

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
GAINESVILLE DISTRICT OFFICE

Kimberly Ruffalo,
Employee/Claimant,

vs.

OJCC Case No. 14-022772MRH

Accident date: 4/22/2014

Ocala Regional Medical Center/Broadspire,
Employer/Carrier/Service Agent.

Judge: Marjorie Renee Hill

FINAL COMPENSATION ORDER

THIS CAUSE came on for a final hearing on September 23, 2015.¹ Claimant was represented by Sean McCormack and the E/C was represented by Matthew Bennett. The hearing and this Final Compensation Order resolve the Petitions for Benefits filed April 20, 2015 and June 30, 2015.

Claimant, a registered nurse, seeks TPD benefits from November 30, 2014 through March 3, 2015, and April 15, 2015 through July 29, 2015. To be entitled to TPD benefits Claimant must not be at MMI and must show a causal connection between her injury and a subsequent wage loss. *See* § 440.15(4)(a), Fla. Stat.; *Arnold v. Fla's Blood Ctrs., Inc.*, 949 So. 2d 242, 248 (Fla. 1st DCA 2007); *Wyeth/Pharma Field Sales & Gallagher Bassett v. Toscano*, 40 So. 3d 795 (Fla. 1st DCA 2010).

Generally, the test used to determine whether physical limitations after an accident are a causal factor to wage loss is whether a claimant's capabilities allow her to return to and adequately perform her prior job with the employer, and whether the workplace injury caused a change in employment status resulting in a reduction of her wages below 80% of her pre-injury average weekly wage. *Toscano*, 40 So. 3d at 799. The cause of the claimant's wage loss, once established, remains the cause until an intervening or superseding cause is established. *See id.* at 803.

Here, it is uncontested that Claimant is not at MMI, and was on temporary work restrictions during the time at issue. It is also uncontested that, because of her temporary work restrictions, she was physically unable to adequately perform her prior job with the employer and, because of her change in employment status, she earned less than 80% of her pre-injury AWW. Consequently, Claimant has established her work injury resulted in wage loss.

The burden now shifts to the E/C to establish deemed earnings because work was available, or voluntary limitation of income, either of which is an intervening or superseding cause. *See Church's Chicken v. Anderson*, 112 So. 3d 545, 547 (Fla. 1st DCA 2013). TPD benefits are not payable if Claimant unjustifiably refuses suitable employment, even modified light-duty work, offered or procured for her. *See e.g. Moore v. Servicemaster Commercial Services*, 19 So. 3d 1147, 1150-1151

¹ The parties' stipulations, claims, defenses, witnesses and exhibits, all of which were considered in rendering this Order, are listed in Appendix A attached to this Order.

(Fla. 1st DCA 2009). The employer must establish the continued availability of the job for each applicable period to establish the voluntary limitation of income defense. *See id.* at 1152.

Here, Claimant's pre-accident earnings encompassed overtime and shift differentials. Pre-accident, Claimant frequently worked more than 50 hours per week, and she worked as many as 65 hours per week. Post-accident, Claimant was offered light-duty work with available overtime and shift differentials, for a total of 53 available hours per week. The 53 hours were made available solely to accommodate Claimant and permit her to earn 80% of her pre-accident AWW. These hours were not mandatory, but all of the hours were available to Claimant throughout the time period at issue.

Claimant had great flexibility as to when she worked these hours, and the type of light duty work she performed. She could work day shifts, night shifts, weekend shifts, come in early for a shift or stay late. Claimant's light duty work included educating other nurses, providing orientation for new employees, "fit testing" employees for face masks to prevent tuberculosis, providing flu shots, and assisting with paperwork processing for various nursing directors. There were some tasks Claimant was expressly assigned, and she never refused assignments. However, those assignments did not encompass the entire 53 hours available to her. To fully avail herself of the available hours, she was required to check with various nursing directors to determine what additional tasks they needed to have performed. Claimant's services were in high demand, and there was enough work for Claimant to complete 53 hours per week had she chosen to do so. There is no persuasive evidence that Claimant's work injuries prevented her from performing the light-duty work consistently made available to her.

When considering the evidence in its entirety, the employer consistently made appropriate light-duty work available to Claimant, and Claimant did not provide any persuasive evidence for failing to avail herself of the hours made available. Accordingly, the E/C met its burden to establish Claimant voluntarily limited her income. Based on the foregoing, it is hereby,

ORDERED AND ADJUDGED that the claims for TPD benefits are **DENIED**. The claim for penalties, interest, costs and attorney fees is **DENIED**. The E/C's claim for prevailing party costs is **GRANTED**. Jurisdiction is reserved to determine the amount if the parties cannot agree.

DONE and ELECTRONICALLY SERVED this 23rd day of September, 2015, in Chambers, in Alachua County, Florida.



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Judge of Compensation Claims
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APPENDIX A

Stipulations

1. The Judge of Compensation Claims has jurisdiction over the parties and the subject matter.
2. Venue is in Alachua County.
3. An employer/employee relationship existed on the date of accident.
4. Workers' compensation insurance coverage was in effect on the date of accident.
5. The work accident is accepted as compensable.
6. Claimant's AWW is \$1,827.21
7. Claimant is not at MMI.
8. Claimant had temporary work restrictions during the period at issue.

Claimant Issues

1. TPD benefits from November 30, 2014 through March 3, 2015
2. TPD benefits from April 15, 2015 through July 29, 2015
3. Penalties, interest, costs and attorney's fees

Employer/Carrier Defenses

1. The work accident is not the major contributing cause of Claimant's alleged wage loss. Her wage loss was due to her failure to avail herself of all hours of work made available to her
2. No TPD benefits due
3. No penalties, interest, cost or attorney's fees due or owing
4. Prevailing party costs

Joint Exhibits

1. Deposition of Dr. Scott taken January 22, 2015
2. Deposition of Jeanee Thompson, taken September 15, 2015
3. Deposition of Brent Hintsala taken December 19, 2014, with attachments

Claimant Exhibits

1. Claimant's Earning Statements

Employer/Carrier Exhibits: None

Judge Exhibits

1. Claimant trial memorandum (argument only)
2. E/C trial memorandum (argument only)

Live Testimony

1. Kimberly Ruffalo
2. Jeanee Thompson