WC Appellate Division Decision issued on October 11, 2017 – Rejection of Offer of Reasonable Employment

Section 214(1)(A) provides employers with a strong mechanism for controlling costs in compensation claims. Specifically, if an employer extends an offer of reasonable employment to an injured employee who is out of work due to an injury, and if the employee refuses that offer without good cause, the employee "is no longer entitled to any wage loss benefits under this Act during the period of refusal". In essence, an employee who rejects a reasonable reinstatement offer forfeits entitlement to incapacity benefits for as long as the refusal continues. The length of the period of refusal is highly fact-specific to the circumstances surrounding a particular claim, and in a recent decision the Appellate Division took a very conservative position in assessing when a period of refusal may have ended. In *Johnson v. Maine Department of Transportation*, Me. W.C.B. No. 17-32 (App. Div. 2017), the employee had sustained an undisputed back injury in 2010 and had been accommodated for several years until his condition progressed to the point that he was no longer able to continue within current restrictions. As a result, he was placed out of work. However, in short order the State identified a clerical position consistent with the restrictions and extended a reinstatement offer. The employee rejected the offer on the grounds that he felt the position was beyond his ability to perform. Shortly after the rejection the State filled the position in order to meet its employment needs. A few weeks later the employee obtained a report from his physician supporting his decision not to accept the offer. The employee then found a full-time job on his own but earned substantially less than he would have if the State's offer had been accepted, and filed a Petition for Review seeking ongoing benefits for partial to reflect the differential. The ALJ found that the State had made a bona fide offer of reasonable employment which had been rejected without good and reasonable cause. The ALJ was not persuaded by the opinion of the physician to the effect that the position was beyond the employee's capacity to perform. The ALJ further found that the period of refusal was not ended by either the retraction of the job offer or by the employee's having obtained a position with a new employer. Accordingly, the Petition for Review was denied and no ongoing benefits were awarded. On appeal the Appellate Division accepted all of the factual findings made by the ALJ and agreed that the State had met its burden of proof in showing that the employee had refused a genuine offer of reasonable employment. With regard to the duration of the refusal, the Division found that the filling of the offered position did not establish that the State was no longer willing or able to accommodate the employee. In addition, the Division found that obtaining new employment with a different employer did not end the period of refusal, and that such a result would be contrary to legislative intent by allowing an individual to "avoid forfeiture by obtaining underemployment at a substantially reduced wage". The employee's appeal was denied, and the decision of the ALJ was affirmed. In summary, an ALJ may properly reject the opinion of a physician on the suitability of an offered position. Similarly, developments such as filling a position with another individual and an employee's obtaining new employment elsewhere do not mark the end of the period of forfeiture following rejection of an offer of reasonable employment. When the period of unjustified refusal has not ended, an employee is not entitled to receive ongoing benefits for any degree of incapacity. Steve Moriarty represented the State in litigation before the Board and on appeal.

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