

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Hawkins v. Publix Super Markets, Inc.

177 So. 3d 1045 (Fla. 1st DCA 2015) · Decided November 12, 2015

SUMMARY

The Florida First District Court of Appeal reversed and remanded a workers' compensation order denying temporary partial disability benefits based on a refusal of suitable employment. The court held that the order lacked sufficient findings regarding the timing and continued availability of the employment, the claimant's refusals, and whether the refusal continued after termination.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Per curiam; Lewis; Makar; Winokur
JURISDICTION	Florida
DECIDED	November 12, 2015
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Claimant appealed the judge of compensation claims' order denying temporary partial disability benefits based on a refusal of suitable employment under section 440.15(6), Florida Statutes (2008).
PRECEDENTIAL VALUE	Published opinion; precedential within the Florida First District Court of Appeal subject to later authority.
PARTIES	Hawkins v. Publix Super Markets, Inc.

TOPICS

workers compensation appellate procedure employment law

PRACTICE AREAS

workers compensation employment law

QUESTIONS PRESENTED

1. Whether the JCC made sufficient findings to deny temporary partial disability benefits for all claimed time periods based on a refusal of suitable employment under section 440.15(6), Florida Statutes (2008).

2. Whether the employer must establish the continued availability of suitable employment during each applicable period in order to maintain the statutory defense to temporary partial disability benefits.

HOLDINGS

1. A denial of temporary partial disability benefits based on refusal of suitable employment cannot stand when the JCC fails to make specific findings identifying the relevant periods of the employment offer, continued availability, refusal, and any continuation of the refusal after termination.
2. An employer must establish the continued availability of the suitable job during each applicable period to retain the affirmative defense based on refusal of suitable employment.

KEY QUOTATIONS

““Voluntary limitation of income caused by the refusal to accept a suitable job does not permanently foreclose the right to indemnity benefits.”” (177 So. 3d at 1046)

“Furthermore, an employer must establish the continued availability of the job for each applicable period in order to retain the benefit of the affirmative defense based on refusal of suitable employment.” (177 So. 3d at 1046)

FACTUAL BACKGROUND

Claimant sustained a compensable workplace injury and asserted that physical restrictions caused a subsequent wage loss, supporting a claim for temporary partial disability benefits. The employer/carrier relied on an offer of suitable employment and Claimant's refusal as a basis for denying benefits. The JCC did not make specific findings concerning the timing of the offer, the continued availability of the job, the periods of refusal, or whether the refusal continued after Claimant's termination.

PROCEDURAL HISTORY

The JCC found that Claimant established an initial entitlement to temporary partial disability benefits but concluded that the employer/carrier established the statutory defense based on refusal of suitable employment. The First District reversed because the order lacked findings sufficient to determine whether the defense applied during each relevant time period and remanded for additional findings and conclusions based on the existing evidentiary record.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The JCC must make further findings of fact and conclusions of law, based on the evidence already introduced, addressing the date of the initial employment offer, the dates of continued availability of suitable employment, the dates of Claimant's refusal, and whether the refusal continued after Claimant was terminated.

CASES CITED

- Wyeth/Pharma Field Sales v. Toscano, 40 So. 3d 795, 799 (Fla. 1st DCA 2010)
- A. Duda & Sons, Inc. v. Kelley, 900 So. 2d 664, 669 (Fla. 1st DCA 2005)
- Moore v. Servicemaster Commercial Servs., 19 So. 3d 1147, 1152 (Fla. 1st DCA 2009)

OPINION

PER CURIAM.

PER CURIAM. In this workers' compensation case, Claimant appeals the judge of compensation claims' (JCC's) order denying his claim for temporary partial disability (TPD) benefits based on a refusal of suitable employment under subsection 440.15(6), Florida Statutes (2008).

Because the order on appeal does not set forth sufficient findings to support the denial of TPD benefits for all the relevant time periods, we reverse and remand for further consideration by the JCC. Under paragraph 440.15(4)(a), Florida Statutes (2008), an injured employee or claimant is entitled to TPD benefits if he or she demonstrates a causal connection between the compensable workplace injury and subsequent wage loss by proof of physical restrictions that prohibit the injured employee from performing all of his or her job duties.

See Wyeth/Pharma Field Sales, v. Toscano, 40 So.3d 795, 799 (Fla. 1st DCA 2010). In the order on appeal, the JCC found that Claimant met his initial burden to establish entitlement to TPD benefits, but also that the E/C satisfied the requirements of subsection 440.15(6) so that no TPD benefits were due Claimant. Subsection 440.15(6), however, provides that the disqualification applies only during the continuance of a refusal of employment. § 440.15(6), Fla. Stat. (2008).

See also A. Duda & Sons, Inc. v. Kelley, 900 So.2d 664, 669 (Fla. 1st DCA 2005). "Voluntary limitation of income caused by the refusal to accept a suitable job does not permanently foreclose the right to indemnity benefits." Moore v. Servicemaster Commercial Servs., 19 So.3d 1147, 1152 (Fla. 1st DCA 2009). Furthermore, an employer must establish the continued availability of the job for each applicable period in order to retain the benefit of the affirmative defense based on refusal of suitable employment.

Id. In the final order, the JCC made no specific findings establishing the date of the initial offer of employment, the dates of continued availability of a suitable job, the dates of Claimant's refusal, or whether Claimant's refusal continued after he was terminated by the Employer. Without such findings, there is insufficient evidence to support the denial of benefits for all the time periods claimed.

For this reason, we REVERSE and REMAND for further findings of fact and conclusions of law based on the evidence already introduced by the parties. LEWIS, MAKAR, and WINOKUR, JJ., concur.

