

**Illinois Supreme Court:
Termination for Cause Does Not Justify
Denial of TTD Benefits**

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On January 20, 2010, the Illinois Supreme Court issued a decision holding that an employee's entitlement to TTD benefits does not cease if that employee is terminated during a period of light-duty employment for conduct unrelated to the injury. This decision specifically reversed an Appellate Court opinion reaching a contrary result.

In October 2008, the Workers' Compensation Commission Division of the Appellate Court had carved out a judicially recognized exception to the employer's liability for payment of temporary total disability benefits. In Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission, 385 Ill.App.3d 1040, 896 N.E.2d 1132, 324 Ill.Dec.913 (3rd Dist. 2008) the Appellate Court held that an employee is not entitled to collect TTD benefits after he voluntarily removes himself from the workforce for reasons unrelated to his injury. The majority of the Appellate Court concluded that the employer may deny TTD compensation to employees who, upon returning to modified duty or a rehabilitation assignment, are terminated for just cause unrelated to the disabling condition. Even the dissenting opinion agreed with that general principal, but disagreed with the majority's opinion as incomplete because it lacked standards for a practical application of this new principal. In an opinion filed on January 22, 2010, the Illinois Supreme Court reversed the Appellate Court, finding neither the majority nor the dissent had reached the correct conclusion on the issue before the court. Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission, 2010 WL 199914 (Ill.). The Supreme Court emphasized the limited power of the Workers' Compensation Commission, indicating that any action taken by the Commission must be specifically authorized by statute, citing Cassens Transport Co. v. Illinois Industrial Commission, 218 Ill.2d 519 (2006). The Court stated as follows:

Looking to the Act, we find that no reasonable construction of its provisions supports a finding that TTD benefits may be denied an employee who remains injured, yet has been discharged by his employer for "volitional conduct" unrelated to his injury. A thorough examination of the Act reveals that it contains no provision for the denial, suspension or termination of TTD benefits as a result of an employee's discharge by his employer. Nor does the Act condition TTD benefits on whether there has been "cause" for the employee's dismissal. Such an inquiry is foreign to the Illinois Workers' Compensation system. Interstate Scaffolding, Inc., supra at p. 10.

There is little difference in the respective recitation of background by either court. Claimant, Jeff Urban, was employed by Interstate Scaffolding, Inc. as a union carpenter when he sustained a work-related injury to his head, neck and back on July 2, 2003. He was diagnosed with a mild concussion and cervical strain. Although he returned to work soon after the injury, he continued to experience persistent headaches, cervical pain, and numbness in his arms. Claimant underwent numerous diagnostic tests and treatments for his medical condition and the

employer's examining physician recommended a spinal fusion. However, claimant initially rejected that more radical procedure, waiting to determine whether the medication and therapies prescribed by his treating physician would be successful.

Claimant returned to work in a light-duty capacity shortly after the alleged injury working until May 25, 2005. On that date, claimant told a secretary working in payroll that he had been overpaid in an earlier check he received based on the union scale instead of light-duty pay. That information was relayed to an assistant to the president. A confrontation ensued between the assistant and Urban at which time the assistant accused Urban of being a "hypocrite", referencing religious slogans he had written on shelving in a storage room on the company's premises. Claimant was angered by the confrontation, called police and lodged a complaint of harassment and religious discrimination. Although a police report was prepared, no arrest or other action was taken by the police. After the assistant reported to the company president, the company president advised the claimant's supervisor to fire the claimant for defacement of property. Thereafter, the employer refused to pay TTD benefits.

An arbitrator of the Workers' Compensation Commission initially denied TTD benefits after the date the claimant was terminated. The Commission reviewed the arbitrator's award, disagreed with the arbitrator and awarded further TTD benefits. The circuit court agreed with the Commission, which was then reversed by the Workers' Compensation Division of the Appellate Court. Upon review of the medical evidence, the Appellate Court agreed there was sufficient evidence to support the Commission's finding that the claimant's condition had not stabilized as of the date of his termination. However, they found the more interesting aspect of the appeal was whether claimant was entitled to TTD benefits following his discharge for cause. The Appellate Court relied heavily on its analysis of City of Granite City v. Industrial Commission, 279 Ill.App.3d 1087 (1996) and Schmidgall v. Industrial Commission, 268 Ill.App.3d 845 (1994), finding that the critical inquiry in determining whether the employee is entitled to TTD benefits after leaving the workforce centers on whether the departure was voluntary. The Appellate Court also analyzed several cases from other jurisdictions, ultimately concluding that volitional conduct unrelated to the injury or disability leading to termination for cause is an appropriate basis for denial of further TTD benefits.

The Supreme Court reviewed the same two cases referenced above and found that the Appellate Court misconstrued the holding in each case.

In both Schmidgall and Granite City, the touchstone for determining whether the claimants were entitled to TTD benefits was not the voluntariness of their departure from the workforce as the appellate court believed. Rather, the touchstone was whether the claimants' conditions had stabilized to the extent that they were able to re-enter the workforce. Interstate Scaffolding, Inc., supra at p. 10.

The Supreme Court found no support for the Appellate Court's exception to the liability for TTD benefits imposed by the Workers' Compensation Act. Among other things, the Court noted as follows:

The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the workforce. [Citing Flynn v. Industrial Commission, 211 Ill.2d 546 (2004)] Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the workforce. Interstate Scaffolding, Inc., supra at p. 10.

The Court went on to hold as follows:

Whether an employee has been discharged for a valid cause, or whether the discharge violates some public policy, are matters foreign to workers' compensation cases. An injured employee's entitlement to TTD benefits is a completely separate issue and may not be conditioned on the propriety of the discharge.

For the reasons stated above, we hold that an employer's obligation to pay TTD benefits to an injured employee does not cease because the employee has been discharged - whether or not the discharge was for "cause." When an injured employee has been discharged by his employer, the determinative inquiry for deciding entitlement to TTD benefits remains, as always, whether the claimant's condition has stabilized. If the injured employee is able to show that he continues to be temporarily totally disabled as a result of his work-related injury, the employee is entitled to TTD benefits. Interstate Scaffolding, Inc., supra at p. 12, 13.

Because the Commission had correctly found that Urban's condition had not stabilized, that he had not yet reached maximum medical improvement, the Commission's award for TTD benefits was not against the manifest weight of evidence. The Supreme Court did allow that there are permissible reasons for suspension or termination of TTD benefits, for example, when the employee refuses work falling within the physical restrictions prescribed by his doctor. Benefits may also be suspended when the employee refuses to submit to an examination under Section 12 of the Act. However, where the claimant's condition has not yet reached maximum medical improvement, termination from a light-duty position, even for "cause" does not trigger a permissible basis for denial of further TTD benefits.