IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STEVE A. VAUGHN,	:	APPEAL NO. C-150102 TRIAL NO. A-1405979
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY.*
STEPHEN BUEHRER, ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Steve A. Vaughn appeals the Hamilton County Common Pleas Court's dismissal for lack of subject matter jurisdiction of his appeal from the decision of the Industrial Commission of Ohio declining review of the denial of his request for authorization of chiropractic treatments.

Vaughn was injured during his employment on November 20, 2002. He filed a claim with the Bureau of Workers' Compensation, and the claim was allowed for sprain lumbrosacal, disc displacement L3-L4 and facet arthropathy at L3-L4. In December 2013, Vaughn's physician filed a C-9 seeking authorization for 20 chiropractic treatments Vaughn had received from May 20 through November 25,

2013, and for chiropractic treatments received one time a week for a six-week period from December 2, 2013, through January 11, 2014.

Both the District Hearing Officer ("DHO") and the Staff Hearing Officer ("SHO") denied Vaughn's requests for authorization of treatment. In his order, the SHO stated that the 26 requested chiropractic treatments from May 26, 2013, through January 11, 2014, were not medically reasonable or appropriate for the treatment of the allowed conditions. Thus, the SHO concluded that Vaughn's claim was not authorized for the requested 26 chiropractic treatments during this period. The SHO further stated that the order was based upon the March 21, 2014, report of Dr. Steven Wunder. The Industrial Commission declined further review. Vaughn appealed the order to the common pleas court. The common pleas court, upon the bureau's motion, dismissed Vaughn's appeal for lack of jurisdiction.

In a single assignment of error, Vaughn argues that the trial court erred in dismissing his appeal. We disagree.

R.C. 4123.512 provides that a claimant or an employer "may appeal an order of the industrial commission * * * in any injury or occupational disease case, other than a decision as to the extent of disability, to the court of common pleas * * *." The Ohio Supreme Court has interpreted the statute narrowly, by holding that the only decisions of the commission that may be appealed are those that are final and that resolve a claimant's right to participate or to continue to participate in the State Insurance Fund. *Felty v. AT&T Technologies, Inc.*, 65 Ohio St.3d 234, 236, 602 N.E.2d 1141 (1992).

Vaughn concedes that an order denying further medical or chiropractic treatment is an "extent of disability" decision that is not an appealable order under

R.C. 4123.512, because it concerns a benefit owed to him resulting from his original participation in the workers' compensation system. *See Plashek v. Ryan*, 4th Dist. Scioto No. 08CA3230, 2008-Ohio-5973, ¶ 14. Nonetheless, he asserts that the SHO order denying authorization for his chiropractic treatments relied on Dr. Wunder's report, and that certain statements in the report could be read as affecting his continued ability to participate in the workers' compensation system. Thus, Vaughn insists that we should find the order to be ambiguous and remand the matter to the Industrial Commission for clarification.

As support for his position, Vaughn relies on this court's prior opinion in *Maloney v. Diversey*, 1st Dist. Hamilton No. C-030243, 2003-Ohio-6506. *Maloney,* however, is distinguishable. In *Maloney*, an employee had sought authorization for the payment of chiropractic bills under two claims. The DHO, relying upon two medical opinions, had denied the treatment on the basis of an intervening cause, by expressly stating in his order "that Maloney's need for chiropractic care [was] due to an intervening injury–his stocker job at Kroger." *Id.* at ¶ 6, 7 and 9. The SHO had then vacated the DHO's order and, without mentioning the intervening cause, denied Maloney's request on the basis of the medical opinions. *Id.* at ¶ 6-7. We held that, to the extent that the hearing officers had relied upon the medical reports without clearly stating the nature of that intervening cause the orders were ambiguous on their face and prohibited any judicial determination under R.C. 4123.512, as to whether the orders had merely addressed the extent of his disability or had affected his continued right to participate in the workers' compensation system. *Id.* at ¶ 10. As a result, we remanded the matter to the Industrial Commission for clarification of its findings in the orders. *Id.* at ¶ 11.

Here, however, there is no ambiguity on the face of the SHO's order. The SHO's order merely denied Vaughn's request for authorization for chiropractic treatment for a specific period of time. The order does not mention any intervening incident as being the basis for the denial of treatment. Nor does it permanently foreclose Vaughn's ability to participate in the workers' compensation system. Because the order Vaughn has appealed relates only to the extent of his disability, the common pleas court did not have jurisdiction pursuant to R.C. 4123.512 to entertain his appeal and thus properly dismissed it. We, therefore, overrule Vaughn's sole assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., MOCK and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on December 23, 2015

per order of the court _____.
Presiding Judge