

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Quest Diagnostics, Inc. v. Indus. Comm.*, Slip Opinion No. 2023-Ohio-2213.]

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**SLIP OPINION NO. 2023-OHIO-2213**

**THE STATE EX REL. QUEST DIAGNOSTICS, INC., APPELLEE, v. INDUSTRIAL  
COMMISSION OF OHIO ET AL., APPELLANTS.**

**[Until this opinion appears in the Ohio Official Reports advance sheets, it  
may be cited as *State ex rel. Quest Diagnostics, Inc. v. Indus. Comm.*, Slip  
Opinion No. 2023-Ohio-2213.]**

*Workers' compensation—Voluntary abandonment of employment—Industrial  
injury did not cause claimant's wage loss—Judgment affirmed.*

(No. 2022-0567—Submitted February 28, 2023—Decided July 5, 2023.)

APPEAL from the Court of Appeals for Franklin County,

No. 20AP-246, 2022-Ohio-1093.

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**Per Curiam.**

{¶ 1} Appellant Industrial Commission of Ohio granted appellant Quintina L. Stone's request for temporary-total-disability ("TTD") compensation. Stone's employer, appellee Quest Diagnostics, Inc. ("Quest"), requested a writ of mandamus from the Tenth District Court of Appeals ordering the commission to

reinstate the order of its staff hearing officer, who had denied Stone's TDD application. The court of appeals granted the writ, concluding that the commission had misapplied the law of voluntary abandonment as announced in *State ex rel. Klein v. Precision Excavating & Grading Co.*, 155 Ohio St.3d 78, 2018-Ohio-3890, 119 N.E.3d 386. Both Stone and the commission have appealed. We affirm the Tenth District's judgment.

## **I. BACKGROUND**

### ***A. Claimant's Injury and Relocation***

{¶ 2} Stone, a phlebotomist, began her employment with Quest in 1991. In February or March 2018, Stone notified her supervisor that she would be moving to California with her husband, who was taking a new position there. Stone expressed her desire to transfer her employment within the company and, according to her affidavit, was told that she would be permitted to transfer.

{¶ 3} In September 2018, Stone and her husband were notified of his specific reassignment location and that he was to start working there on October 29. On October 3, Stone submitted multiple transfer requests with Quest in California, which were signed and dated by her supervisor.

{¶ 4} Three days later, Stone was injured at work when she fell from a stepladder. Her workers' compensation claim was allowed for various shoulder injuries. On October 8, Stone's physician released her to work with temporary restrictions. Stone was off work briefly due to her injury and then took a previously scheduled vacation. She returned to work with light-duty restrictions on October 22. For the next few days, Stone's responsibilities consisted of greeting patients as they entered the office.

{¶ 5} On October 24, Stone informed her supervisor that she was moving to California on October 27. Stone had not received any response to her transfer requests. Stone and her supervisor called Quest's recruiting office, which informed

them that Stone could not transfer her employment because she was not certified as a phlebotomist in California.

{¶ 6} This new information did not change Stone’s plans to relocate, and Stone’s supervisor asked for a resignation letter. Stone sent her supervisor an email saying, “I am putting in my resignation with Quest Diagnostics due to moving to California this Saturday,” and she moved on or about October 27. In an affidavit, Stone refers to the resignation letter as a “transfer document” because she intended to become certified and continue to work for Quest.

{¶ 7} Stone became certified as a phlebotomy technician in California on March 9, 2019. Stone avers, “If HR and my supervisor would have provided me the proper information, I would have been certified in April 2018. I could have been working light duty here in California while pending surgery.” She further avers that she will return to Quest in California once she is medically able to do so. However, there is no evidence in the record that Quest has agreed to reemploy her.

***B. Commission Hearing and Orders***

{¶ 8} In June 2019, Stone applied for TTD compensation beginning October 27, 2018, and continuing until she is medically able to return to work. A district hearing officer for the commission found that Stone’s decision to resign and relocate was a voluntary removal from her position of employment, for which TTD compensation is not payable, and denied her request.

{¶ 9} Stone’s appeal to a commission staff hearing officer (“SHO”) was denied on the same grounds. The SHO believed Stone’s testimony that she had no intent to abandon the workforce but observed that “there was no guarantee of a job transfer with the Employer and there was no job offer” when Stone resigned and relocated. Thus, the SHO found that Stone had voluntarily resigned, precluding compensation.

{¶ 10} The commission, exercising its continuing jurisdiction under R.C. 4123.52, accepted Stone’s request for reconsideration to correct a perceived error

of law. It determined that in denying compensation, the SHO had misapplied the law of voluntary abandonment. The commission concluded that Stone was entitled to TTD compensation because she did not intend to abandon the workforce and did not voluntarily remove herself from her former position of employment. Stone was awarded TTD compensation from October 27, 2018, through July 31, 2019, to continue upon submission of supporting medical evidence of ongoing disability. Quest's request for reconsideration of this decision was denied.

*C. Mandamus Action*

{¶ 11} Quest filed a mandamus action in the Tenth District Court of Appeals, requesting a writ ordering the commission to vacate its award of TTD compensation and to reinstate the SHO's order. Quest alleged that there had been no legal basis for the commission to exercise its continuing jurisdiction because the SHO's order contained no clear mistake of fact or law.

{¶ 12} The Tenth District concluded that the commission had misinterpreted and misapplied the law of voluntary abandonment. 2022-Ohio-1093, 187 N.E.3d 678, ¶ 4, 13. The court issued a writ ordering the commission to vacate its order and to enter an order denying Stone's request for TTD compensation. *Id.* at ¶ 13, 56.

{¶ 13} Both Stone and the commission appealed.<sup>1</sup>

**II. LEGAL STANDARDS**

*A. Standard of Review*

{¶ 14} A writ of mandamus will issue if the relator establishes a clear legal right to the relief requested and a clear legal duty of the respondent to provide such

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1. Quest suggests that we should strike the commission's notice of appeal as untimely filed. However, the commission's notice of appeal was timely filed pursuant to S.Ct.Prac.R. 6.01(C)(1) ("If a party timely files a notice of appeal in the Supreme Court, any other party may file a notice of appeal \* \* \* within the time prescribed by division (A)(1) or (2) of this rule or ten days after the first notice of appeal was filed, whichever is later"). Stone filed her notice of appeal on May 11, 2022, and the commission filed its notice on May 20, 2022.

relief. *State ex rel. McCormick v. McDonald's*, 141 Ohio St.3d 528, 2015-Ohio-123, 26 N.E.3d 794, ¶ 11. “It is well settled that the commission is responsible for making factual findings. Such findings will be disturbed only if the commission abuses its discretion, which occurs only if there is not ‘some’ evidence to support the finding.” (Citation omitted.) *State ex rel. Ohio Presbyterian Retirement Servs., Inc. v. Indus. Comm.*, 151 Ohio St.3d 92, 2017-Ohio-7577, 86 N.E.3d 294, ¶ 12. But “[a] mandatory writ may issue against the Industrial Commission if the commission has incorrectly interpreted Ohio law.” *State ex rel. Gassmann v. Indus. Comm.*, 41 Ohio St.2d 64, 65, 322 N.E.2d 660 (1975).

***B. Temporary-Total-Disability Compensation***

{¶ 15} Pursuant to R.C. 4123.54 and 4123.56, employees are entitled to receive a portion of their wages when they are temporarily and totally disabled as a result of a workplace injury. The purpose of TTD compensation is to compensate injured workers for their loss of earnings. *State ex rel. Ohio State Univ. v. Pratt*, 169 Ohio St.3d 527, 2022-Ohio-4111, 206 N.E.3d 708, ¶ 17. “Therefore, ‘in order to qualify for TTD compensation, the claimant must show not only that he or she lacks the medical capability of returning to the former position of employment but that a cause-and-effect relationship exists between the industrial injury and an actual loss of earnings.’ ” *Id.*, quoting *State ex rel. McCoy v. Dedicated Transport, Inc.*, 97 Ohio St.3d 25, 2002-Ohio-5305, 776 N.E.2d 51, ¶ 35; *see also* R.C. 4123.54(A) (every employee who is injured in the course of employment “is entitled to receive the compensation for loss sustained on account of the injury”). “ ‘In other words, it must appear that, but for the industrial injury, the claimant would be gainfully employed.’ ” *Pratt* at ¶ 17, quoting *McCoy* at ¶ 35.

{¶ 16} Voluntary abandonment of employment is an affirmative defense to a claim for TTD compensation. *See State ex rel. Pacheco v. Indus. Comm.*, 157

Ohio St.3d 126, 2019-Ohio-2954, 132 N.E.3d 670, ¶ 26; *but see* R.C. 4123.56(F).<sup>2</sup> In *Klein*, we held that “when a workers’ compensation claimant voluntarily removes himself from his former position of employment for reasons unrelated to a workplace injury, he is no longer eligible for [TTD] compensation, even if the claimant remains disabled at the time of his separation from employment.” *Klein*, 155 Ohio St.3d 78, 2018-Ohio-3890, 119 N.E.3d 386, at ¶ 29.

{¶ 17} *Klein* overruled precedent, returning to the “fundamental tenet of [TTD] compensation: that the industrial injury must cause the worker’s loss of earnings.” *Id.* at ¶ 18, citing *McCoy* at ¶ 35. “[I]t would not serve the purpose of [TTD] compensation to award compensation to a worker whose own actions, and not his workplace injury, have prevented his return to his former position of employment.” *Klein* at ¶ 22, citing *State ex rel. Ashcraft v. Indus. Comm.*, 34 Ohio St.3d 42, 43-44, 517 N.E.2d 533 (1987).

{¶ 18} Importantly, we recently clarified that *Klein* did not change the focus from abandonment of the workforce. *Pratt*, 169 Ohio St.3d 527, 2022-Ohio-4111, 206 N.E.3d 708, at ¶ 21-24. It remains that “the key question is whether an injured worker who is no longer in the former position has abandoned the workforce, not merely abandoned the former position.” *Id.* at ¶ 18. This inquiry is consistent with R.C. 4123.56, which provides that TTD compensation shall not be made for any period, inter alia, “ ‘when work within the physical capabilities of the employee is made available by the employer or another employer.’ ” (Emphasis added in *Pratt*.) *Id.* at ¶ 19, quoting R.C. 4123.56(A). As we have maintained, the “question is whether [the] circumstances demonstrate a voluntary abandonment of the workforce—permanent or temporary—such that the injured worker’s wage loss is

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2. Effective September 15, 2020, R.C. 4123.56(F) expresses “the intent of the general assembly to supersede any previous judicial decision that applied the doctrine of voluntary abandonment to a claim brought under this section.” This provision does not apply here, however, because the commission decided Stone’s claim before the effective date. *See* 2020 Am.Sub.H.B. No. 81; *Pratt* at ¶ 10, fn. 2.

not the result of the work injury. In other words, do the circumstances indicate that the injured worker would be working—somewhere—but for the injury?” *Id.* at ¶ 24.

{¶ 19} In this context, the distinction between voluntary and involuntary is causal, not volitional—i.e., a voluntary abandonment is one that is *not* causally related to the industrial injury. *State ex rel. Rockwell Internatl. v. Indus. Comm.*, 40 Ohio St.3d 44, 46, 531 N.E.2d 678 (1988). Hence, an injury-induced departure from the workforce (involuntary abandonment) and a departure based on the claimant’s intentional conduct (voluntary abandonment) are mutually exclusive. The former is compensable; the latter is not.

### III. ANALYSIS

{¶ 20} Here, the commission found that Stone’s clear intent was to maintain employment with Quest through a transfer within the company to a phlebotomist position in California, that Stone justifiably relied on her supervisor’s assurances that a transfer would be permitted, and that the totality of Stone’s statements and actions “demonstrate it was never her plan to abandon the workforce.” These findings are supported by Stone’s affidavits and hearing testimony and by the fact that she eventually obtained her California phlebotomy certification. The commission concluded that these facts demonstrate that Stone “did not voluntarily remove herself from her former position of employment, and therefore, she is entitled to receive [TTD] compensation for the allowed conditions.”

{¶ 21} Stone and the commission contend that the commission’s order should be upheld under the “some evidence” standard. However, the facts in this case are not in dispute. The issue is whether the commission properly applied the law to the undisputed facts.

{¶ 22} Had Stone not been injured, she would have experienced the same wage loss upon relocating to California without the proper certification. And had Stone remained employed by Quest in Ohio, she would not have experienced any

wage loss. Accordingly, the undisputed facts demonstrate that Stone’s industrial injury was not the “but for” cause of her lost earnings. Albeit understandable, Stone’s reasons for abandoning the workforce and experiencing lost wages lack the necessary causal relationship to her industrial injury. “Eligibility for [TTD] compensation has *always* depended on whether the separation from employment was injury-induced.” (Emphasis added.) *Klein*, 155 Ohio St.3d 78, 2018-Ohio-3890, 119 N.E.3d 386, at ¶ 28, citing *State ex rel. Lackey v. Indus. Comm.*, 129 Ohio St.3d 119, 2011-Ohio-3089, 950 N.E.2d 542, ¶ 11.

{¶ 23} The commission misinterpreted and misapplied the law of voluntary abandonment as it relates to Stone’s request for TTD compensation. Accordingly, Quest has demonstrated a clear legal right to the relief requested and a clear legal duty on the part of the commission to provide that relief. *See McCormick*, 141 Ohio St.3d 528, 2016-Ohio-123, 26 N.E.3d 794, at ¶ 11.

#### IV. CONCLUSION

{¶ 24} We affirm the judgment of the Tenth District Court of Appeals granting Quest’s request for a writ of mandamus.

Judgment affirmed.

KENNEDY, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

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Dinsmore & Shohl, L.L.P., Brian P. Perry, and Christen S. Hignett, for appellee.

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Jurus, Workman & Muldoon, L.L.C., and Robert B. Bumgarner, for appellant Quintina L. Stone.

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