2014 IL App (1st) 131705WC-U

Workers' Compensation
Commission Division
Order Filed: November 21, 2014

No. 1-13-1705WC



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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| MARK CESARIO, | ) | Appeal from the Circuit Court |
| | ) | of Cook County. |
| | ) | |
| Appellee, | ) | |
| | ) | |
| v. | ) | No. 12 L 50858 |
| | ) | |
| ILLINOIS WORKERS' COMPENSATION | ) | |
| COMMISSION, *et al.*, | ) | |
| | ) | Honorable |
| (Village of Oak Lawn Fire Department, | ) | Margaret Ann Brennan, |
| Appellant). | ) | Judge, Presiding. |

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JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson, Harris, and Stewart concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment of the circuit court which set aside the decision of the Commission was affirmed where the claimant was entitled to refuse light duty work under the terms of his union contract.

¶ 2 The employer, the Village of Oak Lawn Fire Department (Village), appeals from the circuit court judgment setting aside the decision of the Workers' Compensation Commission (Commission) which denied the claimant, Mark Cesario, temporary total disability (TTD)

benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)). For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on June 27, 2011.

¶ 4 These facts are undisputed by the parties: (1) the claimant's left shoulder injury, which occurred on October 14, 2009, arose out of and in the course of his employment with the Village as a firefighter and emergency medical technician; (2) the claimant's injury temporarily and totally disabled him between November 1, 2009, and November 1, 2010, and he received disability benefits for that time period pursuant to the Public Employee Disability Act (5 ILCS 345/1 (West 2008)); (3) the claimant was released to work with restrictions; (4) between November 2, 2010, and December 31, 2010, the claimant worked a blended schedule comprised of light-duty work for the Village and vacation hours; and finally, (5) as of January 1, 2011, the claimant declined the Village's continued offer of light-duty work.

¶ 5 The claimant testified that he received his full salary between November 1, 2009, and November 1, 2010, pursuant to the Public Employee Disability Act. Thereafter, his benefits fell under the Act. He testified that he performed light-duty tasks at the fire station beginning November 1, 2010, on a full-time basis for one week. Between the second week of November 2010, and December 31, 2010, the claimant worked the light-duty assignment on a part-time basis while supplementing his hours with sick time and vacation time that he had accrued. After that, he contacted his union representative regarding the options available to him given his work

restrictions and the provisions of the Collective Bargaining Agreement (CBA) governing his employment with the Village.

¶ 6 The CBA[1] provision relevant to this appeal states:

> "Section 5.15. Light Duty Positions.
>
> There shall be no light duty or temporary administrative duty positions or assignments for employees sustaining duty injuries unless voluntarily agreed to by the employee and the Village with notice of the assignment to the Union.
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> The employer may assign an employee to a light duty assignment if an employee is absent from duty for six (6) duty days or more for injuries or illness occurring off duty. When an employee is absent for six (6) or more duty days, the employee must submit to the Fire Chief or designee a report from the employee's medical doctor indicating the following
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> ***
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> Light duty will commence after the physician's work status paperwork is received by the Fire Chief. The light duty assignment shall not exceed the restrictions set forth by the physician. In the event the work restrictions are changed by the physician, the light duty assignment will change to meet the new restriction if possible. The Village will not impose light duty in the event of a full work restriction.

[1] The record does not contain the entire CBA. Because the parties do not dispute that the CBA was negotiated under the Illinois Public Labor Relations Act (5 ILCS 315/1 *et seq.* (West 2008)), we accept that fact as true.

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> The light duty assignment shall not last more than 45 calendar days without mutual agreement by the Fire Chief and the Union President or their designees. No vacant bargaining unit position shall be successively filled by employees on light duty without mutual agreement by the Fire Chief and Union President or their designees."

¶ 7 The claimant's work restrictions were set forth in a November 29, 2010, FCE which determined that he could work at the "medium-heavy" category of work, which was less than the "very heavy" category required by his firefighter/EMT position. According to the FCE, "it [was] uncertain whether further rehabilitation services [would] continue to improve [the claimant's] condition beyond his current level," given his extensive rehabilitation efforts to date, including several months of work conditioning services.

¶ 8 On January 4, 2011, the claimant spoke to a deputy fire chief and decided not to work on a light-duty basis because the CBA required that he agree to a light-duty work assignment. The claimant testified that he satisfied the 45-day light-duty period, but he did not agree to continue working a light-duty assignment beyond that. He admitted that he was told by a Village human resources representative that, if he refused to work, he would not receive TTD benefits.

¶ 9 On March 25, 2011, the claimant's treating physician, Dr. Charles Bush-Joseph, opined that, based on the claimant's condition and FCE, it was unlikely that he would be able to return to full-duty and would require permanent work restrictions. However, the letter does not provide an exact date upon which the claimant had reached maximum medical improvement (MMI) and there is no testimony in the record from Dr. Bush-Joseph or any other physician.

¶ 10 Robert Lanz, a firefighter with the Village, testified that he was the secretary-treasurer and director of contract enforcement for the International Firefighters Association Union, Local No. 3405. On November 3, 2010, he assisted the claimant with the filing of a union grievance regarding his refusal to work a light-duty assignment. Lanz testified that he had participated in the negotiations for the CBA provision regarding light-duty work and explained that the provision was written in a manner to preserve an employee's benefits under the Public Employees Disability Act, but that management had not indicated that it intended to use the provision to disqualify someone from receiving benefits under the Act. He explained that, under the Public Employees Disability Act, an employee's benefits could be vacated if he worked any kind of job, including light-duty work.

¶ 11 Lanz testified that, if the claimant stated that he desired to accept the Village's offer of light-duty work, the union would not prevent him from doing so. He denied that, in January 2011, he made any affirmative statement on behalf of the union that would block the claimant's light-duty assignment.

¶ 12 Fire Chief George Sheets testified that, in July 2010, he and the claimant agreed that he would forego a light-duty assignment because of his intense work-conditioning schedule. Later that year, in November 2010, the claimant was placed in a light-duty position with the Village. Chief Sheets testified that, in January 2011, the claimant then refused to continue working in a light-duty position. According to Chief Sheets, the light-duty position offered to the claimant was a temporary position and not a permanently budgeted position. He stated that the offer would extend for another 45 days per the CBA provision at which time it would be "re-upped,"

or re-offered to the claimant and the union. He testified that he did not know of any limit as to how many times a light-duty position could be "re-upped." However, he agreed such a position would likely not be extended for multiple years, but maybe for one year or less. As Chief Sheets understood the terms of the CBA, the decision to continue a light-duty position rested with the union and the Village. He also identified the Village's human resources manual, which states an employee would not be paid benefits under the Act if he refused to work when a position was offered by the Village.

¶ 13 Following a hearing, the arbitrator denied the claimant's request for TTD benefits pursuant to section 8(b) of the Act (820 ILCS 305/8(b) (West 2008)) for the period of time during which he refused to accept the Village's offer of light-duty work. Specifically, the arbitrator ordered the Village to pay the claimant temporary partial disability (TPD) benefits for 5 1/7 weeks for the time period between November 2, 2010, and December 31, 2010. The arbitrator noted that the parties stipulated that 87 hours of vacation time were used by the claimant during that period, and he ordered that the Village be given credit for the payment of 5 5/7 weeks of compensation, but not for the period that it used the claimant's vacation time. The arbitrator further found that the claimant was not entitled to TTD benefits from January 1, 2011, through July 27, 2011, based upon the availability of light-duty work which the claimant refused to accept, and that no TTD benefits were owed for the weeks between November 1, 2009, and November 1, 2010, when the claimant received benefits under the Public Employees Disability Act.

¶ 14 The claimant sought a review of the arbitrator's decision before the Commission. On June 6, 2012, the Commission affirmed and adopted the arbitrator's decision and remanded for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 15 The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County. On April 1, 2013, the circuit court set aside the Commission's decision, finding that the terms of the claimant's CBA, which limited light-duty work to 45 days, supersede the Act's provisions related to TTD benefits. Thus, the circuit court determined that the claimant was entitled to TTD benefits despite his refusal of a light-duty work assignment, and the court remanded the cause to the Commission for a determination of the amount of TTD benefits owed to the claimant.

¶ 16 On April 22, 2013, pursuant to the Village's motion to clarify the court's April 1 order, the circuit court modified the April 1 order to expressly state the weeks it determined that the claimant was owed TTD (January 1, 2011, through July 27, 2011). It also struck its remand order. On May 6, 2013, the court vacated its April 22 order and reinstated its April 1 order with the same two modifications—that the claimant was owed TTD benefits for the period between January 1, 2011, and July 27, 2011, and that its remand order was stricken. Additionally, the court included language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2014). The Village now appeals under Illinois Supreme Court Rule 303 (eff. June 4, 2008).[2]

[2] The Village initially appealed the April 1, 2013, order and that appeal was assigned no. 1-13-1295WC. Thereafter, the Village appealed the May 6, 2013, order and was assigned appeal no. 1-13-1705WC. The Village moved to dismiss appeal no. 1-13-1295, and that motion was

¶ 17 At the outset, we note that, even though the issue was not raised by either party, this court has an obligation to determine if it has jurisdiction to entertain this appeal. *In re Marriage of Betts*, 159 Ill. App. 3d 327, 330, 511 N.E.2d 732 (1987). Subject to exceptions created by statute or set forth in the Rules of our Supreme Court, the jurisdiction of the appellate court is limited to reviewing appeals from final judgments. *In re Marriage of Verdung*, 126 Ill. 2d 542, 553, 535 N.E.2d 818 (1989); see also 820 ILCS 305/19(f) (West 2012) (setting forth jurisdiction in workers' compensation cases). Generally, when the circuit court reverses a decision of the Commission and remands the matter back to the Commission for further proceedings involving the resolution of questions of law or fact, the order is interlocutory and not appealable. *Stockton v. Industrial Comm'n*, 69 Ill. 2d 120, 124–25, 370 N.E.2d 548 (1977). "If, however, the agency on remand has only to act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or merely make a mathematical calculation, then the order is final for purposes of appeal." See *Williams v. Industrial Comm'n*, 336 Ill. App. 3d 513, 516 (2003) (citing *A.O. Smith Corp. v. Industrial Comm'n*, 109 Ill.2d 52, 54-55 (1985)).

¶ 18 Here, the circuit court struck its initial remand order in the May 6, 2013, modified order. Even if the remand remained intact, the Commission merely had to make a mathematical calculation to determine the amount of TTD benefits owed to the claimant for the weeks between January 1, 2011, and July 27, 2011, using the claimant's average weekly wage, which was determined to be $1,413.46 and is undisputed by the parties. See *A.O. Smith Corp. v. Industrial Comm'n.*, 109 Ill. 2d at 54-55) (finding the court had jurisdiction where the parties stipulated to

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granted on July 23, 2013.

the decedent's earnings and the calculation of the amount of the benefit award upon affirmance was a simple mathematical process). Accordingly, we find that the May 6, 2013, circuit court order is a final order for purposes of appeal.

¶ 19 Turning to the merits, the Village first contends that the Commission properly concluded that the claimant was not entitled to TTD benefits during the period when he refused to work a light-duty position as section 5.15 of the CBA does not contradict the Act. According to the Village, although the CBA allowed the claimant to decline light-duty work, the Act does not allow for payment of TTD benefits if he does so. We disagree with the Village.

¶ 20 "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." *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n,* 236 Ill.2d 132, 142 (2010). Here, however, there is no dispute that the claimant had not reached MMI. The parties only dispute whether the light-duty work provision of the CBA supersedes the Act's provision that TTD benefits may be suspended or terminated if the claimant refuses an offer of work falling within the physical restrictions prescribed by his doctor. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n,* 236 Ill. 2d 132, 146 (2010). This question presents one involving matters of statutory and contract construction to which we apply *de novo* review. *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232 (2001); *Dean Management, Inc. v. TBS Construction, Inc.*, 339 Ill. App. 3d 263, 269 (2003).

¶ 21 Contrary to the Village's interpretation of the Act, the Act does not explicitly require that an injured worker accept an offer of employment within his restrictions, but rather it is just a

factor to consider when determining whether the employee's condition has stabilized. 820 ILCS 305/8 (West 2008); *Interstate Scaffolding*, 236 Ill. 2d at 146; *Sunny Hill*, 2014 IL App (3d) 130028WC, ¶ 28 (question is not whether "a return to *any* work will result in the denial of TTD benefits, but rather evidence of such work may be probative of whether the employee's condition has stabilized which, according to *Interstate Scaffolding* is the proper focus of the TTD analysis"). That a claimant, like the claimant in this case, has returned to work on a light-duty basis or has refused an offer to do so, are merely factors our courts consider when determining whether TTD benefits should be awarded, but no one factor has been held to be solely dispositive.

¶ 22 In *Beuse v. Industrial Commission*, 299 Ill. App. 3d 180, 182 (1998), the union contract between the claimant-firefighter and the Village of Franklin Park prohibited a fireman from working a light-duty assignment. The Commission vacated a portion of the claimant's TTD award, because "the claimant was released for light-duty work and failed to look for work." *Id.* at 181. However, in confirming the Commission's decision, this court noted that, despite the Commission's stated reason, the termination date which it used was not the date the claimant was released to light-duty work, but the date when the independent medical examiner had released the claimant to full-duty work. *Id.* at 183. We continued that "[t]he release to light duty must be put in perspective as but one factor to be considered in determining whether a claimant has reached maximum medical improvement." *Id.* Accordingly, the fact that the union agreement in *Beuse* did not allow the claimant to accept light-duty work was not dispositive on the issue of whether he was entitled to TTD benefits. Likewise, in this case, the fact that the claimant

refused light-duty work on the basis of the terms of his CBA is not dispositive as to whether he is entitled to TTD benefits under the Act.

¶ 23 Moreover, we do not agree with the Village that the CBA does not take precedence over the Act or any other labor relations statute. The parties do not dispute that the CBA was negotiated under the Public Labor Relations Act (5 ILCS 315/1 *et seq.* (West 2008)), and that statute contains the following provision:

> "(a) In case of any conflict between the provisions of this Act and any other law ***, executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control. ***
>
> (b) Except as provided in subsection (a) above, any collective bargaining contract between a public employer and a labor organization executed pursuant to this Act shall supersede any contrary statutes, charters, ordinances, rules or regulations relating to wages, hours and conditions of employment and employment relations adopted by the public employer or its agents." 5 ILCS 315/15 (West 2008).

¶ 24 To the extent the Act may conflict with the terms of the claimant's CBA regarding performance of "light duty" work, the CBA controls. Here, the CBA clearly requires that the claimant agree to the light-duty position before the provision requiring the union's approval is triggered. Regardless, any dispute regarding the terms of the CBA are to be handled by the grievance process, not the Commission. See 5 ILCS 315/8 (West 2008) (setting forth statutory

requirement for grievance procedure); *Administrative Office of Illinois Courts v. State & Municipal Teamsters, Chauffeurs & Helpers Union, Local 726*, 167 Ill. 2d 180, 193 (1995).

¶ 25 We also disagree with the Village's interpretation of section 5.15 of the CBA, namely its position that, because the union did not object to the extension of the claimant's light-duty assignment beyond 45 days, his refusal results in the termination of his TTD benefits.

¶ 26 The primary goal of contract interpretation is to give effect to the parties' intent by interpreting the contract as a whole and applying the plain and ordinary meaning to unambiguous terms. *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 22. When construing a contract, we must place the meanings of words within the context of the contract as a whole. *Dean Management*, 339 Ill. App. 3d at 269. A contract term is not ambiguous merely because the parties disagree as to its interpretation; rather, a term is ambiguous when it may reasonably be interpreted in more than one way. *Arlington Heights*, 2011 IL App (1st) 110748, ¶ 22; *Dean Management*, 339 Ill. App. 3d at 269. If the terms of the contract are unambiguous, we look only to the "four corners" of the contract, and we do not consider parol evidence. *Dean Management*, 339 Ill. App. 3d at 269.

¶ 27 Here, we do not find the terms of the CBA ambiguous, and therefore, we read section 5.15 of the CBA as a whole, applying the plain and ordinary meaning to its unambiguous terms. Section 5.15 explicitly states that there "shall be no light duty" positions for employees sustaining duty injuries "unless voluntarily agreed to by the *employee* and the Village with notice of the assignment to the Union." (Emphasis added.) Section 5.15 further states that such an assignment "shall not last more than 45 calendar days without mutual agreement by the Fire

Chief and the Union President or their designees." Reading section 5.15 in its entirety, we construe the plain language of the 45-day provision, which allows the Union President or Fire Chief to object to the continuation of a light-duty assignment, to necessarily imply that the employee and the Village have agreed to such an assignment per the earlier paragraph. In this case, the claimant did not agree to the light-duty assignment beyond the initial 45-day period, and therefore, the need for the mutual agreement of the fire chief and union president was never triggered.

¶ 28 Based on the foregoing reasons, we affirm the judgment of the circuit court which set aside the Commission's decision denying the claimant TTD benefits for the period between January 1, 2011, and July 27, 2011, and, we remand the cause to the Commission for a determination of the amount of TTD owed to the claimant for that period of time.

¶ 29 Circuit court judgment affirmed.