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Florida Court Reverses Itself: 104-Week Limit on Temporary Benefits Constitutional

By Michael Adams

A Florida district court has overturned an earlier ruling that found a 104-week limit on an injured worker's temporary benefits unconstitutional. The court ruled instead that the limit represents a legal deadline to determine an injured worker's eligibility for permanent benefits.

The Florida First District Court of Appeals handed down the decision in the case of [*Westphal v. City of St. Petersburg, No. 1D12-3563*], which is now likely to be decided by the state Supreme Court.

The case had its genesis in a 2009 workplace accident that left a Bradford Westphal, a City of Petersburg firefighter, with severe injuries to his legs and required multiple back surgeries.

Under the state's workers' compensation law, Westphal was eligible for 104 weeks of temporary benefits, which is designed to compensate workers while they heal and then return to work or reach their maximum medical improvement status making them eligible for permanent benefits.

In Westphal's case, however, he had exhausted his temporary benefits and yet was refused permanent benefits since his long-term medical status could not be determined.

District Court Judge Bradford Thomas ruled that the statutory gap in benefits violated Westphal's access to courts and his right to "receive justice without denial

or delay.” As a result, Thomas struck down the 104-week limit, which then reinstated a 1991 law that set temporary benefits at 260 weeks.

However, on appeal, the entire court overturned Thomas’ ruling saying the constitutionality of the 104-week benefit limit was not at issue since it could be resolved under other provisions of the workers’ compensation law.

Judge Philip Padovano, writing on behalf of the full court, said Thomas’ ruling failed to take into effect the legislative intent of the workers’ compensation law. “Nothing in the text of the applicable statute provisions suggest that the legislature intended to create a gap in which some totally disabled workers will be unable to apply for disability benefits,” opined Padovano.

Secondly, Padovano noted that the law requires a physician to evaluate an injured worker and assign an impairment rating six weeks before the 104-week limit is reached, regardless of whether or not the worker has reached the maximum medical improvement.

“While it is true that the legislature placed a fixed time limit on the right to recover benefits, the purpose of the time limit was not to create a gap in which a totally disabled but still improving worker will be uncompensated,” wrote Padovano. Further, Padovano noted, “it is clear from the overall statutory scheme that the time limit was designed as a deadline on the issue of maximum medical improvement.”

While the First DCA ruling stands for now, it appears the state’s Supreme Court will have the final say on the matter. Although the court has not formally agreed to take jurisdiction of the case it did release an order stating that “because of significant and media interest in this matter, this case has been designated as a high profile case.”

Even so, the First DCA’s ruling came as some relief to industry representatives who were counting on the court to reverse what could have been the greatest challenge to the workers’ compensation since a 1993 re-write of the statute.

The National Council on Compensation had projected the Thomas’ ruling could increase workers’ compensation costs by \$65 million, which translates into a 2.8 percent rate hike.

NCCI State Relations Executive Lori Lovgren said the council is delaying any cost estimates based on the First DCA's ruling until the Supreme Court decides whether or not to hear the case.

Property Casualty Insurers Association's State Government Relations Counsel Donovan Brown said the industry is still assessing the latest court ruling. That said, Brown noted the ruling — while preserving the current limit on temporary benefits — could open the door to other troubling issues. Namely, the possibility it will incentivize injured workers and their attorneys to reach the 104-week limit to qualify for permanent total benefits.

“It creates an end run around the normal review process for determining maximum medical improvement,” said Timothy Dunbrack, partner in the Orlando office of law firm Kelley Kronenberg. He said he views the court's ruling as a victory for the industry.

“I was not surprised by the court's ruling because the argument that the temporary benefits is unconstitutional would mean an uncertain scenario for everybody in the workers' compensation system,” said Dunbrack.

Dunbrack said, however, the ruling does create some exposure to a number of cases.

“It allows permanent total disability earlier so I do foresee an uptick in 104-week benefit cases,” said Dunbrack.