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State ex rel. Ryan Alternative Staffing, Inc. v. Moss 2021-Ohio-3539

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Ohio Northern University Law Review

Student Case Notes

State ex rel. Ryan Alternative Staffing, Inc. v. Moss 2021-Ohio-3539

I. INTRODUCTION

Ohio workers' compensation laws provide protection to employees for injuries, disability, or death sustained in the course of their employment.¹ Temporary total disability ("TTD") compensation is available to workers who are temporarily unable to return to their former employment due to a work-related injury; however, the Ohio Revised Code prohibits payment of TTD compensation to injured workers under certain circumstances, including when "work within the physical capabilities of the employee is made available by the employer or another employer."² Thus, if the employer makes a good faith offer of suitable alternative employment within the employee's capabilities and within a reasonable proximity of the injured worker's residence, the injured worker is not entitled to receive TTD compensation.³

In *State ex rel. Ryan Alternative Staffing, Inc. v. Moss*, the Supreme Court of Ohio clarified the standard required for a good faith job offer and reaffirmed that if the injured worker refuses to accept a good faith offer of a suitable alternative employment, she is barred from receiving TTD

1. "Except as otherwise provided in this division or divisions (I) and (K) of this section, every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever the injury has occurred or occupational disease has been contracted, is entitled to receive the compensation for loss sustained on account of the injury, occupational disease, or death, and the medical, nurse, and hospital services and medicines, and the amount of funeral expenses in case of death, as are provided by this chapter." OHIO REV. CODE ANN. § 4123.54(A) (2019).

2. § 4123.56(A).

3. OHIO ADMIN. CODE 4121-3-32(A) (2019).

compensation, even if she turned down the offer in good faith or for a justifiable reason.⁴

II. FACTUAL AND PROCEDURAL BACKGROUND

Bridget M. Moss (“Moss”) suffered a work-related knee sprain injury while she was employed in a second shift position by Ryan Alternative Staffing, Inc. (“Ryan”), a temporary staffing agency.⁵ When Moss returned to work with medical restrictions, she was unable to continue working as a machinist at Ryan’s client, Ram Plastics, and she requested TTD compensation.⁶ Ryan offered Moss alternative employment in its office, which complied with Moss’s medical restrictions; however, it was a day-shift position.⁷ Moss refused to accept Ryan’s verbal job offer as she was unable to work the day shift, because she provided care for her disabled granddaughter during the day while her daughter was at work.⁸ Consequently, Ryan provided Moss with a written job offer specifying the terms of the offer and noting that Moss refused to accept it, and denied Moss’s TTD compensation request.⁹

Moss filed a motion asking the Industrial Commission of Ohio (“Commission”) to approve her TTD compensation request, contending that Ryan did not make the job offer in good faith because it was aware that Moss was unable to accept the day shift position.¹⁰ Ryan, in response, argued that it did not knowingly offer Moss a position that she could not take; on the contrary, it was unable to offer Moss a different position because its client did not have any open second shift positions available with Moss’s restrictions, and Ryan’s office was open only during business hours.¹¹ A district hearing officer (“DHO”) denied Moss’s TTD compensation request, finding that the job offer was made in good faith, as it “is not deemed to have been ‘consciously crafted’ to present the Injured Worker with a position which she could not accept.”¹² On appeal, “a staff hearing officer (“SHO”) vacated the DHO’s order and granted Moss’s request for TTD compensation.¹³ The SHO reasoned that while Ryan made

4. State ex rel. Ryan Alternative Staffing, Inc. v. Moss, Slip Opinion No. 2021-Ohio-3539 at ¶ 14 (2021).

5. *Id.* at ¶ 3.

6. *Id.*; State ex rel. Ryan Alternative Staffing, Inc. v. Moss, Slip Opinion No. 2020-Ohio-5197 at ¶ 11 (Ohio Ct. App. Nov. 5, 2020).

7. *Ryan*, 2021-Ohio-3539 at ¶ 3.

8. *Id.*

9. *Id.*; *Ryan*, 2020-Ohio-5197 at ¶¶ 14-15.

10. *Ryan*, 2021-Ohio-3539 at ¶ 4.

11. *Ryan*, 2020-Ohio-5197 at ¶¶ 17-18.

12. *Id.* at ¶ 19; *Ryan*, 2021-Ohio-3539 at ¶ 4.

13. *Ryan*, 2021-Ohio-3539 at ¶ 5.

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a good faith job offer, Moss also refused the offer in good faith; thus, she was entitled to TTD compensation.¹⁴ Ryan appealed, but the Commission refused to hear the appeal, and it also denied Ryan's request for reconsideration.¹⁵

Ryan filed an action seeking a writ of mandamus ordering the Commission to vacate the order granting TTD compensation to Moss.¹⁶ The magistrate found that Moss was eligible for TTD compensation and recommended that the court deny Ryan's request for the writ of mandamus.¹⁷ Nevertheless, the Tenth District Court of Appeals sustained Ryan's objection and granted the writ, holding that TTD compensation should be denied, because the magistrate "properly determined the facts," but she erred in applying the law when she considered not only the good faith job offer but also Moss's good faith in rejecting the offer.¹⁸ The Commission appealed to the Supreme Court of Ohio.¹⁹

III. THE COURT'S DECISION AND RATIONALE

A. Majority Opinion

On appeal, the Supreme Court of Ohio vacated the judgment of the Tenth District and granted a limited writ, ordering the Commission to reconsider whether Ryan made a good faith offer of suitable alternative employment according to the standards provided by the Court.²⁰

First, the Court addressed the standard for a writ of mandamus, under which "Ryan must show that it has a clear legal right to the relief requested, that the commission has a clear legal duty to provide it, and that Ryan lack an adequate remedy in the ordinary course of the law."²¹

Next, the Court turned to the question of the "Good-Faith Offer of Suitable Alternative Employment."²² The Court noted that under Ohio law, the injured worker is not entitled to TTD compensation "when work within the physical capabilities of the employee is made available by the employer."²³ The Court further explained that this requirement is satisfied when the employer makes a "job offer," which "means a proposal, made in good faith, of suitable employment within a reasonable proximity of the

14. *Id.*

15. *Id.*

16. *Id.* at ¶ 6.

17. *Id.* See *Ryan*, 2020-Ohio-5197 at ¶ 36.

18. *Ryan*, 2021-Ohio-3539 at ¶ 8.

19. *Id.* at ¶ 6.

20. *Id.* at ¶ 2.

21. *Id.* at ¶ 7 (citing *State ex rel. Omni Manor, Inc. v. Indus. Comm.*, 165 N.E.3d 273 (2020)).

22. *Id.* at ¶ 8.

23. *Ryan*, 2021-Ohio-3539 at ¶ 8 (citing § 4123.56(A)).

injured worker's residence," and suitable employments requires that the work is "within the employee's physical capabilities."²⁴ The Court determined that it was undisputed that Ryan's job offer to Moss constituted an offer of suitable employment and the work was within a reasonable proximity of her residence as well, and the Commission also found that Ryan made the offer in good faith.²⁵ The Court, however, had to decide whether an injured worker can be awarded TTD compensation if she, acting in good faith, refuses her employer's good faith job offer of suitable alternative employment.²⁶ The Court found that based on the statute, the answer to this question was no, and the Commission does not have the discretion to grant TTD compensation under these circumstances.²⁷ Thus, the Court ultimately held that if the injured worker rejects a good faith offer that complies with the statutory requirements, even if she does so in good faith due to "familial obligations," she is not entitled to TTD compensation, as the existence of a good faith offer depends only on the employer's good faith in making the offer, not the injured worker's good faith in rejecting it.²⁸

The Court faced a similar issue in *State ex rel. Ellis Super Valu, Inc. v. Indus. Comm.*, discussing whether an injured worker was barred from receiving TTD compensation after refusing a light-duty job offer due to her inability to accept the position because of her familial obligations.²⁹ In *Ellis*, the employee, Susan B. Hudgel, was unable to return to her previous day-shift position, and her employer, Ellis Super Valu, Inc. ("ESV"), offered her a light-duty position within her medical restrictions on the night shift, which Hudgel refused to accept, because she could not work the night since it would have required her to leave her children alone at night while her husband was also at work.³⁰ The DHO denied TTD compensation and found that Hudgel's refusal of the offer constituted "voluntary abandonment of employment," but the SHO disagreed with the findings of voluntary abandonment and held "that Hudgel had a valid reason for refusal," awarding her TTD compensation.³¹ The employer filed a writ of mandamus action, and the Tenth District denied the writ.³² On appeal, the Court clarified that *Ellis* was not a case of voluntary abandonment, instead, it raised a different issue, namely, "refusal of an offer of suitable alternative

24. *Id.* (citing OHIO ADMIN. CODE 4121-3-32(A)(6), 4121-3-32(A)(3)).

25. *Id.* at ¶ 9.

26. *Id.* at ¶ 10.

27. *Id.*

28. *Ryan*, 2021-Ohio-3539 at ¶¶ 14-15.

29. *State ex rel. Ellis Super Valu, Inc. v. Indus. Comm.*, 874 N.E.2d 780 (2007).

30. *Ryan*, 2021-Ohio-3539 at ¶ 11 (citing *Ellis*, 874 N.E.2d at 781).

31. *Id.* See *Ellis*, 874 N.E.2d at 781.

32. *Ryan*, 2021-Ohio-3539 at ¶ 11; see *Ellis*, 874 N.E.2d at 781.

employment,” which is another possible defense to an injured worker’s request for TTD compensation.³³ The Court considered why Hudgel refused the offer, including reasons such as “employment suitability, the legitimacy of the job offer, or whether the position was offered in good faith.”³⁴ The Court ultimately held:

Whether Hudgel exercised good faith in refusing the job offer does not answer whether ESV exercised good faith in extending it, which must be addressed. If ESV consciously crafted a job offer with work shifts that it knew Hudgel could not cover—as Hudgel alleges and ESV denies—then good faith may not exist. That, however, is a factual determination for the commission.³⁵

While the parties debated whether the employer made the job offer in good faith, the Commission had not addressed that issue; therefore, the Court reversed the judgment of the Tenth District, granted the writ, and returned the case to the Commission for further consideration.³⁶

In the present case, the Court found that, based on *Ellis*, the Commission incorrectly concluded that the Employer’s “good faith offer is only one of the several factors” that should be considered, and erred in finding that Moss was permitted to receive TTD compensation because she rejected the offer in good faith.³⁷ The Court clarified the required standard by holding that the statute does not “permit[] an injured worker to receive TTD compensation after refusing a good-faith offer of suitable alternative employment” regardless of whether the injured worker exercised good in refusing such offer, and the Court’s ruling in *Ellis* “did not create an exception” under this rule for situations where an employee who refuses a good-faith job offer due to familial obligations can receive TTD compensation.³⁸ In addition, the Court emphasized that Ryan knowledge of Moss’s familial obligations during the day-shift is only relevant for the limited purpose of determining whether Ryan made the job offer in good faith, which is a factual determination that should be made by the Commission.³⁹

Finally, the Court discussed whether the case should be returned to the Commission instead of ordering the Commission to deny compensation.⁴⁰

33. *Ryan*, 2021-Ohio-3539 at ¶ 12 (citing *Ellis*, 874 N.E.2d at 781). See § 4123.56(A).

34. *Ryan*, 2021-Ohio-3539 at ¶ 12 (citing *Ellis*, 874 N.E.2d at 782).

35. *Id.* at ¶ 12 (citing *Ellis*, 874 N.E.2d at 782).

36. *Id.* (citing *Ellis*, 874 N.E.2d at 782).

37. *Id.* at ¶ 13.

38. *Id.* at ¶ 14.

39. *Ryan*, 2021-Ohio-3539 at ¶¶ 15-16.

40. *Id.* at ¶ 16.

The Court concluded that both the DHO's and the SHO's orders showed confusion regarding the correct standard required to establish good faith.⁴¹ First, the Court found that the DHO's finding of good faith based on the incorrect belief that Ryan could only act in bad faith if it "consciously crafted a position it knew Moss could not accept."⁴² The Court clarified that while "conscious crafting" of a position the employer knows the injured worker cannot accept is one possible way of establishing bad faith, it is not the only one; thus, the lack of such circumstance does not automatically mean that the offer was made in good faith.⁴³ Second, the SHO also found that Ryan made the job offer in good faith because the position offered to Moss was the only one available within her medical restriction; but the Court found that it is not necessarily determinative of the issue of good faith either.⁴⁴ Moreover, the Court held that the SHO incorrectly concluded that because Moss refused the job offer in good faith, she was entitled to TTD compensation, in spite of also having found that Ryan made the offer in good faith.⁴⁵ Thus, the Court vacated the judgment of the Tenth District, issued a limited writ, and ordered the Commission to reconsider the case according to the standard provided.⁴⁶

B. *Dissenting Opinion*

Justice Kennedy dissented, joined by Justice DeWine.⁴⁷ Justice Kennedy would have affirmed the judgment of the Tenth District granting the writ and ordering the Commission to vacate its order and deny TTD compensation.⁴⁸ First, the dissent argued that Moss was not entitled to TTD Compensation because her loss of wages were caused by her rejection of Ryan's good faith job offer, which was unrelated to her work injury.⁴⁹ This argument is based on the premise that the purpose of TTD compensation is to offer compensation to the injured worker for loss sustained in the course of a work-related injury; therefore, a "causal relationship must exist" between the loss of wages and the injury.⁵⁰ However, the causal connection is severed and the injured worker is not entitled to TTD compensation when

41. *Id.* at ¶ 17.

42. *Id.* at ¶¶ 18-19. *See Ellis*, 874 N.E.2d at 782 (finding that if the employer "consciously crafted a job offer with work shifts that it knew [the employee] could not cover . . . then good faith may not exist.").

43. *Ryan*, 2021-Ohio-3539 at ¶ 19.

44. *Id.* at ¶ 20.

45. *Id.*

46. *Id.* at ¶ 21.

47. *Id.* at ¶ 23 (Kennedy, J., dissenting).

48. *Ryan*, 2021-Ohio-3539 at ¶ 23.

49. *Id.*

50. *Id.* at ¶ 24. *See* § 4123.54(A).

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the reason for loss of wages is not a work-related injury, but some other cause, for example “when work within the physical capabilities of the employee is made available by the employer,” and the injured worker declines the employer’s good faith job offer.⁵¹ Thus, Moss’s rejection of the good faith job offer severed the causal connection and she should not have been awarded TTD compensation.⁵²

The dissent emphasized that the majority’s decision vacating the lower court’s judgment is based on arguments that the parties did not make and they are contrary to the Commission’s findings.⁵³ The dissent disagreed with the majority’s assertion that the Commission was confused regarding the applicable standard of good faith.⁵⁴ According to the majority, the Commission determined that Ryan could have not acted in bad faith because it had not consciously crafted a job offer that Moss could not take; however, as there are other possible bases for establishing bad faith, it is not dispositive of the issue of good faith.⁵⁵ The dissent, on the other hand, argued that the parties never raised other possible issues regarding Ryan’s good faith; Moss’s only argument before the Commission was that Ryan offered the night shift position to her knowing that she cannot accept it.⁵⁶ Both the DHO and the SHO rejected Moss’s argument and unambiguously found that Ryan made the job offer in good faith.⁵⁷

Therefore, while the dissent agreed with the majority that the Commission’s application of the statute was clearly erroneous in finding that it is permissible to award TTD compensation to an injured worker who, in good faith, rejects a good faith offer of suitable alternative employment, Justice Kennedy also argued that whether Ryan made a good faith offer should be determined solely by the finder of facts, the Commission; thus, it was not a question for the Court to decide.⁵⁸ The dissent argued that the majority’s contention that the Commission was confused regarding the standard of good faith was merely speculative, and by “injecting new arguments into this case” making arguments the parties did not make, the Court abandoned its “role of neutral arbiter of matters the parties present,”

51. *Ryan*, 2021-Ohio-3539 at ¶¶ 24-26 (quoting § 4123.56(A)). Justice Kennedy also notes that there are other reasons that sever the causal connection between the workplace injury and the loss of wages and results in the injured worker’s inability to receive TTD compensation, such as when the worker voluntarily abandons her employment, resigns, retires, when the worker is incarcerated, or her employment is terminated because of the violation of work rules.

52. *Id.* at ¶ 27.

53. *Id.* at ¶ 23.

54. *Id.*

55. *Id.* at ¶ 33.

56. *Ryan*, 2021-Ohio-3539 at ¶ 33.

57. *Id.* at ¶¶ 33-34.

58. *Id.* at ¶¶ 33, 35.

which is contrary to the way the adversarial system works.⁵⁹ For these reasons, the dissent would have affirmed the judgment below, issuing a writ of mandamus and ordering the Commission to deny TTD compensation.⁶⁰

IV. ANALYSIS

A. Introduction

The Court's opinion clarified the standard required for a good faith offer of suitable alternative employment in worker's compensation cases.⁶¹ The Court correctly concluded that the Ohio Revised Code does not allow an injured worker who refused a good faith offer of suitable alternative employment which complies with the statute's requirements to receive TTD compensation, even if the injured worker has a justifiable reason and turned down the job offer in good faith.⁶² The Court's decision provides guidance in interpreting the statute's provisions to determine whether a good faith offer existed; however, it also raises the question of whether reevaluating the Commission's factual findings and returning the case to the Commission for further consideration was appropriate in this case, instead of affirming the Tenth District's judgment ordering the Commission to vacate its order and deny TTD compensation.⁶³

This note argues that while the standard set forth by the Court is correct, providing that Ohio law does not permit an injured worker to receive TTD compensation who, even if acting in good faith, rejects a good faith offer of suitable alternative employment, a convincing argument can be made that in this case, the Commission's factual determination on the existence of a good faith job offer should not have been reexamined by the Court; instead, the only issue for the Court to decide was whether the Commission made an error in applying the law when it found that because Moss also refused the job offer in good faith, she was entitled to TTD compensation.⁶⁴

59. *Id.* at ¶ 36. See *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (“In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.”).

60. *Ryan*, 2021-Ohio-3539 at ¶ 33.

61. *Id.* at ¶¶ 14-15 (majority opinion).

62. *Id.* at ¶ 10.

63. *Id.* at ¶ 16.

64. *Id.* at ¶ 35 (Kennedy, J., dissenting).

B. Discussion

i. The Court's Opinion Clarified the Standard for Establishing the Existence of a Good Faith Offer of Suitable Alternative Employment

In the present case, the issue was whether the Commission abused its discretion by awarding TTD Compensation to Moss based on its finding that Ryan made the job offer in good faith, but Moss also refused it in good faith.⁶⁵ The Court, reaffirming its holding in *Ellis*, held that the employer's good faith job offer made in accordance with the statutory requirements is a defense to TTD compensation claims, and the Commission has no discretion to award TTD benefits to the injured worker who rejected the job offer, even if doing so in good faith.⁶⁶ The statutory language barring payment of TTD compensation, however, requires the Commission's finding that the rejected job offer was made in good faith.⁶⁷

As previously discussed, in *Ellis*, a case with similar facts, the Court held that whether a good faith job offer exists is a "factual determination" which must be addressed by the Commission.⁶⁸ In *Ellis*, while the good faith of the light-duty job offer was disputed between the parties, the Commission had not addressed this question.⁶⁹ For this reason, the Court reversed the lower court's judgment and ordered the Commission to further consider the claim, emphasizing that whether the injured worker rejected the job offer in good faith also does not answer the question whether a good faith job offer existed.⁷⁰ The present case is distinguishable from *Ellis*, because both the DHO and the SHO addressed the issue and, after considering the evidence and arguments, unambiguously found that Ryan made the offer in good faith, unlike in *Ellis*, where the Commission failed to make such determination.⁷¹ In light of the above, the question can be raised whether the Court's decision to return the case to the Commission to reconsider its finding of good faith was appropriate in this case.⁷²

65. *Ryan*, 2021-Ohio-3539 at ¶ 10 (majority opinion).

66. *Id.* at ¶ 14 ("nothing in OHIO REVISED CODE 4123.56(A) or OHIO ADMIN. CODE 4121-3-32(A)(6) permits an injured worker to receive TTD compensation after refusing a good-faith offer of suitable alternative employment, even if the injured worker exercised good faith in refusing the offer.").

67. *Id.* See OHIO ADMIN. CODE 4121-3-32(A)(6).

68. *Ellis*, 874 N.E.2d at 783.

69. *Id.*

70. *Id.*

71. *Ryan*, 2021-Ohio-3539 at ¶¶ 4-5; *Ellis*, 874 N.E.2d at 783.

72. *Ryan*, 2021-Ohio-3539 at ¶ 16.

ii. The Commission, as the Exclusive Finder of Fact in Workers' Compensation cases, Unambiguously Determined That Ryan Made a Good Faith Job Offer, But Erred in the Application of the Law

The Court previously held that the Commission is the exclusive finder of facts in worker's compensation cases, including the question of the existence of a good faith job offer, and it is in the sole discretion of the Commissions to assess the weight and credibility of the evidence.⁷³ Nevertheless, the majority found that the Commission seemed to be confused regarding the "correct standard under which Ryan's good faith is to be determined" and "about what facts can establish bad faith," because the DHO made its order in the belief that "the commission could find bad faith on Ryan's part only if Ryan consciously crafted a position it knew Moss could not accept," also, "despite her finding of 'good faith,' the SHO clearly believed that Moss should receive TTD compensation."⁷⁴ The Court also held that the fact that the position offered was the only one available within Moss's restriction is insufficient to prove that the offer was made in good faith.⁷⁵ The Court explained that consciously crafting a job offer that the injured worker cannot accept was a "specific allegation" in *Ellis*, and not a limitation on finding bad faith.⁷⁶

As the dissent pointed out, the majority's opinion did not consider that just like in *Ellis*, Moss also argued in front of the Commission that Ryan knew that she could not take the day shift position and offered it to her knowing that she would have to refuse it.⁷⁷ Thus, Moss also made a "specific allegation" that Ryan consciously crafted a job offer that she could not take as a way to establish bad faith, and the Commission considered and rejected this argument.⁷⁸

In *Ellis*, the Court held that several factors may be considered in determining whether good faith existed, such as "employment suitability, the legitimacy of the job offer, or whether the position was offered in good faith," but this does not mean that the Commission should take into consideration the injured worker's reason for refusing the offer of suitable

73. State ex rel. Coen v. Indus. Comm., 186 N.E. 398, 399 (1933) ("It is the duty of the Industrial Commission to decide all questions of fact within its jurisdiction. In performing such function, the commission should give to all the evidence before it . . . such weight as it finds that the evidence warrants.").

74. *Ryan*, 2021-Ohio-3539 at ¶¶ 17-20 (quoting *Ellis*, 874 N.E.2d at 783) ("[T]he existence of good faith is 'a factual determination for the commission.'").

75. *Id.* at ¶ 20.

76. *Id.* at ¶ 19.

77. *Id.* at ¶ 33 (Kennedy, J., dissenting).

78. *Id.*

employment after determining that the offer was made in good faith.⁷⁹ Thus, Moss's good faith in refusing the offer is not a dispositive factor in deciding whether the job offer itself was made in good faith.⁸⁰ The majority in *Ryan* contended that the Commission only considered whether the job offer was one "consciously crafted," without taking into consideration other possible factors that can show bad faith, yet the Court's opinion did not identify what other specific factors or circumstances should have been evaluated by the Commission in this case.⁸¹ Although there are other factors that can establish bad faith, the parties did not raise any further issues except Moss's argument that Ryan consciously crafted a job offer that she could not accept.⁸² Therefore, the majority's arguments that the Commission was confused regarding the standard as it believed it can only find bad faith if Ryan consciously crafted a position that Moss cannot accept without considering other possible factors is not supported by the record.⁸³

In a mandamus action, the reviewing court determines "whether the commission abused its discretion in granting or denying compensation."⁸⁴ As long as there is some evidence supporting the Commission's decision to award TTD compensation, the reviewing court should not find that the Commission abused its discretion.⁸⁵ As noted above, the Commission makes factual determinations, weighs the evidence, and evaluates its credibility in its own discretion.⁸⁶ The Commission's order does not have to recite all the evidence considered, but it is required to list the evidence it "relied upon to reach its conclusions," and explain its reasoning.⁸⁷ Further, "because the commission does not have to list the evidence considered, the presumption of regularity that attaches to commission proceedings . . . gives rise to a second presumption—that the commission indeed considered all

79. *Ellis*, 874 N.E.2d at 782.

80. *See Id.*

81. *Ryan*, 2021-Ohio-3539 at ¶ 33.

82. *Id.*

83. *Id.*

84. State ex rel. Pacheco v. Industrial Commission of Ohio, 132 N.E.3d 670, 672 (2019) (citing State ex rel. Packaging Corp. of Am. v. Indus. Comm., 13 N.E.3d at 1168). *Ryan*, 2021-Ohio-3539 at ¶ 7 (majority opinion) (holding that "[t]o be entitled to a writ of mandamus, Ryan must show that it has a clear legal right to relief requested, that the commission has a clear legal duty to provide it, and that Ryan lack an adequate remedy in the ordinary course of the law.") (citing State ex rel. Omni Manor, Inc. v. Indus. Comm., 165 N.E.3d at 276).

85. *Packaging Corp.*, 13 N.E.3d at 1168.

86. *Pacheco*, 132 N.E.3d at 672 (citing State ex rel. Perez v. Indus. Comm., 66 N.E.3d at 704). See also PHILIP J. FULTON, OHIO WORKER'S COMPENSATION LAW 402 (5th ed. 2018) (The Court held in *Perez* that "the Commission has substantial leeway in interpreting and drawing inferences from the evidence in the record as it is the exclusive fact-finder and has exclusive authority to evaluate the weight and credibility of the evidence."); State ex rel. Mobley v. Indus. Comm., 679 N.E.2d 300, 305 (1997) (finding that "the commission is the exclusive evaluator of evidentiary weight and disability").

87. *Pacheco*, 132 N.E.3d at 674 (quoting State ex rel. Metz v. GTC, Inc., 30 N.E.3d at 945).

the evidence before it. That presumption, however, is not irrebuttable.”⁸⁸ Based on the above, the existence of a good faith job offer is a factual determination the Commission should make, and the reviewing Court should not reevaluate the weight of the evidence in a mandamus action; instead, it should determine whether there is some evidence that supports the Commission’s order granting or denying TTD compensation.⁸⁹

In *State ex rel. Pacheco v. Industrial Commission of Ohio*, the Commission denied the injured worker’s request for TTD compensation based on the worker’s refusal to continue working in the light duty position offered by his employer and because of lack of medical documentation showing that he was unable to perform the light duty job.⁹⁰ The injured worker filed a writ of mandamus action, and the Court of Appeals determined that there was evidence in the record to show that the light duty job offer was within Pacheco’s medical restrictions, but the court also found that contrary to the Commission’s finding, it was not an abandonment case; rather, the question was whether the light duty job offer was made in good faith, barring the injured worker from receiving TTD compensation.⁹¹ The Court found that the answer to that question was yes and concluded that the Commission did not abuse its discretion; however, on appeal, the Supreme Court of Ohio found that “the Tenth District should not have determined whether the job was offered in good faith,” and granted a limited writ ordering the Commission to determine whether the job offer was made in good faith.⁹²

The Court held in *Pacheco* that the employer’s “offer of light-duty work rendered Pacheco ineligible for TTD compensation only if the offer was made in good faith.”⁹³ Unlike in *Ryan*, where the Commission considered the issue of the existence of a good faith offer and made a factual determination that good faith existed, in *Pacheco*, the Commission did not address this question in its order, and the Tenth District improperly made a factual finding regarding the lack of good faith of the job offer, which resulted in granting a limited writ ordering the Commission to make such

88. *State ex rel. Lovell v. Indus. Comm.*, 658 N.E.2d 284, 287 (1996).

89. *Ellis*, 874 N.E.2d at 783; *Packaging Corp.*, 13 N.E.3d at 1168; *Pacheco*, 132 N.E.3d at 674 (In *Pacheco*, the Court refused to “step into the commission’s role as fact-finder and to reweigh the evidence.”). See also *Coen*, 186 N.E. at 399 (holding that the court shall not “substitute [its] judgment for that of the commission,” as the Commission is the body that sees and hears the parties’ testimonies and makes “personal observation in the premises;” thus, the Commission exercises discretion on the evidence, which cannot be controlled by the reviewing court “unless an abuse of discretion affirmatively appears”).

90. *Pacheco*, 132 N.E.3d at 672.

91. *Id.* at 672.

92. *Id.* at 671-72.

93. *Id.* at 677.

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finding in its discretion.⁹⁴ In contrast, in *Ryan*, the DHO reviewed and considered the evidence and rejected Moss's bad faith argument contending that Ryan knowingly offered Moss a position that she could not accept.⁹⁵ In its order, the DHO relied on Ms. Plasky's testimony and the letter containing Ryan's written job offer which stated that Ryan was open only during business hours, and it was its regular practice to offer clerical jobs at its own office to injured workers who cannot return to their prior position due to their medical restrictions.⁹⁶ Similarly, the SHO also found that the job offer was made in good faith as it was the only available position Ryan could offer within Moss's medical restrictions.⁹⁷ Thus, the Commission explained its reasoning for its factual findings and provided the evidence it relied upon.⁹⁸

Nevertheless, the majority's analysis questioned the weight and credibility the Commission gave to the evidence, and suggested that such evidence is not necessarily in accord with the Commission's factual findings, based on the assertion that the Commission was confused about the standard for establishing bad faith, and it should have considered other factors.⁹⁹ The Court reasoned that the Commission's finding that although Ryan made a good faith offer, Moss was entitled to TTD compensation because she rejected it in good faith is "an incorrect result under the statute, if the correct standard for determining good faith had been applied," and the case must be returned to the Commission for further determination.¹⁰⁰ As the majority correctly held, if Ryan made the job offer in good faith, Moss is barred from receiving TTD compensation, regardless of whether she refused the offer in good faith.¹⁰¹

The Court's conclusion in the present case, however, can be contradicted by the argument that there is evidence on the record that supports the Commission's factual findings and shows that the SHO considered the arguments made by the parties, determined the relevant facts, and concluded that the offer was made in good faith, but erred in the application of the law by awarding Moss TTD compensation because she rejected the offer in good faith.¹⁰² According to this point of view, the

94. *Ryan*, 2021-Ohio-3539 at ¶ 5, *Pacheco*, 132 N.E.3d at 671.

95. *Ryan*, 2020-Ohio-5197 at ¶¶ 18-19.

96. *Id.*

97. *Id.* at ¶ 20.

98. *Id.* at ¶¶ 18-20.

99. *Id.* at ¶¶ 17-20.

100. *Ryan*, 2021-Ohio-3539 at ¶¶ 20, 22 (Kennedy, J., dissenting). See also *Ellis*, 874 N.E.2d at 783 (held that the existence of good faith is a factual question the Commission should make, and because the Commission did not address this issue, the Court granted a limited writ ordering the Commission to decide the question of good faith).

101. *Ryan*, 2021-Ohio-3539 at ¶ 14 (majority opinion).

102. *Id.* at ¶ 33 (Kennedy, J., dissenting).

Commission's factual findings, including the question of the good faith of the offer, should not have been reexamined by the Court, and the Tenth District's judgment vacating the Commission's order and compelling the Commission to deny TTD compensation should have been affirmed based on the Commission's mistake of law.¹⁰³ In support of this interpretation, the dissent presented a strong argument asserting that the majority's opinion merely "speculates" that the Commission was "confused regarding how the absence of 'good faith' may be established, and by doing so, the Court raised arguments that the parties did not make and improperly substituted its own judgment for the Commission's findings, instead of following existing case law and deferring to the Commission's experience in factual issues."¹⁰⁴

Unlike in *Ellis* or *Pacheco*, the question of a good faith job offer has already been decided by Commission in this case, based on at least some evidence considered and adequately explained in the Commission's order; and such factual findings of the good faith of the job offer were not further disputed by the parties before the Court.¹⁰⁵ As a result, whether Ryan made a good faith job offer was not a question for the Court to reexamine; the only remaining question was whether Moss was entitled to TTD compensation under the circumstances, and the Court answered that question correctly: an injured worker cannot be awarded TTD compensation if she refuses a good faith offer of suitable alternative employment, even if the refusal is also in good faith.¹⁰⁶

Therefore, the dissent's argument that the Commission properly determined the facts in its discretion but erred in the application of the law is supported by the record, which brings up the question whether returning

103. *Id.* at ¶¶ 33, 37.

104. *Id.* at ¶¶ 33, 36-37. *See also* State ex rel. Pass v. C.S.T. Extraction Co., 658 N.E.2d 1055, 1058 (1996) (holding that the reviewing court should give deference to the Commission's expertise in worker's compensation cases if the commission's reasoning is properly explained, as "the commission alone is responsible for evaluating evidentiary weight and credibility"); State ex rel. Navistar, Inc. v. Indus. Comm., 153 N.E.3d at 14 (holding that rejecting the factual findings of the commission and substituting them with the Court's factual determinations would be "an improper invasion of the commission's role as the exclusive fact-finder").

105. The dissent emphasized that the Commission considered the evidence provided by the parties and unambiguously rejected Moss's argument to establish Ryan's bad faith based on Ms. Plasky's testimony and the letter provided to Moss. On appeal, neither the Commission nor Moss disputed the Commission's finding of good faith on Ryan's part, the parties only debated whether under the circumstances, Moss's good faith in rejecting the offer would permit her to receive TTD compensation. *Ryan*, 2021-Ohio-3539 at ¶¶ 29, 33-35. *See also* *Mobley*, 679 N.E.2d at 305 (holding that the "courts must not micromanage the commission as it carries out the business of compensating for industrial/occupational injuries and illness," also, that the standard of review in a mandamus action is not de novo; thus, deferential to the commission's expertise, and court should "not substitute their judgment for the commission's. . . . Where a commission order is adequately explained and based on some evidence, even evidence that may be persuasively contradicted by other evidence of record, the order will not be disturbed as manifesting an abuse of discretion.").

106. *Ryan*, 2021-Ohio-3539 at ¶ 14 (majority opinion).

this case to the Commission for further consideration based on factual issues of good faith the parties did not raise was an appropriate outcome instead of affirming the Tenth District's judgment granting the writ.¹⁰⁷ This note argues that the dissent provided a convincing reasoning for its point that it was improper for the Court to vacate the Tenth District's judgment based on factual issues the parties have not raised, as it is contrary to the nature of our adversarial system, which "is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief."¹⁰⁸

iii. In the Absence of a Causal Relationship Between the Loss of Wages and the Work Injury, Moss is Not Entitled to TTD Compensation

To be entitled to TTD compensation, "a causal relationship must exist between the employee's industrial injury and the loss that the requested benefit is designed to compensate."¹⁰⁹ As discussed earlier, this causal relationship is severed and the injured worker is not eligible for TTD payment "when work within the physical capabilities of the employee is made available by the employer."¹¹⁰ If the injured worker is unable to return to her previous position for reasons unrelated to her work injury, she is not entitled to TTD compensation.¹¹¹ Thus, in *Ryan*, the causal relationship between Moss's loss of wages and the injury was severed because Moss refused Ryan's job offer due to her "familial obligation" to care for her grandchild while her daughter was at work, which was unrelated to her workplace injury.¹¹² Therefore, in the absence of a causal relationship between Moss's work injury and her loss of wages, the Commission erred in concluding that regardless of the existence of a good faith job offer, Moss was entitled to TTD compensation because she also acted in good faith rejecting the offer.¹¹³

The majority, based on its contention that the Commission was confused about "what facts can establish bad faith," vacated the Tenth

107. *Id.* at ¶¶ 33, 36-37 (Kennedy, J., dissenting).

108. *Castro v. U.S.*, 540 U.S. 375, 386 (2003) (Scalia, J. concurring); *Ryan*, 2021-Ohio-3539 at ¶ 36 (Kennedy, J., dissenting).

109. *Ryan*, 2021-Ohio-3539 at ¶ 24 (majority opinion) (quoting *State ex rel. McCoy v. Dedicated Transport, Inc.*, 776 N.E.2d 51, 59 (2002)).

110. § 4123.56(A).

111. "If a workers' compensation claimant's own actions, for reasons unrelated to the injury, preclude the claimant from returning to a former position of employment, the claimant is not entitled to temporary total disability benefits since it is the claimant's own action, rather than the injury, which precludes a return to the former position." 94 Ohio Jur. 3d Workers' Compensation § 212 (citing *State ex rel. Crim v. Ohio Bur. Of Workers' Comp.*, 751 N.E.2d 990 (2001)).

112. *Ryan*, 2021-Ohio-3539 at ¶ 35 (Kennedy, J., dissenting).

113. *Id.*

District's judgment and issued a limited writ ordering the Commission to reconsider the issue."¹¹⁴ However, it is in the Commission's discretion to determine all issues of facts, and the "[mandamus] cannot control the exercise of discretion unless an abuse of such discretion affirmatively appears."¹¹⁵ As discussed above, in *Ryan*, the parties have not asserted or disputed any factual questions in Court regarding the existence of a good faith job offer, thus, the only question debated was whether Moss was entitled to TTD compensation based on her good faith refusal of the job offer.¹¹⁶ While the Commission's factual statements and the record do not support the majority's contention that the Commission was confused about the standard of good faith, the Commission erred in the application of the law finding that Moss can receive compensation, as the statute and existing case law expressly bar compensation under these circumstances.¹¹⁷ Thus, the dissent's argument that the Commission, "rather than exhibiting confusion" about the standard to establish Ryan's good faith, misapplied the law and abused its discretion by awarding TTD compensation to Moss, is not without merit, and neither is the contention that because of the absence of causal relationship between Moss's loss of wages and her work injury, the writ should have been granted, ordering the Commission to deny compensation.¹¹⁸

V. CONCLUSION

The importance of the Court's decision lies in the clarification that in TTD compensation claims, if the employer makes a good faith offer of suitable alternative employment, and the injured worker refuses to accept it, even if exercising good faith in doing so, due to familial obligations or for other justifiable reason, the injured worker is not permitted to receive TTD compensation.¹¹⁹ Thus, the injured worker's good faith in rejecting the offer is not dispositive of the issue of the existence of the employer's good faith offer.¹²⁰

However, the Court's decision also raises the question of whether the Court can interfere with the Commission's exclusive fact-finding authority either by asserting that the Commission was confused about the standard of establishing good faith and reexamining and reweighing the evidence that

114. *Id.* at ¶ 21.

115. *Coen*, 186 N.E. at 399.

116. *Ryan*, 2021-Ohio-3539 at ¶ 34. *State ex rel. Nicholls v. Indus. Comm.*, 692 N.E.2d 188, 192 (1998) (finding that in the absence of clear error, a mere possibility of an unspecified error is not sufficient to invoke the continuing jurisdiction of the Commission).

117. *Ryan*, 2021-Ohio-3539 at ¶ 33.

118. *Id.* at ¶¶ 34-35, 37.

119. *Id.* at ¶¶ 14-15 (majority opinion).

120. *Id.* at ¶¶ 12, 14.

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supports the Commission's finding, or by raising new factual arguments the parties have not raised.¹²¹ While the majority held that the case should be returned to the Commission for determining the question of whether a good faith offer existed which bars Moss from receiving TTD compensation, the dissent presented a convincing argument that the question of Ryan's good faith offer had already been determined by the Commission and was therefore not an issue the Court had to decide.¹²²

The only remaining question was whether Moss was eligible for TTD compensation because she had a good faith reason to refuse Ryan's good faith job offer, and the statute provides a clear directive that she was not.¹²³ Arguably, the Commission's finding that Moss could receive compensation because both Ryan and Moss acted in good faith is an erroneous application of the law, as after finding good faith on Ryan's part, the Commission should not have considered whether Moss refused to accept the job offer in good faith.¹²⁴ Moss rejected the job offer for a reason unrelated to her work injury; therefore, in the absence of a causal relationship between her loss of wages and the work-related injury, she is not entitled to TTD compensation.¹²⁵ For these reasons, as the dissent argues, affirming the Tenth District's judgment granting the writ and ordering the Commission to deny compensation would have been a justifiable outcome in this case.¹²⁶

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121. *Id.* at ¶¶ 33-37 (Kennedy, J., dissenting).

122. *Ryan*, 2021-Ohio-3539 at ¶¶ 33, 35.

123. *Id.* at ¶¶ 14-15 (majority opinion) (citing § 4123.56(A); OHIO ADMIN. CODE 4121-3-32).

124. *Id.* at ¶¶ 12, 14, 33 (citing *Ellis*, 874 N.E.2d at 782).

125. *Id.* at ¶ 35 (Kennedy, J., dissenting).

126. *Id.* at ¶ 37.