

WORKERS' COMPENSATION SHOP TALK

QUESTION: Can a Previous Finding that a Claimant Voluntarily Abandoned the Workforce be Used to Deny a Subsequent Application for Lost Time Benefits?

The issue of “voluntary abandonment” of the workforce can arise in multiple contexts, most often involving requests for temporary total disability (TTD) and permanent total disability (PTD) compensation. However, the determination of whether a claimant has “voluntarily abandoned” the workforce is the same, and often does not require a new determination. Recently, the Tenth District Court of Appeals was presented with a case involving a determination that a claimant had “voluntarily abandoned” the workforce in 2014, and whether that determination could be the sole basis for denying PTD compensation three (3) years later.

State ex rel. Bomer v. Indus. Comm., 2019-Ohio-1328, involved an x-ray technician who was injured at work on February 4, 1997. A workers’ compensation claim was filed, which was eventually allowed for more than nineteen (19) different conditions involving her left knee, left hip, and left thumb. Claimant returned to work until 2000, at which time she stopped working for reasons that are unclear. Claimant sought and received Social Security Disability benefits in 2007, and for PTD in 2006, and again in 2009. On both PTD applications, benefits were denied because it was determined that the claimant was capable of performing sedentary work, but the claimant did not seek such work or vocational training. In 2014, the claimant filed an application for TTD benefits for a period of several months, but at hearings on that motion it was determined that the claimant had voluntarily abandoned the workforce several years earlier. Claimant argued at the time that she had visited temporary agencies in 2012 seeking employment, but could not document these visits and the SHO determined that these efforts were “minimal.” The claimant never filed a mandamus action or otherwise contested this decision. Later, in 2017, the claimant again sought PTD compensation when she was nearly 70 years old. Again, the matter went to hearings and the SHO denied the motion, relying solely on the 2009 order finding she was capable of gainful employment and the 2014 order finding that she had voluntarily abandoned the workforce, and therefore was “ineligible” to receive PTD compensation. The claimant filed a *mandamus* action in the Tenth District Court of Appeals, arguing that the Commission abused its discretion by relying on the prior finding that she had abandoned the workforce.

The Tenth District denied the writ, finding that there was no abuse of discretion in relying on the prior finding of abandonment. The only relevant inquiry in a PTD application is the claimant’s ability to perform “sustained remunerative employment,” and the claimant was able to engage in such employment in 2009. Since that time, the claimant failed to take any substantial steps to join the workforce, including vocational training, and failed to document any “significant” search for employment. The SHO rejected the alleged visit to temporary agencies as unsubstantiated, and that her “minimal effort” to obtain work was insufficient. The Court agreed with the

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claimant that the Magistrate should have considered the facts giving rise to the 2014 abandonment finding, but rejected the claimant's reliance upon *State ex rel. Digiacinto v. Indus. Comm.*, 2018-Ohio-1999, finding in that case that the medical factors involved were much more severe and not related to the allowed conditions. Because the claimant was capable of returning to work as late as 2009, but failed to do so, she was rightly found to have abandoned the workforce and her 2017 PTD application was properly denied.

Bomer stands for the proposition that, once abandonment has been determined, it is a valid argument to bar later requests for compensation.

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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