

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

QUESTION: Is a claimant in Ohio obligated to produce medical evidence to disprove an allegation that she voluntarily abandoned her employment?

A claimant's decision to voluntarily "abandon" her position of employment for reasons unrelated to an industrial injury will, in most cases, preclude her receipt of temporary total disability ("TTD") benefits. *State ex rel Ashcraft v. Indus. Comm.*, 34 Ohio St.3d 42 (1987). However, a decision to return to the workforce can re-establish a right to TTD under some circumstances. *State ex rel McCoy v. Dedicated Transport, Inc.*, 97 Ohio St.3d 25, 2002-Ohio-5305. Recently, the Tenth District Court of Appeals was presented with a case involving a claimant who abandoned her position multiple times, and whether it is incumbent upon her to produce medical evidence to support her contention that she had re-established her right to TTD.

State ex rel German v. Provider Services Holding, LLC, 2014-Ohio-3336, involved a claimant who injured her back and was unable to return to her former position. She accepted a "light-duty" job with the same employer, but left to get married and re-locate. The claimant obtained new employment with a second employer in her new city, but left that position, either because she was "laid off" (her physician's notes) or was unable to work 12-hour shifts due to back pain. The claimant returned to her former residence, and sought TTD. The employer contested the TTD request, claiming she had "voluntarily abandoned" two previous positions. A DHO granted the TTD request, based upon the claimant's testimony that she stopped working due to her injuries. An SHO reversed this order, finding that there was evidence she resigned from both positions, and that there was no "contemporaneous proof" from a physician that her resignations were injury-related. This resulted in a mandamus action by the claimant, and a magistrate recommended that the *writ* be denied.

The Tenth District affirmed, finding that while a claimant was not required to produce "contemporaneous medical evidence" to rebut a claim of voluntary abandonment, her failure to do so was fatal to her claim in this case. It is only incumbent upon the claimant to demonstrate her job departure was "injury induced." This can be accomplished by testimony, including the testimony of the claimant. In *German*, the SHO held that the employer had rebutted this testimony with evidence, both from the claimant herself and from statements to her doctor, that both departures were voluntary. The Industrial Commission is free to credit or discredit the claimant's testimony, and to draw reasonable inferences therefrom. In the case at bar, Ms. German's testimony was contradictory, in part, by other evidence in the record. *State ex rel Supreme Bumpers, Inc. v. Indus. Comm.*, 98 Ohio St.3d 134, 2002-Ohio-7085.

I will be attending the WCI Workers' Compensation Conference in Orlando, Florida, and would love to hear from any of you whom will also be attending. 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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