Docket No. 107852.

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

INTERSTATE SCAFFOLDING, INC., Appellee, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Jeff Urban, Appellant).

Opinion filed January 22, 2010.

JUSTICE BURKE delivered the judgment of the court, with opinion.

Chief Justice Fitzgerald and Justices Freeman, Thomas, Kilbride, Garman, and Karmeier concurred in the judgment and opinion.

OPINION

In this appeal we are asked to consider whether an employer's obligation to pay temporary total disability (TTD) workers' compensation benefits to an employee who was injured in the course of his employment ceases when the employer terminates the employee for conduct unrelated to the injury. For reasons that follow, we hold that when an employee who is entitled to receive workers' compensation benefits as a result of a work-related injury is later terminated for conduct unrelated to the injury, the employer's obligation to pay TTD workers' compensation benefits continues until

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the employee's medical condition has stabilized and he has reached maximum medical improvement.

BACKGROUND

Claimant Jeff Urban (Urban) was employed by Interstate Scaffolding, Inc. (Interstate), as a union carpenter on July 2, 2003, when he sustained a work-related injury to his head, neck, and back. He was transported by ambulance to Silver Cross Hospital, where he was diagnosed with a mild concussion and cervical strain. Although Urban returned to work soon after the injury, he continued to experience persistent headaches, cervical pain, and numbness in his arms.

Between July 2, 2003, and May 25, 2005, Urban underwent numerous diagnostic tests and treatments for his medical condition resulting from the July 2, 2003, injury. At times Urban's doctor required him to remain off work. At other times, Urban was able to work "light duty" with restrictions ordered by his doctor. Urban received TTD workers' compensation benefits when he could not work and, when working light duty, Urban received a workers' compensation maintenance benefit to make up the difference in income between his previous carpenter's pay and his light-duty pay. It is undisputed that between July 2, 2003, and May 25, 2005, Interstate paid a total of $48,060.80 in TTD and maintenance benefits, as well as medical expenses totaling $50,809.78.

On May 25, 2005, an incident occurred, culminating in Urban's dismissal. On that day Urban was working a light-duty assignment at Interstate's East Hazel Crest facility. Sometime that morning, Urban went to the office and spoke to Rebecca Parks, a secretary at Interstate who worked in payroll. He told her that he believed there was an error in his paycheck regarding the amount deducted for federal withholding. During the discussion with Parks, Urban mentioned that a paycheck he received a few weeks earlier also had been wrong. He stated that in the earlier check he had been overpaid because he was paid union scale instead of light-duty pay.

After speaking with Parks, Urban went back to work. Parks, however, relayed what Urban had told her to Jan Coffey, the assistant to Interstate's president, Ron Fowler. Upon learning this information,

Coffey became irate. She knew that a few weeks earlier, in April 2005, Urban had written some religious "graffiti" or slogans in a storage room on Interstate's premises. Therefore, when she learned that Urban had retained an overpayment in his paycheck, Coffey felt that such conduct ran counter to Urban's professed religious beliefs. Coffey left the office to find Urban, confronted him, and accused him of being a "hypocrite."

Urban became angered by Coffey's confrontation. He engaged in a brief heated argument with Coffey, after which he called the East Hazel Crest police department and lodged a complaint of harassment and religious discrimination. A police officer arrived at the Interstate facility and interviewed both Urban and Coffey. Although a police report was prepared, no arrests or other action was taken by the police.

After the officer left the facility, Coffey phoned company president Ron Fowler and told him what had occurred. According to Coffey, during this phone call she told Fowler, for the first time, about the religious graffiti Urban had written on the shelves of the storage room. Coffey said she only told Fowler about the graffiti to explain why she had become so upset by Urban's comments to Parks.

After Coffey spoke to Fowler, Fowler asked to speak with Urban's supervisor, Barry Manuel. Fowler instructed Manuel to fire Urban. When Manuel did so, he told Urban that Fowler's stated reason for Urban's dismissal was Urban's defacement of Interstate property as a result of the religious graffiti Urban had written in permanent black marker in the storage room.

When Interstate terminated Urban, it also refused to pay him TTD benefits. Consequently, Urban filed an application for adjustment of claim with the Workers' Compensation Commission.

On June 28, 2005, a hearing was held on Urban's claim before Leo Hennessy, an arbitrator for the Workers' Compensation Commission. At the hearing, Urban testified regarding his July 2, 2003, injury and the subsequent medical treatment he had received. Urban explained that on July 2, 2003, he had suffered heat stroke and was injured when he was dropped on his head while being transported to the ambulance. Subsequently, he continued to experience headaches, neck pain, shoulder pain, and numbness in his upper

extremities. In December 2003, he began treatment with Dr. Young at Rush University Hospital. Dr. Young sent Urban for MRI testing and started him on a course of treatment which included injections for neck pain; nerve block and radio frequency procedures for migraine headaches and shoulder pain; and physical therapy.

Urban testified that he also saw Dr. Bernstein at his employer's request. Dr. Bernstein recommended a spinal fusion operation. Urban testified that he had rejected this more radical procedure until he could determine whether the medication and therapies prescribed by Dr. Young would be successful. However, he testified at the hearing that he was still experiencing significant pain and, for that reason, now decided to undergo the spinal fusion operation.

Urban also testified about the events surrounding his dismissal. Urban admitted that he had written religious slogans in the storage room at Interstate's facility, but he did not believe those writings were the reason for his dismissal. Urban testified that other employees had written on, or made markings on, the shelves and walls of the storage room and there had never been any repercussions of any kind.

After Urban completed his testimony, he placed into evidence several exhibits containing his medical records. These records documented the diagnoses, medications, and treatments Urban had received from the date of the injury through the date of the hearing.

The only other witness to testify at the hearing was Jan Coffey, who testified for Interstate. Her testimony was solely about the events of May 25, 2005, which led up to Urban's dismissal. In addition, a typed summary of the events, prepared by Coffey and Parks on or about May 25, 2005, was introduced as Interstate's exhibit No. 7. Interstate also placed into evidence exhibits consisting of photographs of the religious graffiti Urban admittedly wrote on the shelves of the storage room.

On July 22, 2005, the arbitrator issued a decision on Urban's claim. After summarizing the facts of the case and recounting the testimony presented at the hearing, arbitrator Hennessy came to the following conclusion:

> "Notwithstanding the divisive, conflicting testimony regarding the arguments and confrontations of May 25, 2005, at the Respondent's place of business and the unusual basis for the

termination of the Petitioner, this Arbitrator finds the Petitioner is not entitled to temporary total disability benefits subsequent to his termination of May 25, 2005."

The arbitrator's decision, which offered no explanation as to why Urban was found not to be entitled to TTD benefits, was filed with the Workers' Compensation Commission on July 27, 2005. Urban then filed a petition for review pursuant to section 19(b) of the Workers' Compensation Act (820 ILCS 305/19(b) (West 2004)).

On November 16, 2006, the Commission issued a decision modifying the arbitrator's ruling.[1] In its decision, the Commission held that Urban was entitled to TTD benefits in the sum of $1,004.41 per week for the five-week period between Urban's May 25, 2005, termination and the arbitration hearing on June 28, 2005, "based on the fact that Petition's condition had not stabilize [*sic*] as of the June 29, 2005, [*sic*] Arbitrator's hearing." In addition, the Commission remanded the matter to the arbitrator "for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980)." The Commission also ordered Interstate to pay Urban interest on the award pursuant to section 19(n) of the Act. The Commission did not discuss or make any findings with regard to Urban's termination.

Interstate sought administrative review of the Commission's decision in the circuit court of Will County. The circuit court confirmed the Commission's decision.

Further appeal was taken by Interstate and, in a 3-2 decision, the workers' compensation division of the appellate court reversed the Commission's decision and award of benefits. The appellate court concluded that Urban was not entitled to TTD benefits after his termination "for cause" on May 25, 2005. 385 Ill. App. 3d 1040.

Urban filed a timely petition for leave to appeal with this court, which we granted. We permitted the Illinois Trial Lawyers

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[1]The Commission subsequently issued a corrected decision on December 6, 2006, to address a clerical error. The December 6 decision was otherwise identical to the November 16, 2006, decision.

Association and the Illinois AFL-CIO to file *amicus curiae* briefs in support of Urban. In addition, the Illinois Association of Defense Trial Counsel and the Illinois Self Insurers Association were permitted to file *amicus curiae* briefs on behalf of Interstate.

ANALYSIS

In the case at bar, the Commission awarded Urban TTD benefits, finding that Urban's work-related injury had not yet stabilized. The appellate court agreed with the Commission's factual findings that Urban's work-related injury had not stabilized and that Urban remained temporarily totally disabled. Nevertheless, the appellate court set aside the Commission's award of benefits based on the fact that Urban had been discharged by his employer due to conduct unrelated to his injury. Thus, the issue before us is one of law–whether an employer's obligation to pay temporary total disability benefits to an employee who suffered a work-related injury ends if the employee returns to work for a light-duty assignment and, while working light duty, is terminated for conduct unrelated to his injury. Our review, therefore, is *de novo*. See *Flynn v. Industrial Comm'n*, 211 Ill. 2d 546, 553 (2004) (where there are no factual disputes, review of Commission's ruling is *de novo*). As noted by the appellate court below, this issue has never before been addressed in any reported decision in Illinois. 385 Ill. App. 3d at 1044.

Urban argues that an employee's dismissal should have no impact on that employee's entitlement to TTD benefits. He contends that here, as in any case which comes before the Commission where the question is whether an injured employee is entitled to TTD benefits, the dispositive test is whether the worker's condition has stabilized and he has reached maximum medical improvement. See *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 178 (2000). Urban points out that, in the case at bar, the appellate court agreed with the Commission that Urban's condition had not yet stabilized at the time of the hearing. Thus, Urban contends that he is entitled to TTD benefits until such time as his medical condition stabilizes, notwithstanding his dismissal. He asks that we reverse the appellate court judgment and reinstate the decision of the Commission.

Interstate, on the other hand, embraces the logic and reasoning of the majority opinion of the appellate court below and asks us to adopt its holding that an employer may cease paying TTD benefits if the injured employee commits a volitional act of misconduct that serves as justification for his termination. See 385 Ill. App. 3d at 1047.

It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007); *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005); *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 531 (2001). See also *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990) (TTD compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, "[W]eekly compensation *** shall be paid *** as long as the total temporary incapacity lasts," which this court has interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit). Further, the period during which a claimant is temporarily totally disabled is a question of fact to be resolved by the Commission, whose determination will not be disturbed unless it is against the manifest weight of the evidence. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118-19; *McKay Plating Co. v. Industrial Comm'n*, 91 Ill. 2d 198 (1982). Accordingly, when reviewing a decision of the Commission, the relevant test is whether there is sufficient evidence in the record to support it. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

Applying these standards, the appellate court agreed "there was sufficient evidence to support the Commission's finding that claimant's condition had not stabilized." 385 Ill. App. 3d at 1044. Nonetheless, the majority did not confirm the Commission's decision. Instead, the court held:

> "Although we agree that claimant was still temporarily totally disabled at the time of his termination, the more interesting aspect of this appeal is whether claimant is entitled to TTD benefits following his discharge from respondent's employ." 385 Ill. App. 3d at 1044.

In determining what impact, if any, an employee's discharge might have on the employee's entitlement to TTD benefits, the appellate court first looked to Illinois case law and found two cases, *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087 (1996), and *Schmidgall v. Industrial Comm'n*, 268 Ill. App. 3d 845 (1994), to be "instructive." From these cases, the appellate court determined that "the critical inquiry in determining whether the employee is entitled to TTD benefits after leaving the workforce centers on whether the departure was voluntary." 385 Ill. App. 3d at 1045.

The appellate court then conducted an independent review of decisions by courts from other jurisdictions that had addressed the question of an employee's entitlement to TTD benefits following a discharge for misconduct. See 385 Ill. App. 3d at 1045-46 (and cases cited). The court noted that these cases fall into two categories: those which deny compensation to an employee who has been discharged for misconduct and those which hold that the employee's discharge does not automatically bar the employee from receiving benefits. The appellate court then concluded:

> "[W]e 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." (Emphasis added.) 385 Ill. App. 3d at 1047.

Based on this conclusion, the majority held that Urban was not entitled to TTD benefits following his dismissal, which was the result of Urban's volitional conduct unrelated to his injury. The majority set aside the Commission's decision and its award of TTD benefits. 385 Ill. App. 3d at 1049.

The two justices who dissented agreed with the majority that an employee's TTD benefits *could* be discontinued when the employee is terminated as a result of his "volitional acts of conduct (or misconduct) that are unrelated to his disabling condition." They disagreed, however, with the majority's outright reversal of the Commission's decision in the present case. 385 Ill. App. 3d at 1049-50 (Donovan, J., dissenting, joined by Holdridge, J.). The dissenting justices believed that the majority's decision was flawed because it lacked any standards for the practical application of its "new

principle." 385 Ill. App. 3d at 1051-52 (Donovan, J., dissenting, joined by Holdridge, J.). The dissent concluded that the proper framework for deciding whether TTD benefits could be discontinued upon the injured employee's termination was the procedure set forth in *Seagraves v. Austin Co. of Greensboro*, 123 N.C. App. 228, 472 S.E.2d 397 (1996). 385 Ill. App. 3d at 1051-52 (Donovan, J., dissenting, joined by Holdridge, J.). Relying on *Seagraves*, the dissent held:

> "[A]n employer who terminates an injured employee and who discontinues the employee's temporary benefits, has the burden 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 nondisabled employee, and (d) that the violation was a voluntary act within the control of the employee and not caused by the employee's disability. If the employer establishes that its employee has engaged in misconduct constituting a constructive refusal to perform the work provided or to participate in the rehabilitation plan, then the burden shifts to the employee to produce evidence to rebut the employer's evidence, or to establish that his work-related injury contributed to his subsequent wage loss. If the employee establishes that the medical restrictions resulting from the work-related injury prevent him from securing employment at pre-injury work levels, temporary disability benefits should be payable for the loss of earning capacity." 385 Ill. App. 3d at 1051-52 (Donovan, J., dissenting, joined by Holdridge, J.).

The dissenting justices would have set aside the Commission's decision and remanded the matter to the Commission "with instructions to afford the parties an opportunity to present additional evidence in accordance with the framework set forth in this decision." 385 Ill. App. 3d at 1053 (Donovan, J., dissenting, joined by Holdridge, J.).

We have reviewed the appellate court judgment and find that neither the majority nor the dissent has reached the correct conclusion on the issue before this court. It is important to remember that worker's compensation is a statutory remedy and the Workers'

Compensation Commission, as an administrative agency, is without general or common law powers. See *Flynn*, 211 Ill. 2d at 553; *Cassens Transport Co. v. Illinois Industrial Comm'n*, 218 Ill. 2d 519, 525 (2006). Accordingly, a claimant's entitlement to TTD benefits is governed by the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2004)) and the Commission is limited to those powers granted by the legislature. *Cassens Transport Co.*, 218 Ill. 2d at 525. Any action taken by the Commission must be specifically authorized by statute. *Cassens Transport Co.*, 218 Ill. 2d at 525.

Looking to the Act, we find that no reasonable construction of its provisions supports a finding that TTD benefits may be denied an employee who remains injured, yet has been discharged by his employer for "volitional conduct" unrelated to his injury. 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.

The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. *Flynn*, 211 Ill. 2d at 556. Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force.

The Act provides incentive for the injured employee to strive toward recovery and the goal of returning to gainful employment by providing that TTD benefits may be suspended or terminated if the 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. See 820 ILCS 305/19(d) (West 2004); *R.D. Masonry, Inc. v. Industrial Comm'n*, 215 Ill. 2d 397 (2005). Benefits may also be suspended or terminated if the employee refuses work falling within the physical restrictions prescribed by his doctor. See 820 ILCS 305/8(d) (West 2004); *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 166 (1992); *Hayden v. Industrial Comm'n*, 214 Ill. App. 3d 749 (1991) (TTD justifiably terminated by the employer, under the Act, when the injured employee was unwilling to cooperate

with vocational placement efforts). But none of these situations exist in this case.

The appellate court found that permitting the termination of benefits to an employee who is "justifiably" discharged "comports with the [position] taken in *Granite City* and *Schmidgall*." We disagree.

In *Schmidgall*, the claimant testified at his arbitration hearing that he was experiencing constant pain as a result of his work-related injury and his doctors had not released him to return to work. The Commission denied the claim for TTD benefits, however, concluding that the claimant, who had begun receiving social security pension benefits, was automatically precluded from simultaneously receiving workers' compensation benefits. *Schmidgall*, 268 Ill. App. 3d at 848. On appeal, the appellate court set aside the Commission's decision, holding that a worker is entitled to TTD benefits from the time an injury incapacitates the employee until such time as he is as far recovered as the character of the injury permits. *Schmidgall*, 268 Ill. App. 3d at 849. The court held that the claimant's receipt of social security benefits was not dispositive of his eligibility for TTD benefits. The court noted that the claimant was not receiving social security benefits because he had left the workforce, but because he had not been released by his doctor and could not work. Whether the claimant *desired* to work was deemed not relevant since he was not *physically capable* of working at that time. *Schmidgall*, 268 Ill. App. 3d at 849.

In *Granite City*, the appellate court considered whether the claimant was eligible to receive TTD benefits while simultaneously receiving disability pension benefits. The Commission had denied the claimant TTD benefits–not because it had decided, as a matter of policy, that a person could not simultaneously receive both workers' compensation benefits and disability pension benefits (*Granite City*, 279 Ill. App. 3d at 1090) but because the claimant was able to work. The claimant was a police officer who had returned to work after sustaining a work-related injury. Upon his return to work, he began receiving full benefits as a police officer, working 40 hours per week in a light-duty assignment within the limitations set by his doctor. The officer left this position to take a disability pension. The appellate court held that, in the absence of evidence–medical or otherwise–to show that the officer could not have continued working in the light-

duty position, his acceptance of a disability pension was tantamount to permanently removing himself from the work force. The court held that the duration of TTD benefits is controlled by the claimant's ability to work and his continuation in the healing process. *Granite City*, 279 Ill. App. 3d at 1090. The court further held that an employee has the burden of showing not only that he is not working, but that he *cannot* work. See also *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 887 (1990). Because the officer had presented no medical evidence to show that his condition had not stabilized or that he could not perform the light-duty assignment offered to him, the court found that the officer failed to prove his entitlement to TTD benefits. *Granite City*, 279 Ill. App. 3d at 1090-91.

In both *Schmidgall* and *Granite City*, the touchstone for determining whether the claimants were entitled to TTD benefits was not the voluntariness of their departure from the workforce, as the appellate court believed. Rather, the touchstone was whether the claimants' conditions had stabilized to the extent that they were able to reenter the work force.

The appellate court below believed that a discharged employee should be automatically barred from receiving TTD benefits because "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." 385 Ill. App. 3d at 1047. This logic, however, is faulty.

It is a well-settled principle that the Act is a remedial statute and should be liberally construed to effectuate its main purpose–providing financial protection for injured workers. *Flynn*, 211 Ill. 2d at 556. See also *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364 (2009) (the Workers' Compensation Act is a remedial statute intended to provide financial protection for injured workers and it is to be liberally construed to accomplish that objective). In our view, the Act's purpose is not furthered by automatically denying TTD benefits to an injured employee simply because he has been discharged by his employer.

It remains the law in Illinois that an at-will employee may be discharged for any reason or no reason. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 159 (1992). Whether an employee has been

discharged for a valid cause, or whether the discharge violates some public policy, are matters foreign to workers' compensation cases. An injured employee's entitlement to TTD benefits is a completely separate issue and may not be conditioned on the propriety of the discharge.

For the reasons stated above, we hold that an employer's obligation to pay TTD benefits to an injured employee does not cease because the employee had been discharged–whether or not the discharge was for "cause." When an injured employee has been discharged by his employer, the determinative inquiry for deciding entitlement to TTD benefits remains, as always, whether the claimant's condition has stabilized. If the injured employee is able to show that he continues to be temporarily totally disabled as a result of his work-related injury, the employee is entitled to TTD benefits.

In the case at bar, the Commission found that Urban's condition, which was the result of a work-related injury, had not stabilized, and that he had not yet reached maximum medical improvement. We agree with the appellate court that these factual finding by the Commission are not against the manifest weight of the evidence and are sufficiently supported by the evidence.

CONCLUSION

The judgment of the appellate court is reversed. The decision of the Workers' Compensation Commission and its award of benefits to Urban are reinstated.

Appellate court judgment reversed;
Commission decision reinstated.

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*385 Ill. App. 3d 1040, *; 896 N.E.2d 1132, **;*
*2008 Ill. App. LEXIS 1017, ***; 324 Ill. Dec. 913*

INTERSTATE SCAFFOLDING, INC., Appellant, v. THE WORKERS' COMPENSATION COMMISSION, et al. (Jeff Urban, Appellee).

No. 3-07-0801WC

APPELLATE COURT OF ILLINOIS, THIRD DISTRICT, WORKER'S COMPENSATION COMMISSION

385 Ill. App. 3d 1040; 896 N.E.2d 1132; 2008 Ill. App. LEXIS 1017; 324 Ill. Dec. 913

October 20, 2008, Filed

SUBSEQUENT HISTORY: Released for Publication December 2, 2008.
Reversed by **Interstate Scaffolding**, Inc. v. Ill. Workers' Comp. Comm'n, 2010 Ill. LEXIS 12 (Ill., Jan. 22, 2010)

PRIOR HISTORY: [***1]
Appeal from the Circuit Court of Will County. No. 07-MR-100. Honorable Bobbi N. Petrungaro, Judge, Presiding.

DISPOSITION: Reversed and remanded.

CASE SUMMARY

PROCEDURAL POSTURE: An arbitrator declined to award appellee claimant temporary total disability (TTD) payments after his dismissal. The Workers' Compensation Commission modified the decision and found that the claimant was entitled to TTD benefits. The Circuit Court of Will County (Illinois) affirmed the Commission's decision. Appellant employer appealed.

OVERVIEW: The claimant sustained a work-related injury while in the employ of the employer and was eventually cleared to return to light duty. The employer accommodated the claimant's restrictions, but subsequently terminated the claimant for defacing company property. The issue before the appellate court was whether the claimant was entitled to the payment of TTD benefits following his termination. The appellate court declined to find that the Commission's finding that the claimant was temporarily totally disabled at the time of his termination was against the manifest weight of the evidence. However, the appellate court did hold that the claimant was not entitled to collect TTD benefits after he voluntarily removed himself from the work force by defacing company property, a reason unrelated to his injury. The appellate court found no evidence that the claimant was terminated so that the employer could avoid the payment of TTD benefits. The appellate court found that but for the claimant's conduct, the claimant would have continued to receive TTD benefits until his condition had stabilized.

OUTCOME: The circuit court's decision was reversed and the matter was remanded to the Commission for further proceedings.

CORE TERMS: claimant's, termination, disability, disability benefits, work-related, terminated, temporary, light-duty, arbitrator, rehabilitation, unrelated, work force, misconduct, light duty, contacted, storage, shelves, stabilized, volitional, earning, religious, defacing, return to work, arbitration hearing, totally disabled, vocational rehabilitation, insurance carrier, temporarily, entitlement, discharged

LEXISNEXIS® HEADNOTES Hide

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities
HN1 An employee is not entitled to collect temporary total disability benefits after he voluntarily removes himself from the work force for reasons unrelated to his injury. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities
HN2 A claimant is temporarily totally disabled from the time an 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. A claimant seeking temporary total disability (TTD) benefits must prove not only that he did not work, but that he was unable to work. The dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached maximum medical improvement (MMI). The factors to consider in assessing whether a claimant has reached MMI include a release to return to work, medical testimony or evidence concerning the claimant's injury, and the extent of the injury. Once an injured claimant has reached MMI, the disabling condition has become permanent and he is no longer eligible for TTD benefits. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview
Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities

HN3 The period during which a claimant is temporarily totally disabled is a question of fact for the Workers' Compensation Commission, and its determination will not be disturbed on review unless contrary to the manifest weight of the evidence. In determining whether a factual finding of the Commission is against the manifest weight of the evidence, the relevant test is whether the record contains sufficient factual evidence to support the Commission's determination. More Like This Headnote | Shepardize: Restrict By Headnote

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities
HN4 The critical inquiry in determining whether the employee is entitled to temporary total disability benefits after leaving the workforce centers on whether the departure was voluntary. More Like This Headnote | Shepardize: Restrict By Headnote

Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities
HN5 An individual who is working is not entitled to temporary total disability benefits. More Like This Headnote | Shepardize: Restrict By Headnote

Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > Rehabilitation
HN6 Maintenance is awarded incidental to vocational rehabilitation. 820 ILCS 305/8 (a) (2004) provides that an employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including maintenance costs and expenses incidental thereto. More Like This Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Awards > Terminations
Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > Rehabilitation
Workers' Compensation & SSDI > Benefit Determinations > Temporary Total Disabilities
HN7 The absence of good faith in cooperating with vocational rehabilitation efforts justifies the termination of temporary total disability benefits. More Like This Headnote | Shepardize: Restrict By Headnote

COUNSEL: For **Interstate Scaffolding,** Inc., Appellant: Mr. Anthony J. Cacchillo, William J. Cook & Associates, Chicago, IL.

For Jeff Urban, Appellee: Mr. Patrick Serowka, Mr. Mitchell W. Horwitz, Horwitz, Horwitz, & Associates, Ltd., Chicago, IL.

JUDGES: JUSTICE GROMETER delivered the opinion of the court. McCULLOUGH, P.J., and HOFFMAN, J., concur. DONOVAN, J., dissenting. JUSTICE HOLDRIDGE joins in this dissent.

OPINION BY: GROMETER

OPINION

[1134]** **[*1041]** JUSTICE GROMETER delivered the opinion of the court:

Claimant, Jeff Urban, sustained a work-related injury while in the employ of respondent, **Interstate Scaffolding, Inc.** Claimant was eventually cleared to return to light-duty work. Respondent accommodated the restrictions, but subsequently terminated claimant for defacing company property. At issue in this case is whether claimant is entitled to the payment of temporary total disability (TTD) benefits following his termination. The arbitrator ruled that claimant was not so entitled, but the Workers' Compensation Commission (Commission) and the circuit court of Will County disagreed. We hold that HN1 an employee is not entitled to collect TTD benefits after he voluntarily removes himself from the work force for reasons unrelated to his injury.

I. BACKGROUND

Claimant was employed by respondent as a union carpenter. On July 2, 2003, he suffered a **[***2]** work-related injury to his head and neck and sought medical treatment from Dr. James Young. Dr. Young eventually authorized claimant to return to work subject to certain lifting restrictions, and in February 2005, claimant began working light duty for respondent at one of its facilities in East Hazel Crest, Illinois. At the arbitration hearing on his application for adjustment of claim, claimant testified that the work provided by respondent was within the restrictions prescribed by **[**1135]** Dr. Young. Claimant continued to work light duty on a regular basis until May 25, 2005, when his employment was terminated.

With respect to the events leading to his discharge, claimant testified that sometime in April 2005, he had written religious inscriptions on the walls and shelves in a storage room on respondent's premises. Claimant stated that he wrote the inscriptions with permanent marker **[*1042]** and that some of his coworkers were aware of the writings. Claimant also indicated that there was other graffiti and drawings on the storage-room shelves prior to when he made the inscriptions. Nevertheless, claimant acknowledged that he did not have permission from respondent to write on the walls and shelves. **[***3]** He also stated that the writings did not pertain in any way to his job duties with respondent and that, aside from the storage room, at no other location on respondent's premises did non-work-related slogans or writings appear on the walls, affixed shelves, or elsewhere.

On May 25, 2005, claimant brought his paycheck to Rebecca Parks, an employee in respondent's payroll department. Claimant contacted Parks because he had been overpaid and because no federal taxes were being withheld from his paycheck. Claimant testified that he had received other paychecks that contained overpayments and he "didn't want to get accused for not saying anything." After claimant spoke to Parks, she contacted Jan Coffey, the assistant to Ronald Fowler, respondent's president. According to claimant, Coffey approached him, called him a "hypocrite," and stated that if he believed the religious slogans that he had written on respondent's premises, he would have brought the erroneous paychecks to respondent's attention weeks earlier. Coffey testified that claimant responded that he "deserved those wages" and that he was a "union worker." In response to the confrontation with Coffey, claimant contacted the East **[***4]** Hazel Crest police department, complaining that he was being harassed and discriminated against because of his religious beliefs. A police officer came to respondent's facility, interviewed various individuals, and wrote a report. However, no arrests were made, and no one was charged with any crime. Coffey later contacted Fowler, who was out of town, to report the incident and the fact that claimant had contacted the police. At that time, Coffey informed Fowler for the first time about the writings claimant had made on the walls and shelves in the storage room. Fowler subsequently instructed Barry

Manuel, claimant's supervisor, to terminate claimant for defacing company property.

The arbitrator declined to award claimant TTD benefits subsequent to his dismissal. The arbitrator wrote that, "[n]otwithstanding the divisive, conflicting testimony regarding the arguments and confrontations of May 25, 2005 at the Respondent's place of business and the unusual basis for the termination of [claimant], this arbitrator finds [claimant] is not entitled to temporary total disability benefits subsequent to his termination of May 25, 2005." The Commission modified the decision of the arbitrator and **[***5]** remanded the cause pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794 (1980). Relevant here, the Commission found that claimant was entitled to TTD **[*1043]** benefits from May 25, 2005, through the date of the arbitration hearing, "based on the fact that [claimant's] condition had not stabilize [*sic*]" as of the date of the arbitration hearing. The circuit court of Will County confirmed the Commission's decision. Respondent then filed the instant appeal.

[1136]** II. ANALYSIS

The principal issue in this appeal is whether the Commission erred in awarding claimant TTD benefits following his termination from respondent's employ on May 25, 2005. The principles governing TTD benefits are well settled. HN2A claimant is temporarily totally disabled from the time an 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. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542, 865 N.E.2d 342, 310 Ill. Dec. 18 (2007). A claimant seeking TTD benefits must prove not only that he did not work, but that he was unable to work. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 531, 758 N.E.2d 18, 259 Ill. Dec. 173 (2001). The dispositive inquiry is whether the claimant's condition **[***6]** has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement (MMI). *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594, 834 N.E.2d 583, 296 Ill. Dec. 26 (2005). The factors to consider in assessing whether a claimant has reached MMI include a release to return to work, medical testimony or evidence concerning the claimant's injury, and the extent of the injury. *Freeman United Coal Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 178, 741 N.E.2d 1144, 251 Ill. Dec. 966 (2000). Once an injured claimant has reached MMI, the disabling condition has become permanent and he is no longer eligible for TTD benefits. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072, 820 N.E.2d 570, 289 Ill. Dec. 794 (2004). HN3The period during which a claimant is temporarily totally disabled is a question of fact for the Commission, and its determination will not be disturbed on review unless contrary to the manifest weight of the evidence. *Cropmate Co. v. Industrial Comm'n*, 313 Ill. App. 3d 290, 296, 728 N.E.2d 841, 245 Ill. Dec. 759 (2000). In determining whether a factual finding of the Commission is against the manifest weight of the evidence, the relevant test is whether the record contains sufficient factual evidence to support the Commission's determination. *F&B Manufacturing Co.*, 325 Ill. App. 3d at 532.

In **[***7]** this case, we cannot say that the Commission's finding that claimant was temporarily totally disabled at the time of his termination was against the manifest weight of the evidence. A review of the record demonstrates that, as of the date of the arbitration hearing, claimant had not been released to full-duty work. Further, none of claimant's treating physicians indicated that claimant had reached **[*1044]** MMI. In fact, the medical evidence establishes that claimant continues to experience various symptoms connected with the work-related accident for which he was still being treated. Thus, there was sufficient evidence to support the Commission's finding that claimant's condition had not stabilized.

Although we agree that claimant was still temporarily totally disabled at the time of his termination, the more interesting aspect of this appeal is whether claimant is entitled to TTD benefits following his discharge from respondent's employ. In confirming the decision of the Commission, the circuit court stated that "[t]he Commission determined that the [claimant] was not fired for cause." We find no language to this effect in the Commission's decision. To the contrary, as respondent conceded during **[***8]** oral arguments, the arbitrator relied on claimant's discharge in deciding that claimant was not entitled to TTD benefits after May 25, 2005. Thus, the arbitrator tacitly concluded that claimant's termination was for cause. The Commission affirmed that portion of the **[**1137]** arbitrator's decision. Nevertheless, the parties have not provided us with any authority addressing the impact of an employee's termination on his entitlement to TTD benefits subsequent to the date of dismissal. Respondent, however, equates the circumstances of this case to situations in which an employee has refused work falling within the physical limitations prescribed by his doctor or in which the employee fails to cooperate in good faith with rehabilitation efforts. In general, these lines of cases provide that an employee is not entitled to TTD benefits. See, *e.g.*, *Stone v. Industrial Comm'n*, 286 Ill. App. 3d 174, 179-80, 675 N.E.2d 280, 221 Ill. Dec. 373 (1997) (failure to cooperate); *Hayden v. Industrial Comm'n*, 214 Ill. App. 3d 749, 755-56, 574 N.E.2d 99, 158 Ill. Dec. 305 (1991) (same); *Gallentine v. Industrial Comm'n*, 201 Ill. App. 3d 880, 887, 559 N.E.2d 526, 147 Ill. Dec. 353 (1990) (refusal of light-duty work); *Presson v. Industrial Comm'n*, 200 Ill. App. 3d 876, 880-81, 558 N.E.2d 127, 146 Ill. Dec. 164 (1990) (same); *Boker v. Industrial Comm'n*, 141 Ill. App. 3d 51, 54-55, 489 N.E.2d 913, 95 Ill. Dec. 351 (1986) **[***9]** (same); but see *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 116-17, 561 N.E.2d 623, 149 Ill. Dec. 253 (1990) (rejecting the employer's claim that because the employee was dilatory with his rehabilitation efforts, he was not entitled to TTD benefits where the employee's rehabilitation counselor testified that the employee's progress was satisfactory and where the time frame requested by the employer would have required the employee to engage in more hours of rehabilitation than authorized by his physician); *Jewel Food Cos. v. Industrial Comm'n*, 256 Ill. App. 3d 525, 531-32, 630 N.E.2d 865, 196 Ill. Dec. 700 (1993) (rejecting the employer's claim that the employee failed to cooperate with vocational rehabilitation where the employee contacted 25 employers on his own, he contacted some of the leads provided by his vocational counselor, he advised counselor that he **[*1045]** could not meet his financial obligations if he accepted a low-paying job, and he made a "concerted effort" to return to work for the employer).

Although the cases cited by respondent provide some guidance, they are not directly on point. More analogous are two decisions addressing the impact on TTD benefits where the employee returns to light-duty work but is subsequently **[***10]** taken out of the work force. In *City of Granite City v. Industrial Comm'n*, 279 Ill. App. 3d 1087, 666 N.E.2d 827, 217 Ill. Dec. 158 (1996), the claimant suffered a knee injury while working as a police officer. Following surgery, the claimant returned to a light-duty position. He worked intermittently for several months, until he took disability retirement. The claimant also sought TTD benefits following his retirement. The Commission denied the request, holding that the claimant voluntarily left his light-duty job and removed himself from the workforce in order to collect a pension. We affirmed the Commission's decision, noting that the claimant did not present any evidence demonstrating that his injury had not stabilized, that he had not been released for light-duty work, or that he could not perform light-duty work. *Granite City*, 279 Ill. App. 3d at 1090-91.

In contrast to *Granite City* is Schmidgall v. Industrial Comm'n, 268 Ill. App. 3d 845, 644 N.E.2d 1206, 206 Ill. Dec. 153 (1994). In *Schmidgall*, the claimant injured the right side of his body when a coworker accidentally tripped him. Following the injury, the claimant worked in a light-duty capacity until his doctor took him off work. At that time, the respondent began paying TTD benefits. A few **[***11]** months later, the claimant also began receiving **[**1138]** Social Security benefits. The Commission held that the claimant was precluded from receiving TTD benefits once he began receiving Social Security because the claimant "had removed himself from the work force." We disagreed, reasoning that the claimant had not voluntarily removed himself from the workforce. *Schmidgall*, 268 Ill. App. 3d at 849. Rather, his doctor had by not releasing him to return to work. *Schmidgall*, 268 Ill. App. 3d at

849. Thus, *Granite City* and *Schmidgall* suggest that HN4the critical inquiry in determining whether the employee is entitled to TTD benefits after leaving the workforce centers on whether the departure was voluntary.

In addition to *Granite City* and *Schmidgall*, we also find instructive to our analysis cases from other jurisdictions which address an employee's entitlement to TTD benefits following a discharge for misconduct. In his noted treatise, Professor Arthur Larson outlines the two approaches used in those jurisdictions that have addressed this issue. See 4 A. Larson & L. Larson, Worker's Compensation Law § 84.04[1], at 84-17 (2007). Some jurisdictions deny compensation to **[*1046]** employees who, after resuming employment **[***12]** following a work-related injury, are terminated for misconduct where the disability played no part in the discharge. See, *e.g., Palmer v. Alliance Compressors*, 917 So.2d 510, 514 (La. Ct. App. 2005) (upholding denial of disability benefits following termination where the claimant was discharged for cause and the termination was unrelated to the claimant's injury); *Robinson v. Department of Employment Services*, 824 A.2d 962, 964-65 (D.C. 2003) (denying compensation where the claimant's termination was not connected to his injury); *Sibley v. Unifirst Bank for Savings*, 699 So.2d 1214, 1220 (Miss. 1997) (rejecting argument that the claimant was entitled to disability benefits following termination for criminal activity where the claimant failed to show that her job-related injury played any part in her discharge); *Calvert v. General Motors Corporation*, 120 Mich. App. 635, 327 N.W.2d 542, 546 (Mich. Ct. App. 1982) (holding that an employee who is discharged for "just cause" is not entitled to workers' compensation benefits); *Goodyear Tire & Rubber Co. v. Watson*, 219 Va. 830, 252 S.E.2d 310, 312-13 (Va. 1979) (finding that employee who is terminated for cause and for reasons not associated with his disability is not entitled **[***13]** to benefits). These courts reason that an employee should not be rewarded with disability benefits where the unemployment was not related to the disability but rather to a volitional act over which the employee exercised some control. See, *e.g., Palmer*, 917 So.2d at 513 ("[W]e recognize that an injured employee cannot *** blatantly violate company policy without the possibility of recourse by the employer"); *Calvert*, 327 N.W.2d at 546 (defining termination for "just cause" to include only those "voluntary acts of the employee").

Courts in other jurisdictions hold that an employee's discharge from light-duty work for misconduct unrelated to his disability does not automatically bar the employee from receiving disability benefits. These courts allow the employee to collect benefits if he can establish that the work-related disability hampers the employee's ability to obtain or hold new employment. See, *e.g., Cunningham v. Atlantic States Cast Iron Pipe Co.*, 386 N.J. Super. 423, 901 A.2d 956, 962 (N.J. Super. Ct. App. Div. 2006) (holding that an employee who is terminated for cause will be entitled to disability benefits after termination if he can show actual wages lost because of the injury); *Seagraves v. Austin Co.*, 123 N.C. App. 228, 472 S.E.2d 397, 401 (N.C. Ct. App. 1996) **[***14]** (concluding that where an employee who has sustained a compensable **[**1139]** injury and has been provided light-duty employment is terminated for misconduct, the employee will be entitled to TTD benefits if the employee can show that any post-termination loss of wages is due to the work-related disability); *Marsolek v. George A. Hormel Co.*, 438 N.W.2d 922, 924 (Minn. **[*1047]** 1989) ("[A] justifiable discharge for misconduct suspends an injured employee's right to wage loss benefits; but the suspension of entitlement to wage loss benefits will be lifted once it has become demonstrable that the employee's work-related disability is the cause of the employee's inability to find or hold new employment"). The focus in these cases is on the causal connection between the wages lost and the injury. The court's reason that if the employee can prove that the loss in wages was proximately caused by the injury, TTD benefits should be awarded. See, *e.g., Cunningham*, 901 A.2d at 961 ("The claimant has the burden of proving not only that he was available and willing to work, but that he would have been working if not for the disability"); *Seagraves*, 472 S.E.2d at 401 ("[T]he test is *** whether [the employee's] loss **[***15]** of *** wages *** is due to the employee's work-related disability, in which case the employee will be entitled to benefits for such disability"); *Marsolek*, 438 N.W.2d at 924.

The overriding purpose of the Illinois workers' compensation scheme is to compensate an employee for lost earnings *resulting from a work-related disability*. See *Freeman United Coal Mining Co. v. Industrial Comm'n*, 99 Ill. 2d 487, 496, 459 N.E.2d 1368, 77 Ill. Dec. 119 (1984); *Beelman Trucking v. Workers' Compensation Comm'n*, 381 Ill. App. 3d 701, 708 (2008). Considering this purpose in conjunction with the case law discussed above, 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 *Granite City, Schmidgall*, and those jurisdictions that deny compensation to employees who are terminated for misconduct **[***16]** where the disability played no part in the discharge in that it focuses on the reason the employee was removed from the work force.

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 **[*1048]** 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 **[***17]** until his condition had stabilized. Thus, we reverse **[**1140]** the decision of the Commission awarding claimant to collect TTD benefits from respondent following his discharge for cause.

During oral arguments, we were advised that at the time that claimant was employed in the light-duty position, he was receiving a salary from respondent as well as a separate benefit from respondent's insurance carrier. Thus, we must also determine whether claimant is entitled to continue receiving this separate benefit from the insurance company following his termination. In resolving this issue, we find instructive *Nascote Industries*, 353 Ill. App. 3d 1067, 820 N.E.2d 570, 289 Ill. Dec. 794. In that case, the employee returned to part-time work for her employer following an injury. Following her return, the employer made voluntary benefit payments to the employee. The arbitrator classified these payments as maintenance and determined that the employer was not entitled to a credit for them against the permanency award. The Commission affirmed and adopted the arbitrator's decision. On appeal, we acknowledged that the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)) in effect for injuries prior to February 1, 2006, **[***18]** did not contemplate an award for "temporary partial disability." [1] *Nascote Industries*, 353 Ill. App. 3d at 1074. Yet we concluded that an injured worker who had not yet reached MMI and was working part time within his or her restrictions might be entitled to maintenance benefits. *Nascote Industries*, 353 Ill. App. 3d at 1074-75.

FOOTNOTES

1 The Act now provides for an award of temporary partial disability benefits for accidental injuries occurring on or after February 1, 2006. See Pub. Act 94-0277, eff. July 20, 2005 (amending 820 ILCS 305/8(a)).

As noted above, we were advised in this case that claimant was receiving benefits from respondent's insurance carrier, notwithstanding the fact that he was working in a light-duty capacity. HN5An individual who is working is not entitled to TTD benefits. See *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 832, 769 N.E.2d 66, 263 Ill. Dec. 864 (2002) (stating that to establish entitlement to TTD benefits, an employee must show not only that he did not work, but that he was unable to work). Moreover, claimant's injury occurred on July 2, 2003, prior to the date upon which an injury must occur to be eligible for temporary partial disability **[*1049]** benefits. Thus, if, as we were informed, claimant **[***19]** was receiving benefits from respondent's insurance carrier, the benefits could only have been paid as maintenance. HN6Maintenance is awarded incidental to vocational rehabilitation. 820 ILCS 305/8 (a) (West 2004) ("The employer shall also pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including maintenance costs and expenses incidental thereto"). In *Nascote Industries*, we concluded that part-time employment within the restrictions authorized by a claimant's doctor can be classified as a physician-approved rehabilitation plan. *Nascote Industries*, 353 Ill. App. 3d at 1075. As discussed earlier in this disposition, Illinois courts have held that HN7the absence of good faith in cooperating with vocational rehabilitation efforts justifies the termination of TTD benefits. See, e.g., *Hayden*, 214 Ill. App. 3d at 756. If the failure to cooperate with a rehabilitation plan provides a basis for disallowing future TTD benefits, if 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 **[**1141]** to that part-time **[***20]** 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.

III. CONCLUSION

For the foregoing reasons, we reverse the judgment of the circuit court of Will County, which confirmed the decision of the Commission. We remand the matter to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322, 35 Ill. Dec. 794.

Reversed and remanded.

McCULLOUGH, P.J., and HOFFMAN, J., concur.

DISSENT BY: DONOVAN

DISSENT

DONOVAN, J., dissenting:

I respectfully dissent. 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 disabling 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 **[*1050]** of **[***21]** the Commission's decision to award the claimant temporary disability and maintenance benefits.

According to the record, the claimant is a construction carpenter who was stricken with heat exhaustion on July 2, 2003, while working on a scaffold. Emergency responders were called to the work site to evaluate the claimant's condition. The medics determined that the claimant should be transported to the hospital for treatment. The medics placed the claimant on a backboard. As the medics began to move the claimant, they dropped him. His head and neck struck a toe board. The claimant felt pain in the back of his head and neck, and tingling in his arm immediately after the incident. The claimant was diagnosed with heat exhaustion, a mild concussion with post-concussion headaches and blurred vision, and a cervical strain with tingling in the right arm. An MRI revealed a small broad-based disc bulge at C5-6. The claimant's physician noted complaints of severe sleep interruption and occasions of irritability and a short-temper. The claimant's physician's differential diagnosis included possible cognitive problems.

The claimant began to work light duty in February 2005. His duties included cleaning **[***22]** the yard, organizing material, cleaning and organizing the storage facility, unloading trucks, and emptying scaffolding racks. The claimant was paid $ 20 an hour for the light duty work, and he received a maintenance benefit from the respondent's workers' compensation carrier. He had been earning $ 32.15 an hour prior to the accident.

The claimant worked light duty until May 25, 2005, the date that the respondent terminated him for "defacing company property." The claimant acknowledged that he wrote religious maxims on the shelving in the storage area where he worked in April 2005. The claimant noted that he had seen other non-work related writing and graffiti on the walls and on equipment at his work place. Photos admitted into evidence showed the writings for which claimant admitted responsibility and the other writings that the claimant referenced in his testimony. The claimant stated that his direct supervisor, two other **[**1142]** supervisors, and Jan Coffey, the company president's administrative assistant, knew of his conduct several weeks before he was terminated. Prior to the date of termination, no one confronted the claimant about his actions and no one asked or ordered him to paint **[***23]** over his writings. The claimant was discharged only after he had a run-in with Jan Coffey over a wage overpayment.

Jan Coffey conceded that the claimant was not a problem employee. She noted that the company president was meticulous about his building, but she did not identify a company rule or policy that addressed the type of conduct committed by the claimant or the discipline **[*1051]** for such conduct. Coffey stated that she did not know what consequences her boss would impose.

It has been long held that the overriding purpose of the Illinois workers' compensation scheme is to compensate an employee for lost earnings resulting from work-related injuries. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 99 Ill. 2d 487, 496, 459 N.E.2d 1368, 1373, 77 Ill. Dec. 119 (1984); *Lambert v. Industrial Comm'n*, 411 Ill. 593, 606, 104 N.E.2d. 783, 789 (1952). Equally longstanding is the proposition that our workers' compensation laws should be interpreted and applied in a practical and common-sense matter to accomplish the ultimate purpose of the Act. *Lambert*, 411 Ill. at 599, 104 N.E.2d at 786.

Whether temporary disability benefits may be discontinued where an employee who upon returning to light duty or to a rehabilitation

[***24] assignment is terminated from the work force is a question that has not been addressed in any reported decision in Illinois. The majority reviewed decisions from the courts of other jurisdictions and identified the two separate approaches to the issue. Compare *Palmer v. Alliance Compressors*, 917 So. 2d 510, 514 (La. Ct. App. 2005), with *Seagraves v. Austin Co. Of Greensboro*, 123 N.C. App. 228, 472 S.E.2d 397 (1996). The majority concluded that the reasoned approach of jurisdictions that deny compensation to employees who, upon returning to modified duty or a rehabilitation assignment, are terminated for just cause unrelated to their disabling conditions comports with the purpose behind the Illinois workers' compensation scheme.

I accept this general principle, but I find the majority's decision to be incomplete because it lacks standards for a practical application of this new principle. After reviewing a number of authorities from other jurisdictions, I conclude that the framework set forth in the *Seagraves* decision provides a practical, common-sense approach that would serve the ultimate purpose of our compensation system. *Seagraves*, 123 N.C. App at 233-34, 472 N.E.2d at 401. In my **[***25]** view, an employer, who terminates an injured employee and who discontinues the employee's temporary benefits, has the burden 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 (d) that the violation was a voluntary act within the control of the employee and not caused by the employee's disability. If the employer establishes that its employee has engaged in misconduct constituting a constructive refusal to perform the work provided or to participate in the rehabilitation plan, then the burden shifts to the employee to produce evidence to rebut the employer's evidence, or to establish that his work-related **[*1052]** injury contributed to his subsequent wage loss. If the employee establishes that the medical restrictions resulting from the work-related injury prevent him from securing employment at pre-injury **[**1143]** work levels, temporary disability benefits should be payable for the loss of earning capacity.

Under this framework, it is not sufficient to show that there is just cause for the termination. The employer must show **[***26]** that there is just cause for the employer's refusal to pay temporary disability benefits. This type of approach serves to prevent an employer from using an infraction of company policy as a pretext for terminating an injured employee and cutting off his temporary disability benefits and to protect an employee against harassment leading to voluntary termination, and it also serves to insulate an employer against unacceptable behavior that ordinarily would result in the termination of an employee. See *Seagraves*, 123 N.C. App. at 234, 472 S.E.2d at 401; *Porter v. Ford Motor Co*. 109 Mich. App. 728, 732, 311 N.W.2d 458, 460 (1981).

The majority has determined that the Commission's decision to award the claimant temporary disability benefits following his termination should be reversed outright. The majority concluded that the claimant "tacitly conceded that he was removed from the work force as a result of volitional acts unrelated to his injury," based on his acknowledgments that he had written maxims with religious themes on shelves in the storage area where he worked and that his writings were unrelated to his job duties, and that the claimant would have continued receiving his temporary **[***27]** disability benefits until his condition stabilized had he not defaced the respondent's property. After a careful review of the record, I do not find adequate evidence to support this conclusion.

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 n" just cause [2]." 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 **[*1053]** 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. Finally, I note that the claimant reported trouble sleeping and an increase in irritability and temper since his injury, and that his treating physician was concerned **[***28]** about possible cognitive changes. Whether the claimant's conduct is related to his post-concussion symptoms is a factual question that has not been addressed by either party.

FOOTNOTES

2 It is important to note here that the Commission is charged with the responsibility to determine whether a covered employee suffered a work-related injury and, if so, the compensation to which he is entitled. Generally, it is not the role of the Commission to determine the reasons for an employee's discharge. Since issues of "just cause" termination and retaliatory discharge are not within the purview of the Commission, *res judicata* would not apply to the Commission's findings and determination that an employee's temporary benefits were properly discontinued following termination.

In light of the new principle announced in this disposition, I would reverse the decision of the Will County circuit court, vacate the decision of the Commission, and remand this case to the Commission with instructions to afford the parties an opportunity to present additional evidence in **[**1144]** accordance with the framework set forth in this decision.

JUSTICE HOLDRIDGE joins in this dissent.

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CLERK, CIRCUIT COURT
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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

INTERSTATE SCAFFOLDING, INC.,

Plaintiff,

vs.

ILLINOIS WORKERS COMPENSATION COMMISSION OF ILLINOIS and JEFF URBAN,

Defendants.

No.: 07 MR 100

ORDER

This case comes before the Court for administrative review as to whether the Illinois Workers' Compensation Commission erred in awarding Temporary Total Disability benefits to the Petitioner for the time frame of May 2005 through June 2005. The Arbitrator found that the Petitioner was not entitled to temporary total disability benefits from his May 25, 2005 termination date through the hearing date of June 28, 2005. The Petitioner filed a timely appeal. The Commission determined that the Petitioner was not fired for cause and was on light duty when terminated by the Respondent employer. Thus, the Commission modified the arbitrator's decision, finding that the Petitioner was entitled to additional disability benefits for the five week period and that the Petitioner's condition had not stabilized as of the hearing before the Arbitrator. This appeal followed.

The determination of when recovery or stabilization of condition occurs is a question of fact to be determined by the Commission, and unless its findings are contrary to the manifest weight of the evidence they will not be set aside on review. Brinkmann v. Industrial Comm'n, 82 Ill.2d 462, 467, 413 N.E.2d 390, 392 (1980); Schmidgall v. Industrial Comm'n, 268 Ill. App. 3d 845, 848, 644 N.E.2d 1206, 1208 (4th Dist. 1994). It is the role of the Commission to resolve conflicts in the evidence, to assess the credibility of witnesses and to assign weight to their testimony. See Paganelis v. Industrial Comm'n, 132 Ill.2d 468, 483-84, 548 N.E.2d 1033 (Ill. 1989); Navistar International Transp. Corp. v. Industrial Comm'n, 331 Ill. App. 3d 405, 415, 771 N.E.2d 35 (1st Dist. 2002). It is not enough that this Court might come to a different result, rather in order for this Court to find a decision against the manifest weight of the evidence requires that an opposite conclusion be clearly evident.

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Based on all the evidence presented the Court finds that the decision is not against the manifest weight of the evidence, and should be and is hereby CONFIRMED.

10/2/07
Date

Hon. Bobbi N. Petrungaro

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeff Urban,
Petitioner,

vs.

NO. 03 WC 45987

Interstate Scaffolding, Inc.,
Respondent.

06 I W C C 1 0 1 0

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission modifies the Decision of the Arbitrator and finds that Petitioner is entitled to additional temporary total disability from May 25, 2005 through June 28, 2005, a period of 5 weeks, based on the fact that Petitioner's condition had not stabilize as of the June 29, 2005 Arbitrator's hearing

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,004.41 per week for a period of 5 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: NOV 16 2006

MB/ts
o-10/19/06
43

Mario Basurto

Paul W. Rink

David L. Gore

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE DECISION OF ARBITRATOR

Jeff Urban
Employee/Petitioner

Case # 03 WC 45987

v.

Corrected

Interstate Scaffolding Inc
Employer/Respondent

06IWCC1010

On Aug 30 2005, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

A copy of this decision is mailed to the following parties:

0274
03 WC 45987
HORWITZ, HORWITZ & ASSOCIATES
25 E. WASHINGTON ST
SUITE 900
CHICAGO IL 60602

1860
03 WC 45987
COOK, WILLIAM J & ASSOC
711 S DEARBORN ST*
SUITE 201
CHICAGO IL 60605

STATE OF ILLINOIS)
)
COUNTY OF WILL)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JEFF URBAN
Employee/Petitioner

Case # 03WC 45987

v.

INTERSTATE SCAFFOLDING, INC.
Employer/Respondent

06IWCC1010

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Leo Hennessy , arbitrator of the Commission, in the city of Joliet, on June 28, 2005. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☐ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to the respondent?

F. ☐ Is the petitioner's present condition of ill-being causally related to the injury?

G. ☐ What were the petitioner's earnings?

H. ☐ What was the petitioner's age at the time of the accident?

I. ☐ What was the petitioner's marital status at the time of the accident?

J. ☐ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☒ What amount of compensation is due for temporary total disability?

L. ☐ What is the nature and extent of the injury?

M. ☐ Should penalties or fees be imposed upon the respondent?

N. ☐ Is the respondent due any credit?

O. ☐ Other ______

06IWCC1010

FINDINGS

- On 07/02/03, the respondent ______ *was* operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to the respondent.
- In the year preceding the injury, the petitioner earned $ 80,971.28 ; the average weekly wage was $ 1,557.14 .
- At the time of injury, the petitioner was ____ years of age, *single* with 2 children under 18.
- Necessary medical services *have* been provided by the respondent.
- To date, $ 48,060.80 has been paid by the respondent for TTD and/or maintenance benefits.

  To date, $50,809.78 has been paid by the Respondent for medical services.

ORDER

LH 8-24-05

- The respondent shall pay the petitioner temporary total disability benefits of $ 0.00/week for 0 weeks, from N/A through N/A, which is the period of temporary total disability for which compensation is payable.

  However the arbitrator has noted that the parties have agreed respondent's liability for the period 11-3-03 – 5-25-05 for TTD or maintenance is $47,648.68 and the benefits for this period have been paid.

- The respondent shall pay the petitioner the sum of $ 0.00/week for a further period of 0 weeks, as provided in Section N/A of the Act, because the injuries sustained caused N/A.
- The respondent shall pay the petitioner compensation that has accrued from N/A through N/A, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of $ 0.00 for necessary medical services, as provided in Section 8(a) of the Act.
- The respondent shall pay $ 0.00 in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay $ 0.00 in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay $ 0.00 in attorneys' fees, as provided in Section 16 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of ~~3.54~~ 3.70 % shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

[signature] 8-24-05 ~~7-22-05~~

Signature of arbitrator — Date

AUG 30 2005 — JUL 27 2005

IN THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFF URBAN,	)	
Petitioner,	)	
	)	Case No: 03 WC 45987 Arbitrator Hennessy
INTERSTATE SCAFFOLDING, INC.,	)	
Respondent.	)	06 I W C C 1 0 1 0

K. WHETHER THE PETITIONER IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITSAND/OR MAINTENANCE BENEFITS

The Petitioner was employed by Interstate Scaffolding, Inc. as a union carpenter. On July 2, 2003, the Petitioner was working at the CITGO Refinery in Lemont, Illinois. On that date, the Petitioner suffered from heat exhaustion. After paramedics were called to provide medical assistance, the paramedics dropped the Petitioner injuring his head and neck. The Petitioner eventually sought medical treatment with Dr. James Young at Rush University Hospital. Dr. Young prescribed work restrictions of lifting between 10 to 25 pounds and infrequent lifting above the shoulders. These work restrictions were still in effect as of the date of trial. In February of 2005 the Petitioner began working at a light duty job for the Respondent at its facility in East Hazel Crest, Illinois. The Petitioner's job duties included cleaning up the yard, organizing material, cleaning up the shop, cleaning and organizing the storage facility, unloading trucks, and emptying scaffold racks. The Petitioner confirmed that the light duty work provided to him was within the restrictions prescribed by Dr. Young. The Petitioner worked light duty on a regular basis until May 25, 2005.

The Petitioner admitted at trial that while working at the light duty job, he had written religious slogans on the walls and shelves in a storage room at the Respondent's facility. These slogans were written sometime in April 2005. At trial, the Petitioner identified photographs taken of his writings. The Petitioner testified that he wrote these slogans with a permanent marker, and that he did

Jan Coffey testified that she contacted Ron Fowler, President of Interstate Scaffolding by telephone on May 25, 2005 following the incident in the warehouse. Mr. Fowler was out of town on May 25, 2005. At that time, Ms Coffey informed Mr. Fowler of the argument that had occurred and of the fact that the Petitioner had called the police. Further, Ms Coffey informed Mr. Fowler of the writings done by the Petitioner on the walls and shelves of the storage room. Mr. Fowler instructed the Petitioner's supervisor, Barry Manuel, to issue a termination notice to the Petitioner.

In addition to the aforementioned, this Arbitrator has noted that it was the Petitioner's testimony that Ms Coffey had been aware for weeks about his writings on the storage room shelves. Also noted is the Petitioner's testimony that there were other graffiti and drawings on the shelves prior to when he made his writings.

Notwithstanding the divisive, conflicting testimony regarding the arguments and confrontations of May 25, 2005 at the Respondent's place of business and the unusual basis for the termination of the Petitioner, this Arbitrator finds the Petitioner is not entitled to temporary total disability benefits subsequent to his termination of May 25, 2005.

DATE AND ENTERED July 22, 2005

Leo Hennessy
ARBITRATOR