

More Bad News for the Employer of the Misbehaving Employee

Labor & Employment Law Update

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Terminating an employee for willful misconduct while on light duty related to a compensable workers' compensation claim, has long resulted in the employee's loss of total temporary disability benefits in most jurisdictions.

However, an Illinois Supreme Court recently decided that termination of an employee based on questionable conduct (engaged in by other employees without discipline), does not provide a basis for termination of total temporary disability benefits.

Rather than focus on an evaluation of the issue of misconduct, the Court applied a test as to whether or not the petitioner's condition had stabilized at the time he was working under restrictions. The most obvious issue with this test is that most light duty programs are temporary. The Court did affirm that voluntarily refusing light duty work would result in loss of total temporary disability benefits.

In a recent case, *Matuszczak v. The IL Workers' Comp. Comm.*, 2014 IL App (2d) 130532WC, the defense focused on the rationale employed in most states, maintaining that certain conduct resulting in termination amounts to a refusal of work. The case involved the termination of an employee after he repeatedly stole cigarettes from his employer with knowledge that the theft could result in his termination. In that matter, the Illinois Appellate Court refused to analyze the willful quality and knowledge of the petitioner, applying only a standard as to whether or not his medical condition had been stabilized at the time he was terminated. The court awarded total temporary disability benefits. The court specifically ruled that knowledge of the employee that his conduct could have resulted in termination did not amount to a refusal of light duty work.

This decision leaves employers in Illinois that return an injured employee to work under temporary restrictions in the uncomfortable position of being unable to discipline that employee for willful and sometimes even outrageous/criminal misconduct, without then providing unlimited total temporary disability benefits. Once severed from employment, the injured worker has no incentive to ever have the condition resolved and restrictions removed and will be able to establish difficulty in finding employment elsewhere. This obviously flies in the face of all other leave laws and the concept of "temporary" light duty programs in that they provide work for the injured worker while his condition is moving

towards maximum medical improvement. These programs keep the injured worker conditioned and attached to the workplace and workforce which has long been the recommendation of psychiatric, therapeutic and medical providers. It appears that this issue will have to be addressed by Illinois legislation as the courts are unsympathetic to this catch-22 for employers.

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