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EMPLOYEE IS NOT ENTITLED TO COLLECT TTD BENEFITS AFTER HE VOLUNTARILY REMOVES HIMSELF FROM THE WORK FORCE FOR REASONS UNRELATED TO HIS INJURY

In a recent appellate court decision, *Interstate Scaffolding, Inc. v. The Workers' Compensation Commission*, the court had occasion to consider a novel issue holding that an employee who voluntarily removes himself for unrelated reasons is not entitled to collect TTD.

Jeff Urban was employed by Interstate Scaffolding as a union carpenter. On July 2, 2003, he suffered a work-related injury to his head and neck. In February, 2005, Urban was released for light duty at one of the Interstate Scaffolding facilities. Urban conceded that the work provided by the employer was within the medical restrictions of Dr. James Young, the treating physician. Claimant continued to work on a regular basis until May 25, 2005, when his employment was terminated.

Sometime in April, 2005, Urban had written religious inscriptions on the walls and shelves in a storage room in the employer's premises. Urban used a permanent marker and noted that there was

other graffiti and drawings at the time he added his inscriptions. Urban acknowledged that he did not have permission to do this, that the writing did not pertain in any way to his job and that aside from the storage room, no other location on the employer's premises did non-work-related slogans or writing appear.

On May 25, 2005, Urban brought his paycheck to Rebecca Parks, a payroll department employee, and advised that he had been overpaid because no federal taxes were being withheld from his paycheck. Urban had received other paychecks containing overpayment. Parks then contacted Jan Coffey, assistant to Ronald Fowler, the employer's president. According to the claimant, Coffey called him a hypocrite and stated that if he believed the religious slogans that he had written in the storage area, he would have brought the erroneous paychecks to Parks weeks earlier. Urban allegedly reported that he "deserved those wages" and that he was a "union worker." Because of the confrontation with Coffey, the claimant contacted the local police department, complaining that he was being harassed and discriminated against because of his religious beliefs. However, no arrests or charges were made. Coffey later contacted Fowler, who had been out of town, to inform him for the first time about the writings the

claimant had made on the walls of the storage room. Fowler subsequently instructed the claimant's supervisor to terminate the claimant for defacing the company property.

On arbitration, the claimant was denied any temporary total disability benefits subsequent to his termination on May 25, 2005. The Commission, however, did award TTD benefits from May 25, 2005, based on the fact that claimant's condition had not stabilized. The circuit court confirmed the Commission decision and the employer appealed. The appellate court found that the Commission decision was against the manifest weight of the evidence based on the testimony of the parties.

The court noted that there was sufficient evidence that the claimant's condition had not stabilized. In reviewing prior decisions, the court noted that **“the critical inquiry in determining whether the employee is entitled to TTD benefits after leaving the work force centers on whether the departure was voluntary.”** The court further stated:

We find that allowing an employee to collect TTD benefits from his employer after he was removed from the work force as a result of volitional conduct unrelated to his injury would not advance the goal of compensating an employee for a work-related injury. Instead, it would provide a windfall by continuing to compensate the employee despite the fact that the cause of the lost earnings following

the employee's departure is unrelated to the injury. We note that this approach comports with the one taken in (prior Illinois decisions), and those jurisdictions that deny compensation to employees who are terminated for misconduct where the disability played no part in the discharge in that it focuses on the reason the employee was removed from the work force.

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Turning to the facts in this case, we note that claimant did present evidence that his condition had not stabilized at the time that he was discharged. However, he had been released to light-duty work and, in fact, had been able to perform such work for respondent. Further, claimant admitted that he did not have permission from respondent to write on the walls and shelves in the storage room and that the writings did not pertain in any way to his job duties with respondent. In other words, claimant tacitly conceded that he was removed from the work force as a result of volitional acts unrelated to his injury. Indeed, we find no evidence that would indicate that claimant was terminated so that respondent could avoid the payment of TTD benefits. Although some employees knew of claimant's

actions weeks before his firing, the president of the company was not aware that claimant had defaced company property until shortly before the termination. Simply stated, but for his conduct in defacing respondent's property, claimant would have continued receiving TTD benefits until his condition had stabilized.

During oral arguments, the court was advised that at the time the claimant was employed in a light-duty position he was receiving a salary from the employer, as well as a separate benefit from the employer's insurance carrier. Subsequent to the date of injury, the Illinois Workers' Compensation Act was amended to include an award for "temporary partial disability." The court felt that the benefits being received from the employer's insurance carrier must have been paid as maintenance, which the court noted could be awarded incidental to vocational rehabilitation. The court concluded:

Illinois courts have held that the absence of good faith in cooperating with vocational rehabilitation efforts justifies the termination of TTD benefits. If the failure to cooperate with a rehabilitation plan provides a basis for disallowing future TTD benefits, it follows that being fired for cause from part-time employment also provides a basis for terminating any maintenance

benefit that an employee might have been receiving incidental to that part-time employment. Accordingly, aside from our holding that claimant is not entitled to TTD benefits, we also find that claimant is no longer entitled to collect the portion of the maintenance benefit paid by respondent's insurance carrier.

Three Justices had supported the majority decision and two dissented. The dissenting opinion noted:

In this case, the majority has announced a new principle which provides that temporary disability benefits may be discontinued where an employee who, upon returning to light duty or to a rehabilitation assignment, is terminated from the work force as a result of his volitional acts of conduct (or misconduct) that are unrelated to his disability condition. Though I accept the general principle, I cannot join in the remainder of the decision because the majority provides no standards for practical application of the newly announced principle. In addition, I disagree with the outright reversal of the Commission's decision to award the claimant temporary disability and maintenance benefits.

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In this case, the nature of the claimant's termination was not addressed by the arbitrator or the Commission. There is no finding, express or implied, that the claimant was terminated for "just cause." This may be because the parties presented little evidence on that issue. There is no evidence in the record to show that the claimant's conduct violated an established company rule, and there is no evidence that the act of "defacing company property" triggered an immediate termination, rather than a suspension or a lesser discipline. The parties presented no evidence in regard to whether an able-bodied employee had ever been terminated for such conduct. There is no evidence in regard to whether the claimant would be able to find and hold other employment due to the work-related disabilities and the resulting medical restrictions.

another state? Because the court was divided on a rather unusual issue, the matter will, most likely, be appealed to the supreme court. It would not be unusual for the supreme court to accept an appeal where the minority opinion is expressed so strongly.

Interstate Scaffolding v. Workers' Compensation Commission, et al
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EDITOR'S NOTE: It is difficult to determine other situations where this case might be applied. Might it apply to a situation where the claimant becomes incarcerated? Or where he loses his driver's license because of a traffic violation or where he is an illegal alien? Or where he voluntarily moves to