

**From:** Don Drinko

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

**Question: In seeking a new period of temporary total disability compensation, can “changed circumstances” trump an employee’s refusal to work?**

By statute, the Industrial Commission retains “continuing jurisdiction” to review claims, and can order new or modified treatment or additional periods of compensation as needed based upon “changed circumstances.” R.C. §4123.52(A). This can include additional periods of temporary total disability (TTD) compensation arising months or years after the initial injury. Recently, the Supreme Court of Ohio was presented with a case that questioned the extent of this jurisdiction, to wit: can “changed circumstances” trump a claimant’s refusal to work?

In *State ex rel. Akron Paint & Varnish, Inc. v. Gullota*, 131 Ohio St.3d 231, 2012-Ohio-542, a worker who received several weeks of TTD benefits returned to work with restrictions. After complaining about his duties in the modified position, the employer offered another position which was also within restrictions. In response, the claimant refused the assignment and resigned. Four months later, the claimant requested additional TTD commencing a week after his resignation, which was contested by the employer. The Industrial Commission ultimately denied the motion, not because of the resignation, but based upon a refusal of “light duty” within his restrictions. Several months later, the claimant made a new motion seeking TTD based upon a newly allowed condition, which was also contested by the employer. A DHO denied the motion, but an SHO reversed, finding that the new period was warranted based upon “changed circumstances.” A *mandamus* action followed, which resulted in a reversal of the SHO order and prompted an appeal as of right to the Supreme Court of Ohio.

The Supreme Court affirmed the denial of additional TTD, concluding that the “changed circumstances” of the new allowance did not “trump” the claimant’s refusal of suitable work within his restrictions. In response to the claimant’s argument that the “new” restrictions would have precluded him from his prior light-duty position, the Court noted that this was essentially irrelevant because the claimant had refused that position. Essentially, the claimant had “no job to return to,” and could not retract that decision by presenting evidence of “changed circumstances.”

New medical evidence is only one component of “changed circumstances” set forth in R.C. 4123.52(A), but *Akron Paint* is significant in its treatment of the refusal of light duty as a *de facto* resignation, which is not trumped by later “changed circumstances.” If you have any

questions, or 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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