?

J. Bradley Young

(636) 532-0300

Cell: (314) 406-3095

Byoung@harrisdowell.com

