

**From:** Don Drinko  
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**Gallagher Sharp Shop Talk: Workers' Compensation**

Last time, we considered the issue of “voluntary abandonment” in the context of a claimant’s decision to retire, and whether this should preclude a later award of temporary total disability (“TTD”) compensation. This week, we will discuss a recent decision by the Supreme Court of Ohio on the issue of “voluntary abandonment,” but in the context of termination “for cause.”

*State ex rel. Brown v. Hoover Universal Inc.*, 132 Ohio St.3d 520, 2012-Ohio-3895, concerned a claimant who was injured in 2003. In 2008, the claimant was terminated for violating the company’s written attendance policy. In sum, the employer contended that the claimant used more sick time than he had “banked,” while the claimant maintained that the employer had deducted too many hours, and should have recognized a C-84 as a written doctor’s excuse. A union grievance was filed, but was unsuccessful. After his termination, the claimant sought additional TTD arising from his injuries. The employer contested the award based upon “abandonment,” while the claimant argued that the employer had misapplied the policy, and claimed that he did not understand it. In her order denying additional TTD, the Staff Hearing Officer (SHO) did not address the disputed hours, and simply concluded that the claimant had violated the written policy. The claimant sought a writ of *mandamus*, and the Tenth District ordered the matter referred back to the Industrial Commission for findings on the disputed basis for termination, prompting an appeal by the employer.

The Supreme Court affirmed, holding that further findings were in order. While the Court acknowledged that “voluntary abandonment” by way of termination was appropriate in some cases, Ohio law requires that it be a consequence of behavior that the claimant willingly undertook, and a violation of a written work rule that is: (1) clearly defined; (2) identified as a dischargeable offense; and (3) that was known or should have been known, to the employee. *State ex rel. Louisiana Pacific Corp. v Indus. Comm.*, 72 Ohio St.3d 401. In this case, the SHO focused too much on the requirements, and did not address the disputed issues surrounding the offense. In concluding that a remand for further findings was necessary, the Court cited the potential for abuse when disputed allegations of misconduct are used to bar TTD, particularly when those allegations arise from the disputed injury. In these cases, the Court held that it is incumbent upon the Industrial Commission to consider the “totality of the circumstances” and its order should reflect this consideration.

Over the years, we have discussed at length the difficulty associated with satisfying *State ex rel. Louisiana Pacific Corp. v Indus. Comm.* The *Brown* decision is further evidence that employers must be prepared to litigate the bases for termination administratively, and to introduce evidence to this effect. If you would like to discuss this or any other workers’ compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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