

Ohio Supreme Court Reaffirms Employer's Right to Raise Voluntary Abandonment

By Jonathan Miller

In two separate rulings, Ohio courts reaffirmed an employer's right to raise voluntary abandonment as an affirmative defense to an injured worker's request for temporary total benefits. House Bill 81 (H.B. 81), signed into law by Governor DeWine in June 2021, created a statutory recognized basis for voluntary abandonment and vacated any prior voluntary abandonment case law.

This law has created some unnecessary confusion in administrative hearings before the Industrial Commission (IC). The Supreme Court's ruling reaffirms the employer's ability to defeat a claim for temporary total benefits by making a good faith alternative job offer. It also eliminates the notion that an injured worker's good faith denial may be considered within this analysis by the IC.

In *State ex rel Ryan Alternative Staffing, Inc. v. Moss.*, the Ohio Supreme Court ruled that nothing permits an injured worker to receive temporary total compensation after refusing a good-faith offer of suitable alternative employment, regardless of whether the worker provided a good faith basis for refusing that offer. Taking it a step further, the Court ruled that nothing in 4123.56 provides an independent basis to justify compensation if the injured worker alleged a good faith basis for that denial. In *Ryan*, an injured worker was placed on light duty restrictions following a workplace injury. That worker typically worked third shift. A light duty job offer was provided for first shift. The injured worker declined, based on childcare needs. The employer denied temporary total benefits based on that voluntary refusal of suitable employment. The Supreme Court ruled that while the injured worker may have had a good faith basis for their denial of suitable employment, this could not be used as a factor in justifying compensation under 4123.56.

In *State ex rel. Ohio State Univ. v. Pratt*, the Ohio Tenth District Court of Appeals ruled that 4123.56 applies prospectively. Any cases of voluntary abandonment which occurred prior to that date are controlled by [Klein](#). That *Klein* remains good law for any remaining voluntary abandonment arguments existing prior to the enactment of 4123.56 (F) is extremely good news for employers.

In *State ex rel. Klein v. Precision Excavating & Grading Co.*, decided September 27, 2018, the Ohio Supreme Court ruled a claimant who voluntarily removes him or herself from their former position of employment for reasons unrelated to the workplace injury is no longer eligible for temporary total disability compensation, even if the claimant remains disabled at the time of his separation from employment. *Pratt's* facts were very similar to that of *Klein*. *Pratt* submitted her two weeks' notice on June 20, 2017. *Pratt* was injured on June 24, 2017.

She did return to work and requested temporary total compensation. Ultimately the issue proceeded to hearing on the injured worker's request for temporary total, and the employer's affirmative defense of

voluntary abandonment. In support of Pratt's arguments, she submitted a job offer from another employer dated June 28, 2017. A Staff Hearing officer ruled that the injured worker did not voluntarily abandon the workforce based on that letter. On appeal, the Tenth District Court of Ohio ruled the IC abused its discretion when it considered Pratt's employment prospects and physical limitations in awarding compensation.

Thus, Ohio courts reaffirmed that bright line test for all voluntary abandonment cases: the industrial injury itself must be the cause of the loss of earnings.

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