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Workers' Compensation Alert

July 2012

Voluntary Abandonment Revisited

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In *State ex rel. Corman v. Allied Holdings, Inc.*, 2012-Ohio-2579, the Ohio Supreme Court applied voluntary abandonment principles to a scenario all too common for employers. Corman had a workers' compensation claim allowed for right knee strain and medial meniscus tear resulting from a 2002 workplace injury. Following the injury, Corman was unable to return to his former position of employment and began receiving temporary total disability (TTD) compensation. During this time Corman underwent three surgeries on his right knee.

In January 2003, an independent medical examiner concluded that Corman had reached maximum medical improvement, and on April 3, 2003, the employer filed a motion to terminate TTD compensation based on that conclusion. Four days later Corman sent a letter to the employer requesting early retirement to be effective April 1, 2003. Nothing in the letter indicated that the retirement was to be a disability retirement or was in any way related to the allowed right knee conditions, but Corman later claimed that he was forced to retire because of his knee. On July 14, 2003, a district hearing officer terminated TTD compensation as of the date of the hearing. Thus, Corman continued to receive TTD compensation for over three months after his retirement.

In January 2004, Corman's claim was additionally allowed for aggravation of pre-existing osteoarthritis of the right knee, and total knee replacement surgery was recommended. However, that surgery did not take place until March 2009, nearly six years after Corman's retirement. In the interim Corman failed to seek other employment and applied for and began receiving Social Security benefits. Following the surgery, Corman filed a motion requesting TTD compensation from the date of the surgery forward. A district hearing officer and staff hearing officer denied the motion, finding that Corman voluntarily retired from the workforce on April 1, 2003 as evidenced by his failure to seek other employment or attempt to re-enter the workforce.

Corman filed a mandamus action in the Tenth District Court of Appeals to challenge this result. He argued the knee replacement surgery was a new and changed circumstance, and because he was temporarily and totally disabled when he retired, his retirement was involuntary and thus should not preclude compensation. The Court of Appeals disagreed, noting that the question was not whether Corman was entitled to compensation after he retired, but rather whether he was entitled to TTD compensation six years later. According to the court, even if Corman's retirement

was involuntary and his surgery constituted a new and changed circumstance, he was not entitled to compensation because the evidence established that he never intended to return to work after he retired.

On appeal, in a unanimous decision, the Ohio Supreme Court affirmed the Court of Appeals' decision, noting the similarities between Corman and the claimant in *State ex rel. Pierron v. Indus. Comm.*, 2008-Ohio-5245. Both requested TTD compensation years after retiring from their former positions of employment and in the interim made no effort to secure other employment. Neither produced any evidence showing a medical inability to perform other work. The Court determined that even if Corman's reason for taking early retirement was related to his right knee injury, he could have sought other employment, but decided not to work at all. Because Corman chose to entirely leave the labor market, he was not eligible for TTD.

All too frequently, employers are faced with requests for TTD compensation from claimants who long ago quit seeking work. In the past, requests for compensation based on events like claim-related surgeries were often approved, no matter how long ago the claimant had given up on working. Now, in light of *Pierron* and *Corman*, an employer faced with a request for TTD compensation from a former employee should investigate whether the claimant has worked since leaving its employ. If the claimant cannot show some effort to seek other employment or otherwise return to the workforce, he/she should not be entitled to TTD compensation.

If you have any questions concerning voluntary abandonment or any other workers' compensation or employment law question, you can contact Mr. Johnson, Ms. Gerber, or any attorney in the Labor & Employment Practice Group of Eastman & Smith Ltd.

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