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Sent: Thu 2/12/2015 4:09 PM
Gallagher Sharp Shop Talk: Workers' Compensation

Question: Does the fact that an employee voluntarily quit mean that he is no longer eligible for temporary total disability (TTD) compensation, even though he has not been cleared to return to work?

The question presented this week involves the interpretation of *State ex rel. Pretty Products, Inc. v. Indus Comm.* (1996), 77 Ohio St.3d 5, and subsequent decisions which held that dismissal of an employee for reasons unrelated to his injury does not mean that he is no longer eligible for TTD. Recently, the Supreme Court of Ohio took up the issue of whether a voluntary resignation, which occurred while the claimant was on "light duty," would preclude the payment of TTD as a matter of law.

The facts in *State ex rel. Hildebrand v. Wingate Transport, Inc.*, Slip Op. No. 2015-Ohio-167, are strange even for workers' compensation. The claimant injured his back in 2009, for which he received medical treatment and which was eventually allowed for "sacroiliac sprain." His doctor permitted his return to work, but in a "light duty" capacity which the employer agreed to provide. Six days later, when he returned to start his light duty, he was asked by the owner of the company to return keys to a vehicle which had been loaned to the claimant. This bothered the claimant, who asked if he was being fired, but was told that this was not the case. An argument ensued, the police were called, and the employee ultimately stormed off the premises. A week later the claimant sought unemployment benefits, which were contested by the employer, who argued that the claimant had voluntarily quit. Unemployment benefits were ultimately denied. It was only at this point that the claimant filed a workers' compensation claim and sought TTD compensation, which was also opposed by the employer, who alleged that it was ready, willing and able to provide a "light duty" position before the claimant quit. TTD was denied administratively, prompting a *mandamus* action in the Tenth District Court of Appeals in which the claimant, citing *Pretty Products*, argued that even if the claimant had voluntarily quit he would still be entitled to TTD because he was physically unable to return to his former position of employment. The Court of Appeals denied the writ, prompting an appeal as of right to the Supreme Court.

The Supreme Court affirmed, finding that claimant's physical condition and restrictions were immaterial because the evidence presented confirmed that the claimant had voluntarily quit his position. While *Pretty Products* and its progeny generally stand for the proposition that a disabled employee cannot abandon his position, this principle has only been applied to disabled employees who were terminated for violation of written work rules, including attendance (*Pretty Products*) driving violations (*State ex rel. Omnisource v. Indus. Comm.*) failing to provide documentation (*State ex rel. Luther v. Ford Motor Co.*) or inappropriate comments about the employer (*State ex rel. Reitter Stucco, Inc. v. Indus. Comm.*). The Court distinguished these cases from the case at bar, finding that because the claimant's departure from employment in this case was not related to his industrial injury at all, but wholly the result of his decision quit, *Pretty Products* does not apply. The claimant did not appeal the determination that he had voluntarily abandoned his position for reasons unrelated to his injury, but instead argued that his inability to

return to work full duty precluded a finding of abandonment. “[I]t would be illogical to extend *Pretty Products* to a claimant who elects to leave a job – for reasons unrelated to the industrial injury – before the employer is afforded an opportunity to offer work within his medical restrictions.” In a strongly-worded dissent, Justice O’Neill argues that the Court has created a “labyrinth of voluntary abandonment” and argued that there is no evidence in the record that the claimant voluntarily quit his job, finding that it would be “nonsensical to characterize that encounter as anything short of a termination.”

Hildebrand is an unusual situation for many of the same reasons cited by Justice O’Neill, chiefly that it is unusual for an injured worker to walk away from a light duty position. It does resolve the question in the affirmative as to whether an employee who has not been released to return to full duty can abandon their employment, and their TTD benefits.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers’ compensation issues, please feel free to contact me.

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