

Hearing Administrator Issues

R94-1-19

**Request for 4123.522 and 4123.52 Relief
November 23, 1994**

(R94-1-19 is also referenced under 'Jurisdiction', 'Notice', and 'Staff Hearing Officer Issues')

WHEREAS, Section 4121.36(H)(2)(c)(v) of the Ohio Revised Code provides that Hearing Administrators appointed by the Industrial Commission are to issue compliance letters upon a finding of good cause and without a formal hearing on matters involving Section 4123.522 O.R.C.; and

WHEREAS, Section 4123.522 of the Ohio Revised Code provides that if any person to whom a notice is mailed fails to receive the notice and the Industrial Commission determines that the failure was due to a cause beyond the control and without the fault or neglect of such person or his representative, such person shall take the action afforded to such person within twenty-one (21) days after receipt of the notice of such determination of the Commission; and

WHEREAS, Section 4121.03(E) of the Ohio Revised Code provides that the Commission is responsible for the establishment of the overall adjudicatory policy and management of the Industrial Commission under Chapters 4121, 4123, 4127, and 4131 of the Ohio Revised Code; and

WHEREAS, pursuant to Rule 4121-3-16(F) O.A.C., the applicant filing a motion shall mail a copy of the motion to the opposite party and the copy of the motion filed with the Commission shall indicate that a copy had been so mailed; and

WHEREAS, the Industrial Commission desires to establish a uniform policy for the adjudication of requests for relief under Section 4123.522 of the Ohio Revised Code; and

WHEREAS, pursuant to Section 4123.52 of the Ohio Revised Code, the Industrial Commission may vacate a prior order that resulted from a hearing where only one party was represented upon a determination that a hearing had been held, which, in fact, had been canceled. *State, ex rel. Sears, Roebuck & Co. v. Indus. Comm.* (1982), 2 Ohio App.3d 255; and

WHEREAS, it has come to the attention of the Industrial Commission that in certain cases, applicants for relief under Section 4123.522 of the Ohio Revised Code are seeking relief under Section 4123.52 of the Ohio Revised Code for the reason that the Industrial Commission failed to send notice of hearing to the appropriate address of a party or a party's representative of record.

THEREFORE BE IT RESOLVED that effective December 1, 1994, all requests filed on or after December 1, 1994, and all pending requests for relief under Section 4123.522 of the Ohio Revised Code that have not been scheduled for hearing, will be referred to a Hearing Administrator for initial adjudication pursuant to the provisions of Section 4121.36(H)(2)(c)(v) of the Ohio Revised Code.

BE IT FURTHER RESOLVED that unless the Hearing Administrator determines that (1) the party requesting relief under Section 4123.522 of the Ohio Revised Code has requested a formal hearing on the issue, (2) the opposing party has objected to the issuance of a compliance letter granting relief under Section 4123.522 of the Ohio Revised Code, or (3) the Hearing Administrator determines that there is not good cause for the issuance of a compliance letter granting relief under Section 4123.522 of the Ohio Revised Code, the Hearing Administrator shall issue a compliance letter granting relief pursuant to Section 4121.36(H)(2)(c)(v) of the Ohio Revised Code without a hearing.

BE IT FURTHER RESOLVED that if the Hearing Administrator determines that (1) the party requesting relief under Section 4123.522 of the Ohio Revised Code has requested a formal hearing on the issue, (2) the opposing party has objected to the issuance of a compliance letter granting relief under Section 4123.522 of the Ohio Revised Code, or (3) the Hearing Administrator determines that there is not good cause for the issuance of a compliance letter granting relief under Section 4123.522 of the Ohio Revised Code, the request for relief under §4123.522 of the Ohio Revised

Code shall be referred to a Staff Hearing Officer for hearing and adjudication pursuant to Section 4121.35(D) and Section 4123.522 of the Ohio Revised Code. The decision of the Staff Hearing Officer issued under Section 4121.35(D) and 4123.522 O.R.C. is a final determination of the Industrial Commission and there is no administrative appeal.

BE IT FURTHER RESOLVED that should the Hearing Administrator or the Staff Hearing Officer, as described in the preceding paragraphs, determine that the party requesting relief under Section 4123.522 of the Ohio Revised Code, in fact, is requesting relief under Section 4123.52 of the Ohio Revised Code for the reason that the Industrial Commission either failed to send notice of any hearing to the party or the party's representative of record or the Commission sent a copy of the notice of hearing to an incorrect address of the party or the party's representative of record, the Hearing Administrator or the Staff Hearing Officer, upon a finding of good cause, may grant relief under Section 4123.52 of the Ohio Revised Code to provide that the underlying order be vacated and the hearing be reheard.

Other Hearing Administrator Issues Resolutions

R03-1-04
Continuance Guidelines
October 2, 2003

R05-1-01
Revision of Continuance Guidelines
January 27, 2005