

From: Don Drinko
Sent: Wed 4/20/2016 4:22 PM
Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: When an employee misses work to receive treatment for an unrelated medical condition, does she retain the right to receive temporary total disability compensation?

Temporary total disability (“TTD”) is rewarded pursuant to R.C. §4123.56 for wages loss when a claimant’s injury prevents a return to a former position in employment. Issues sometime arise when a period of disability related to an allowed condition arises while a claimant is already off work for unrelated reasons. Recently, the Ohio Court of Appeals, Tenth Appellate District, decided a case involving a claimant who was off work receiving breast cancer treatment, and whether she was entitled to TTD compensation during that time.

State ex rel. Eddy v. Indus. Comm., 2016-Ohio-387, involved a claimant who suffered a work-related injury on April 15, 2013. A workers’ compensation claim was filed, which was allowed for several conditions, including a dislocated patella and various sprains to her right knee. The claimant was released to work on April 19, 2013, and worked full duty until she left on a pre-planned vacation. During that vacation, the claimant was diagnosed with breast cancer in June, 2013, and informed her employer that she would be pursuing surgery and radiation treatments. The employer issued paperwork which seemed to indicate that the injury worker was terminated while she received treatment, a point the employer later contested. Several weeks later, the claimant developed complications in her right knee, causing her doctors to opine that she would not be capable of returning to work in her former position. The claimant’s doctor filed a motion seeking temporary total disability compensation, which was initially granted by Industrial Commission. The employer appealed, arguing that the claimant worked her normal job until leaving on vacation, during which she received her diagnoses and began treatment. Therefore, the employer argued that TTD was not warranted. The employer maintained that it never terminated the claimant, but was only providing time off work for medical treatment, while the claimant contended that she was terminated due to her illness. An SHO vacated the award and found that the claimant was not entitled to TTD because she was not working at the time for reasons unrelated to her industrial injury. The claimant then filed an original action in the Tenth District Court of Appeals *in mandamus*.

The Tenth District affirmed, finding that the claimant was not entitled to temporary total disability compensation. Because this was a *mandamus* action, it was incumbent upon the claimant to establish a “clear legal right to the relief sought,” or an abuse of discretion standard. In the present case, the claimant was released to work without any restrictions on April 19, 2013, and worked up until her vacation. While she was on vacation, she received her cancer diagnosis and began treatment. The employer in question granted a “temporary medical discharge” so she could pursue radiation and possible surgery. The Court found that the claimant had no compensable lost time as a result of her allowed conditions because her employer had granted her a medical leave disability which was not related to the allowed conditions in this claim. When a departure from employment is not related to the allowed conditions, the departure is considered voluntary and not involuntary and precludes an award of TTD compensation. *State ex*

rel. Waddle v Indus. Comm., 67 Ohio St.3d 452 (1993), had the claimant return to work before her doctors opined that the allowed conditions rendered her temporarily disabled, the Court stated that it would likely have granted same.

Eddy confirms a common-sense approach to TTD, which is to determine whether the claimant's absence from work was due solely to the allowed conditions in the claim. One cannot be disabled from "work" when she was not "working" in the first place. 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.

Donald G. Drinko, Esq.
Certified Workers' Compensation Specialist
GALLAGHER SHARP
1501 Euclid Avenue - 6th Floor
Cleveland, OH 44115
Direct Dial: 216.522.1326
ddrinko@gallaghersharp.com
www.gallaghersharp.com