

Interstate Scaffolding, Inc., v. Illinois Workers' Compensation Commission, No. 107852, 2010 Lexis 12 (Jan. 22, 2010)

By now, you should be well aware that the Illinois Supreme Court rendered its decision in Interstate Scaffolding, Inc., v. Illinois Workers' Compensation Commission, No. 107852, 2010 Lexis 12 (Jan. 22, 2010). The ISIA filed its *amicus curiae* brief on behalf of Interstate Scaffolding, Inc. In what can only be seen as one of the most disappointing decisions to come out of this high court for Illinois businesses, the Court held that when an employee is entitled to receive workers' compensation benefits as a result of a work-related injury and is later terminated for conduct unrelated to the injury, the employer's obligation to pay TTD workers' compensation benefits continues until the employee's medical condition stabilizes and the employee reaches maximum medical improvement.

The injured worker in Interstate was on "light duty" and, in fact, receiving temporary partial disability, or "TPD", benefits. During this time, his employer terminated him for writing some religious slogans on a wall in a storage area. Following the termination, the employer refused to pay TTD benefits. Following arbitration, the Arbitrator denied the petitioner's request for TTD benefits. The Commission, however, on review, modified the Arbitrator's Decision, and awarded TTD benefits on the basis that the petitioner's condition had not yet stabilized as of the date of the hearing.

The Circuit Court of Will County confirmed the Commission's decision. The Appellate Court reversed the award in a 3-2 decision. The Court found that the termination for cause ended the petitioner's entitlement to TTD. The majority's holding reasoned that the petitioner's actions were tantamount to voluntarily removing himself from the workforce for reasons unrelated to his injury.

The Supreme Court began its analysis by restating the basic tenet that the dispositive inquiry in determining entitlement to TTD is whether a claimant's condition has stabilized, or, in other words, is the injured worker at MMI for the injury sustained? In Interstate, there was a general agreement that the claimant had not yet reached MMI.

The Supreme Court opinion next analyzed the Appellate Court's decision, which focused on determining what effect the employee's discharge had on his entitlement to TTD benefits. The Supreme Court found that neither the majority decision nor the dissent reached the correct conclusion on the issue of entitlement to TTD.

In reviewing the Workers' Compensation Act, the Supreme Court found no language or specific section within the Act to support a finding that TTD benefits may be denied or suspended when an injured employee who remains under the effects of the injury is discharged for volitional conduct unrelated to the injury. Stated another way, the Act contains no provisions for the denial, suspension, or termination of TTD as a result of an employee's discharge, and it does not condition TTD benefits on whether

there has been a termination “for cause”. According to the Court, “such an inquiry is foreign to the Illinois workers’ compensation system.” 2010 Lexis 12 at *23.

Consequently, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of the work-related injury and whether the employee is capable of returning to the work force. The decision goes on to state that 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 worker’s entitlement to TTD benefits is a completely separate issue. It may not be conditioned on the whether a termination or discharge is proper or apt. An employer’s obligation to pay TTD benefits 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 based, as always, on whether the claimant’s condition has stabilized.* If the employee can show that she is not at MMI, as a result of the work-related injury, the employee is entitled to TTD benefits.

From a practical point of view, it is important to focus on whether an injured employee remains entitled to TTD benefits. TTD benefits still may be suspended or terminated if

- an employee refuses to submit to medical, surgical or hospital treatment essential to his recovery,
- an employee fails to cooperate in good faith with rehabilitation efforts; or
- an employee refuses to work within the physical restrictions prescribed by his doctors.

It is easy to imagine the potential ramifications of the Interstate decision in a “worst case” scenario. It should be noted that the Supreme Court did not approach its decision in line with the reasoning of either the petitioner or the respondent. Rather, it followed the outline of Illinois Trial Lawyers Association. Unfortunately, in doing so, and by tying TTD benefits to medical, specifically, MMI, the Court has created a rule of law that has now drawn a line for a select group of individuals to step over. The question is whether one of these individuals will step so far over as to create either an amendment to the Act to put limits on the possible abuses of this decision.