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**Gallagher Sharp Shop Talk: Workers' Compensation**

The Supreme Court of Ohio recently issued two workers' compensation decisions dealing with the issue of a claimant's departure from the workforce, and whether that departure will preclude the receipt of temporary total disability ("TTD") compensation. Because each of these decisions is important in its own right, we will deal with each of them separately in the next two chapters of Shop Talk.

The first decision, *State ex rel. Corman v. Allied Holdings, Inc.*, 132 Ohio St.3d 202, 2012-Ohio-2579, concerned a claimant who injured his right knee in the course and scope of employment in 2002. In 2003, the claimant voluntarily retired, purportedly for reasons unrelated to the allowed conditions, and never worked or sought work again. In 2009, the claimant sought to have TTD reinstated, but this request was denied by the employer based upon the fact that the claimant never again sought work, and that his retirement was voluntary. The claimant sought a writ of *mandamus* from the Ohio Court of Appeals, Tenth District, alleging that the Industrial Commission had abused its discretion in denying TTD. The Tenth District denied the writ, concluding that the claimant had demonstrated an "intent to permanently abandon the labor market in 2003." Claimant then brought an appeal as of right to the Supreme Court of Ohio.

The Supreme Court affirmed, finding that the claimant did not sufficiently distinguish his case from *State ex rel. Pierron v. Indus. Comm.*, 120 Ohio St.3d 40, 2008-Ohio-5245. Like *Corman*, *Pierron* involved a claimant who voluntarily retired from his position, thus removing himself from the workforce (and from the possibility of lost earnings, the basis for TTD). In both cases, neither individual made a credible effort to secure new employment, nor were they medically incapable of work as a result of their injuries. In both cases, the Court referred to the decision as a "lifestyle choice." The claimant in *Corman* attempted to distinguish *Pierron* by claiming he retired because of complications related to his injury, but this argument was rejected by the Industrial Commission and not supported by the records. (The claimant did have complications later, but this was not the basis for retirement.) Notably, the Supreme Court said that even if this were the case, it would not impact the result because Plaintiff chose to retire, rather than seek other employment.

The Court in *Corman* based its decision on the claimant's decision to leave the workforce and not to pursue other employment at all. Next time, we will discuss a very recent Supreme Court case dealing with the current state of the law of voluntary abandonment by way of termination for cause. If you would like to discuss this or any other workers' compensation issues, please feel free to contact me.

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