

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

THEOTAS WILLIAMS, II,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D09-6078

ARCHER WESTERN
CONTRACTORS and
GALLAGHER BASSETT
SERVICES, INC.,

Appellees.

Opinion filed July 30, 2010.

An appeal from an order from the Judge of Compensation Claims.
John J. Lazzara, Judge.

Date of Accident: June 13, 2008.

Mark L. Zientz of the Law Offices of Mark L. Zientz, P.A., Miami, for Appellant.

William H. Rogner and Matthew W. Bennett of Hurley, Rogner, Miller, Cox,
Waranch & Wescott, P.A., Winter Park, for Appellees.

THOMAS, J.

In this workers' compensation appeal, Claimant challenges the JCC's denial of his claim for temporary partial disability benefits. The JCC found that Claimant suffered compensable injuries resulting in restrictions which prevented him from

performing his pre-injury job, but which did not prevent him from performing “some modified duty work.” The JCC also found that Claimant was not yet at maximum medical improvement. The record indicates no refusal by Claimant of modified work, nor was Claimant offered modified work; Claimant was not terminated for misconduct; and Claimant did not commence employment elsewhere, followed by termination for misconduct or economic reasons. Under such facts, as explained in our recent opinion in Wyeth/Pharma Field Sales v. Toscano, 35 Fla. L. Weekly D1520 (Fla. 1st DCA July 7, 2010), Claimant is entitled to temporary partial disability benefits without conducting a job search. We therefore reverse the JCC’s order denying Claimant’s claim for temporary partial disability benefits.

REVERSED.

ROBERTS and MARSTILLER, JJ., CONCUR.