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SUPREME COURT RULING EMPHASIZES OBLIGATION TO PAY TTD UNTIL MMI

*Interstate Scaffolding, Inc. v. The Workers
Compensation Commission, et al.*
Docket No. 107852

Jeff Urban was terminated while working under restrictions following an accident at work. According to his employer, the reasons for the termination were unrelated to his injuries and his restrictions, namely that Urban had written religious “graffiti” on the storeroom wall on the employer’s premises. Upon terminating Urban, his employer refused to pay TTD benefits, whereupon he filed a claim with the Compensation Commission seeking benefits.

The Arbitrator denied TTD benefits, but the Commission awarded them based on the fact that Urban’s condition had not stabilized at the time of the arbitration hearing. Interstate appealed this ruling, which was reversed in the Appellate Court in a 3-2 decision. The Appellate Court concluded Urban was not entitled to TTD benefits after his termination “for cause.” The Appellate Court agreed with the Commission’s factual findings that Urban’s condition had not stabilized and that he remained temporarily totally disabled. Nevertheless, the

Appellate Court reversed the award of benefits based on the fact that Urban had

been discharged by his employer for conduct unrelated to the injury.

The Supreme Court took up the issue of whether an employer is obligated to pay temporary total disability benefits to an employee working light duty who is terminated for conduct unrelated to his injuries. Urban’s argument was a simple one: the dispositive test is whether the worker’s condition has stabilized and he has reached maximum medical improvement. If not, he should be entitled to benefits, notwithstanding dismissal. Interstate argued that an employer may cease paying TTD if an injured employee commits a “volitional act of misconduct” that justifies termination.

The Court considered it a well-settled principle that the dispositive inquiry in making an award for TTD benefits is whether the claimant’s condition has stabilized. The Court cited section 8(b) of the Act, which provides that “[W]eekly compensation ***shall be paid*** as long as the total temporary incapacity lasts.” The Court interpreted this as meaning that:

“an employee is temporarily totally incapacitated from the time the injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit.”

The lower court found that Urban's condition had not stabilized, but nevertheless denied benefits using an analysis focusing on whether his departure from work was voluntary. Courts in other jurisdictions have denied TTD benefits to employees discharged for misconduct. Following the logic of these holdings, the appellate court majority held that allowing an employee to collect TTD benefits after being removed from the workforce "as a result of *volitional conduct* unrelated to his injury would *not* advance the goal of compensating an employee for a work-related injury."

Two Justices of the appellate court dissented, agreeing that TTD could be discontinued when an employee is terminated as a result of his own volitional acts unrelated to his injuries. However, the dissenters believed the majority decision flawed because it lacked standards for the practical application of the principle that an employee could be discharged for volitional conduct before his condition stabilized. The dissenters advocated a framework for deciding whether TTD benefits can be discontinued upon an injured employee's termination. This would place the burden on the employer to establish:

- (a) that the employee violated a rule or policy;
- (b) that the employee was fired for a violation of that rule or policy;
- (c) that the violation would ordinarily result in the termination of a non-disabled employee; and employees, and:
- (d) that the violation was a voluntary act within the control of the employee and not caused by the employee's disability.

If an employer can establish these indicia of misconduct, the burden would then shift to the employee to produce evidence to rebut this evidence. Therefore, the dissenters would have remanded the case to the Commission with instructions to admit additional evidence consistent with this framework.

The Supreme Court reversed, holding that neither the majority nor the dissenters reached the correct conclusion. The Court held that there was no reasonable construction of the provisions of the Act which would support a finding that TTD benefits could be denied an employee who remained injured, who has been discharged for "volitional conduct" unrelated to his injury. The Court stated that:

"A thorough examination of the Act reveals that it contains no provision for the denial, suspension, or termination of TTD benefits as a result of an employee's discharge by his employer, nor does the Act condition TTD benefits on whether there has been 'cause' for the employee's dismissal. Such an inquiry is foreign to the Illinois workers' compensation system. (emphasis added)"

The Court went on to state that the fundamental test for determining whether an employee is entitled to TTD is whether he remains temporarily totally disabled as a result of his injuries and whether he is capable of returning to the workforce. The Act provides incentive for an injured employee to strive toward recovery, as:

"TTD benefits may be suspended or terminated if an employee refuses to submit to medical, surgical or hospital treatment essential to his recovery, or if the employee fails to cooperate in good faith with rehabilitation efforts. Benefits

can also be suspended or terminated if an employee refuses to work within the physical restrictions prescribed by his doctors.”

There was no mention whether any of these factors were present in Urban’s case. But as the Commission and the lower courts found that Urban’s condition had not stabilized, the Supreme Court reinstated benefits.

In sum, the Supreme Court refused to accept and adopt the logic of the appellate court that termination as a result of volitional conduct unrelated to an injury did not advance the goal of compensating an employee for a work-related injury. Nor did it adopt the balancing test promoted by the dissent. Rather, the Court adopted a very strict interpretation of the Act as a remedial statute which should be liberally construed to effectuate its main purpose of providing financial protection for injured workers. According to the Court, “an injured employee’s entitlement to TTD benefits is a *completely separate issue* and may not be conditioned on the propriety of the discharge.”

When an injured employee has been discharged, the “determinative inquiry” for deciding entitlement to TTD benefits remains whether the claimant’s condition has stabilized. If an injured employee can show that he remains temporarily totally disabled as a result of his work-related injuries, he will be entitled to TTD benefits.

COMMENT: It is difficult to square the public policy position articulated by the Supreme Court with the principles it otherwise embraces. It is too far reaching, as it appears to permit no exception whatsoever to paying TTD benefits to an

employee whose condition has not stabilized, this despite the prospect for disruption of employer sponsored rehabilitation programs by injured employees who can still anticipate receiving benefits. Also, there may be overriding principles of federal law which, for example, does not permit the employment of an illegal alien whose status is detected after an injury.

The test set forth in the appellate court dissent would have provided a workable system for determining whether a claimant was fired for valid cause. This could have worked to Urban’s benefit in this case. But note that Urban was not temporarily totally disabled at the time he was terminated, and was awarded benefits, nonetheless. Did he “strive toward recovery” by failing to cooperate in good faith with his employer’s rehabilitation efforts? If not, should his benefits not have been terminated?

In short, the Court could have adopted a more functional approach by adopting the framework suggested by the dissent, a set of rules placing the burden on the employer to show that discharge was without pretext. Its failure to do so does *not* preclude termination of benefits for engaging in an injurious practice retarding recovery, failing to cooperate with rehabilitation efforts, or refusing to work modified duty prescribed by a physician. Simply stated, where an employee who is capable of rehabilitation or working takes himself outside such efforts through willful behavior, his employer should retain the opportunity to terminate benefits.

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