

RANDY J. LARSON, Employee/Appellant, v. GORMAN FOUNDRY and AM. INT'L/AIG CLAIMS SERV., INC., Employer-Insurer, and MN DEP'T OF ECON. SEC. and MN DEP'T OF HUM. SERVS., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS  
JANUARY 28, 2000

No. [REDACTED SSN]

HEADNOTES

TEMPORARY TOTAL DISABILITY - JOB SEARCH. Substantial evidence supports the compensation judge's finding that the employee had not conducted an adequate job search where the employee only contacted approximately six potential employers during one and one half years.

TEMPORARY PARTIAL DISABILITY. The compensation judge erred by allowing temporary partial disability benefits to be paid during a time period when the employee was unemployed and in including that time period in determining the employee's 225 weeks of temporary partial disability benefits.

TEMPORARY PARTIAL DISABILITY - EARNING CAPACITY. The compensation judge erred by considering the employee's wage at the time of his termination from the employer when determining the employee's later earning capacity where the job with the employer was no longer available to the employee.

Affirmed in part, modified in part, reversed in part and remanded in part.

Determined by: Rykken, J., Pederson, J., and Wheeler, C.J.  
Compensation Judge: Janice M. Culnane

OPINION

MIRIAM P. RYKKEN, Judge

The employee appeals from the compensation judge's denial of his claim for temporary total and temporary partial disability benefits. We affirm in part, modify in part, reverse in part and remand in part.

BACKGROUND

Randy J. Larson, the employee, began working for Gorman Foundry, the employer, in approximately September 1984. He worked as a laborer, performing physical work such as hauling wheelbarrows and shoveling. On September 27, 1993, the employee was working as a "speed molder," or "molder trainee," and sustained a work-related injury to his low back. The employee testified that there was a great deal of bending, lifting and shoveling involved with this job, including lifting up to 100 pounds. He experienced low back symptoms on September 27,

1993, while shoveling. He received medical treatment in the emergency room at Community Memorial Hospital in Winona, Minnesota. He also received follow-up medical treatment from his family physician, Dr. David Christenson, Winona Clinic, who prescribed physical therapy for approximately two weeks.

The employer and its insurer, American International/AIG Claims Services, Inc., accepted primary liability for this injury. The employee remained off work from September 28 through October 18, 1993; he was paid temporary total disability benefits during that period of time. He returned to work at Gorman Foundry in a light-duty position as a core room helper, and was paid temporary partial disability benefits during the remainder of his time working for the employer, from October 19, 1993 through March 6, 1996. Whereas the employee earned an average weekly wage of \$429.65 at the time of his injury, he had a slight reduction in his earnings while working on a light-duty basis. The employer and insurer paid temporary partial disability benefits of \$11.77 per week for the remainder of time he worked for the employer. In December 1994, the employer and insurer also paid the employee impairment compensation based on seven percent permanent partial disability of the body as a whole.

The employee received ongoing periodic medical treatment at the Gundersen Clinic in LaCrosse, Wisconsin, at the referral of his family physician. A CT scan taken on October 14, 1993, showed a right-sided disc herniation at the L4-5 level, a mild midline disc bulge at the L4-5 level, and a pars defect at the L5 level. An MRI scan taken on December 22, 1993, confirmed these findings. The employee was originally considered a surgical candidate, but subsequently was treated conservatively, with epidural steroid injections, physical therapy, and prescription pain medication.

On March 6, 1996, the employee was fired from his job with the employer. The employer advised the employee that his job was terminated due to his excessive absenteeism. The employee testified that the reasons stated by the employer were that he “went to the doctor without an excuse” and that he had argued with a co-worker, his lead man who was the “core man cleaner.” (T. 78-79.) Testimony about the employee’s firing was presented at the hearing by both the employee and by employer witnesses, with varying accounts presented as to the surrounding circumstances.

According to the employee’s testimony at hearing, and his arguments presented at oral argument, the employee continued to experience low back symptoms in March 1996. On March 6, 1996, the employee advised the employer that he needed to consult a doctor again for his symptoms. The employee argues that George Kosidowski, supervisor, told the employee to come into his office so that he could call a doctor for the employee. The employee allegedly explained to Mr. Kosidowski that he had to leave immediately, to travel to the YMCA to soak in a warm tub for back treatment. The employee left, traveled to the YMCA, and called his physician’s office at the Gundersen Clinic in LaCrosse, Wisconsin. He was seen by his physician on that day. The employee claims that he returned to work that afternoon after his appointment, at his doctor’s direction, and was called into Mr. Kosidowski’s office, where the employer’s owner advised him that his job was being terminated due to his absenteeism.

By contrast, the employer argues that after a heated altercation between the employee and Mr. Kosidowski, the employee left the workplace against his instructions. According to testimony by Mr. Kosidowski, even though he advised the employee that he was not excused from work, and that he wanted to talk with the employee in his office, the employee angrily left work the morning of March 6, 1996. Upon the employee's return from his doctor's appointment later that afternoon, the employer advised the employee that his job was terminated, with that ultimate decision apparently made by Thomas Kosidowski, president and owner of Gorman Foundry. (T. 206.)

In any event, the employee allegedly was fired for cause on March 6, 1996. Thereafter, the employee remained off work for approximately one and a half years, during which time the employer and insurer continued to pay temporary partial disability benefits at the same rate of \$11.77 per week, even though the employee was earning no wages. The employee received re-employment compensation benefits from March 7 through September 17, 1996, totaling \$4,836, and general assistance benefits from May through October 1997, totaling \$1,218.

Following the termination of the employee's job with the employer, he received no rehabilitation assistance from the employer. The employer argues that they provided no rehabilitation assistance to the employee because he voluntarily left his job by arguing and walking off the job, and therefore his job termination was unrelated to his work-related injury.

The employee testified that he looked for work after being fired, but could name only three employers to whom he applied, Peerless Chain, Freightler Malt and Manpower, during his unemployment.

From September 1997 until the time of the hearing, the employee held two different jobs. The employee began working for McDonald's Restaurant on or about September 17, 1997, at an initial hourly wage of \$5.40.<sup>1</sup> By the hearing date, December 3, 1998, the employee earned \$6.10 per hour. He was classified as a part-time employee, which allowed him maximum part-time hours averaging 37 to 40 hours per week. (T. 166, 169.) He missed work occasionally due to his back symptoms and medical appointments. According to the employee's testimony, McDonald's provided him with light-duty work, and accommodated his physical work restrictions and his occasional need for time off work resulting from his ongoing low back symptoms.

The employee also worked for a short time for Equality Diecast, from October 23 through December 5, 1997. At hearing the employee claimed that he quit his job at Equality Diecast because working around machinery would have exposed him to dust, fumes and gasses. The employee, at that time, believed that his treating physician had advised him (via a functional capacities evaluation report) that he should avoid dust, fumes and gasses as a result of his back

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<sup>1</sup> The record includes conflicting references to the employee's starting date at McDonald's. A McDonald's representative testified at hearing that the employee was hired on September 17, 1997, and the employee's claim petition conforms with this date. The Findings and Order refer to the employee's claim for temporary total disability benefits through September 30, 1997, perhaps because that was the employee's first pay date.

injury. At oral argument, the employee argued that he actually was unable to continue performing the work at Equality Diecast due to his ongoing back symptoms, and that exposure to dust, fumes and gasses was not an issue when he decided to quit his job at Equality Diecast.

Once the employee was re-employed, the employer and insurer paid the employee temporary partial disability benefits at the rate of \$11.77 per week, arguing that the employee's temporary partial disability benefit entitlement should be based on an imputed wage of \$412.00, since the employee had established his retained earning capacity by working at Gorman Foundry post-injury from 1993 to 1996. The employer and insurer discontinued benefits on February 21, 1998.

## PROCEDURAL HISTORY

The employer and insurer filed a Notice of Intention to Discontinue Benefits (NOID) on February 20, 1998, alleging that the employee's entitlement to temporary partial disability benefits had expired, pursuant to Minn. Stat. § 176.101, subd. 2(b), as he had received the statutory limit of 225 weeks. On March 26, 1998, the Office of Administrative Hearings issued an Order on Discontinuance allowing the employer to discontinue benefits as of February 21, 1998. The employee filed an objection to discontinuance on April 17, 1998. The employee also filed a claim petition on or about that date, alleging entitlement to intermittent temporary partial disability benefits from and after September 16, 1997, and temporary total disability benefits from March 7, 1996 through September 16, 1997. The employee's objection to discontinuance and his claim petition were consolidated for hearing.

Issues addressed at the hearing held on December 3, 1998, included the employee's entitlement to temporary total disability benefits from March 7, 1996, through September 30, 1997; whether the employee was entitled to temporary partial disability benefits at a rate in excess of \$11.77 per week paid from September 30, 1997 through February 21, 1998; whether the employee was entitled to temporary partial disability benefits beyond February 21, 1998 (the expiration of 225 weeks); attainment of maximum medical improvement; and the employee's retained earning capacity. Intervention and medical claims were also addressed.

Following the hearing, the compensation judge denied the employee's wage loss claim in its entirety. The judge determined that the employee was eligible for no additional temporary partial disability benefits beyond the 225 weeks of benefits already paid. The compensation judge also determined that the employee had not been underpaid temporary partial disability benefits as claimed, as he had established an earning capacity post-injury and his temporary partial disability benefits had been paid at the proper level. The compensation judge also determined that the employee was not entitled to payment of temporary total disability benefits while unemployed, since he had failed to conduct a reasonable and diligent job search after his job termination from Gorman Foundry. Since no wage loss benefits were owed, the judge denied the intervenors' claims for reimbursement of general assistance and re-employment insurance payments. From this decision the employee appeals.

## STANDARD OF REVIEW

On appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1982). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

## DECISION

### Temporary Total Disability Benefits

The employee first appeals from the compensation judge's determination that he is not entitled to payment of temporary total disability benefits since he did not conduct a reasonable and diligent job search during the period of time for which benefits are claimed. (Findings 8 and 9.) We affirm that determination by the compensation judge.

An individual is "totally disabled if his physical condition, in combination with his age, training, and experience, and the type of work available in his community, causes him to be unable to secure anything more than sporadic employment resulting in an insubstantial income. A total disability is temporary when it is likely it will exist for a limited period of time only." Schulte v. C.H. Peterson Constr. Co., 278 Minn. 79, 153 N.W.2d 130, 24 W.C.D. 290 (1967). "The injured employee proves total disability by showing that work the employee is capable of doing is unavailable, and unavailability is shown by a diligent job search to no avail." Redgate v. Sroga's Standard Serv., 421 N.W.2d 729, 733, 40 W.C.D. 948, 954 (Minn. 1988). It is this requirement of a diligent job search upon which the compensation judge focused. The determination of whether or not an employee's job search is diligent is a question of fact for the compensation judge to resolve. Bauer v. Winco-Energex, 42 W.C.D. 762, 768 (W.C.C.A. 1989). The burden of proving an adequate job search is on the employee. Redgate, 421 N.W.2d at 733, 40 W.C.D. at 954.

The compensation judge stated in her memorandum that “it is clear the employee had restrictions during this time [while unemployed from March 1996 until September 17, 1997].” The compensation judge found that from March 14, 1994 through the date of the hearing, the employee was able to work eight hours per day, within the following work restrictions. These restrictions were outlined in the functional capacities evaluation report prepared by Dr. Timothy Harbst on March 14, 1994. (Pet. Ex. B.) In his chart note of September 14, 1998, Dr. Harbst stated that there was no change in previously-issued restrictions. (Pet. Ex. H.)

- I. The employee could work eight hours per day. In an eight-hour day, the employee could sit for five hours, stand for four hours, walk for four hours. The employee could sit for two hours at a time, stand for one hour at a time, walk for one hour at a time. The employee could continuously lift up to 5 pounds, frequently lift between 6 to 10 pounds, and occasionally lift up to 20 pounds. The employee could not lift over 20 pounds. The employee could frequently carry up to 5 pounds, occasionally carry 6 to 10 pounds, and never carry over 10 pounds. The employee could occasionally bend, squat, crawl, or climb, the employee could frequently reach.
- II. The employee had no restrictions on hand movements and use of arm or leg controls.
- III. The employee had no restrictions on the following activities: use of unprotected heights, being around machinery, exposure to marked changes in temperature and humidity, driving automotive equipment, exposure to dust, fumes and gases.

(Finding No. 7.)

The compensation judge conceded that the employee’s physician had imposed these work restrictions on the employee, but the judge focused primarily on the employee’s obligation to conduct a diligent job search in order to maintain his claim for temporary total disability benefits. The judge stated that the employee was able to name less than six different employers he contacted, to search for employment, during the one and one half year time period for which he claimed temporary total disability benefits. (Memo. p. 7.) The judge found that these limited contacts did not constitute a diligent job search. (Finding No. 8.)

We recognize that the employee’s physical work restrictions, along with the lack of any rehabilitation assistance provided to him by the employer, all made the employee’s job search more difficult. We cannot, however, conclude that the compensation judge clearly erred in determining that the employee’s level of job search, approximately three to six job contacts over

a period of one and one half years, was unreasonable and insufficiently diligent to establish entitlement to temporary total disability benefits for the period claimed.

Whereas it is true that the issue of whether an employee has sought work with reasonable diligence must be viewed within the context of the scope of rehabilitation assistance which has been provided by the employer and insurer, the absence of rehabilitation assistance does not make a virtual lack of any job search sufficient. See Evink v. Roger E. Duncan, slip op. (W.C.C.A. May 17, 1991). While the employee's job search efforts should be weighed within the context of the lack of rehabilitation assistance provided to the employee by the employer, the absence of rehabilitation services herein did not relieve the employee of his obligation to diligently seek employment. Farah v. Heartland Foods, slip op. (W.C.C.A. Nov. 23, 1999), citing Stephens-Hahn v. Lakeland Envelope Co., slip op. (W.C.C.A. July 30, 1992).

Substantial evidence supports the compensation judge's determination that the employee did not conduct a reasonable and diligent job search while unemployed. We therefore affirm the compensation judge's denial of the claim for temporary total disability benefits. We modify the dates listed in Finding No. 9, to reflect the actual dates when the employee was unemployed (March 7, 1996 through September 16, 1997).

#### Temporary Partial Disability Benefits

This appeal also involves two issues related to the employee's claim for temporary partial disability benefits. The first claim pertains to benefits paid while the employee was unemployed, following the termination of his job with the employer on March 6, 1996. The second claim is for an underpayment of temporary partial disability benefits paid while the employee worked at McDonald's Restaurant from September 1997 through the hearing date. The employer and insurer did not pay temporary partial disability benefits based upon wages earned at McDonald's, but instead paid a limited amount of weekly temporary partial disability based upon the employee's imputed post-injury retained earning capacity.

#### Payment of Temporary Partial Disability During Period of Unemployment

At the hearing, the parties stipulated that the employee had been paid 225 weeks of temporary partial disability benefits as of February 21, 1998. The parties also stipulated that from March 7, 1996 through February 21, 1998, temporary partial disability benefits were paid at the rate of \$11.77 per week, based upon an imputed established earning capacity of \$412.00/week (the employee's wage at the time of his job termination, calculated on the basis of 40 hours/week x \$10.30/hour). As described above, the compensation judge denied the temporary total disability benefits claimed from March 7, 1996 through September 16, 1997. However, the compensation judge made no finding as to whether temporary partial disability benefits were properly paid while the employee was unemployed. The compensation judge's memorandum contains no reference to the propriety of payment of temporary partial disability benefits during a period of unemployment,

but solely refers to the continuation of temporary partial disability benefits by the employer up until the expiration of the statutory maximum of 225 weeks.<sup>2</sup>

Pursuant to Minn. Stat. § 176.101(2), an employee is entitled to payment of temporary partial disability benefits calculated on the wages that the employee is “able to earn” in his or her temporarily partially disabled condition. An employee must prove that he has a work-related injury resulting in disability, and he is able to work subject to that disability, and that he has an actual loss of earning capacity which is causally related to the work-related disability. Krotzer v. Browning-Ferris, 459 N.W.2d 509, 43 W.C.D. 254 (Minn. 1990); Dorn v. A.J. Chromy Constr. Co., 310 Minn. 42, 245 N.W.2d 451, 29 W.C.D. 86 (1976). For injuries which occurred on or after January 1, 1984, an employee must actually be employed in order to receive temporary partial disability benefits. Parson v. Holman Erection Co., 41 W.C.D. 129, 428 N.W.2d 72 (1988); Minn. Stat. § 176.101(2)(b), as amended in 1992. Temporary partial compensation may not be paid for more than 225 weeks, or after 450 weeks after the date of injury, whichever occurs first. Minn. Stat. § 176.101, subd. 2(b).

In this case, the employee was not entitled to payment of temporary partial disability benefits during his unemployment from March 7, 1996, through September 17, 1997, the date on which he started working for McDonald’s Restaurant, a period of approximately 82 weeks. Such payments were made under mistake of law, and should provide neither an additional benefit to the employee nor a potential windfall to the employer and insurer. Continuation of such payments, according to the compensation judge, allowed this 82 weeks to be “credited” against the statutory maximum payment of 225 weeks, thereby foreclosing the employee’s ability to claim temporary partial disability for that 82 weeks and also providing the employer with a “credit” for benefits paid at an artificially low rate.

This is not to say that the employer and insurer should receive no future credit for payment of this temporary partial disability (approximately \$965, based upon approximately 82 weeks @ \$11.77). Such a credit should be allowed, to be applied against any past due or future benefits which may be owed to the employee.

The judge denied the employee’s claim for any additional payments of temporary partial disability benefits beyond February 21, 1998. This denial was based in part upon the employer’s erroneous payment of temporary partial disability benefits during the employee’s unemployment. We do not know yet whether the employee will prove his entitlement to temporary partial disability benefits in the future, depending upon his employment situation, but we cannot allow the employee to be precluded from claiming temporary partial disability benefits for a potential additional 82 weeks, solely on the basis of benefits paid while he remained unemployed.

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<sup>2</sup> There is a discrepancy between Finding No. 10 and the Memorandum, p. 7. Finding No. 10 refers to February 21, 1998 as the expiration of 225 weeks of temporary partial disability benefits; the Memorandum refers to February 21, 1997. We have utilized the date of February 21, 1998, as that is when benefits were discontinued.

We therefore reverse Finding No. 10 that the employee is not eligible for temporary partial disability benefits after February 21, 1998, and reverse the determination that 225 weeks of temporary partial disability benefits were paid by that date.

#### Level of Temporary Partial Disability Benefits Paid During Employment in 1997 and 1998

The compensation judge denied the employee's claim for an underpayment of temporary partial disability benefits, which the employee claimed were due for the period of time he worked at McDonald's and Equality Diecast.

The employee claims entitlement to temporary partial disability benefits during his employment with McDonald's Restaurant from September 17, 1997 through the hearing date, and during his employment with Equality Diecast from October 23 through December 3, 1997. The employee also claims he was underpaid temporary partial disability from September 17, 1997, through February 21, 1998. The employee claims that temporary partial disability should be based upon his wages earned at McDonald's and Equality Diecast.

An employees' entitlement to temporary partial disability benefits is based on the difference between the employees' wage on the date of injury and the wage the employee is able to earn in his or her partially disabled condition. Minn. Stat. § 176.101. In order to be eligible for temporary partial benefits, the employee must establish a reduction in earning capacity which is causally related to the work injury. Arouni v. Kelleher Constr., Inc., 426 N.W.2d 860, 864, 41 W.C.D. 42, 48 (Minn. 1988). Where a disabled employee is released to work on a full-time basis but works only at a part-time job, the employee may still be eligible for temporary partial disability benefits if any wage loss is causally related to the personal injury. Nolan v. Sidal Realty Co., 53 W.C.D. 388 (W.C.C.A. 1995). Working less than full-time may or may not be reasonable under the particular facts of a case. See e.g., Fisher v. Corn Belt Meats, 52 W.C.D. 687 (W.C.C.A. 1995), summarily aff'd (Minn. June 30, 1995), cited in Nolan, supra.

“(T)emporary partial benefit awards are generally based on post-injury wages because post-injury wages are presumptively representative of an employee's reduced earning capacity. In appropriate circumstances, however, this presumption can be rebutted with evidence indicating that employee's ability to earn is different than the post-injury wage.” Einberger v. 3M Co., 41 W.C.D. 727, 739 (W.C.C.A. 1989) (citation omitted). In order to establish an earning capacity different from actual earnings, there must be more presented than evidence of a hypothetical job paying a theoretical wage. Saad v. A.J. Spanjers Co., 42 W.C.D. 1184, 1994 (W.C.C.A. 1990); Patterson v. Denny's Restaurant, 42 W.C.D. 868, 875 (W.C.C.A. 1989).

The compensation judge found that the employee established an earning capacity at the employer [\$412.00/week] which resulted in payment of temporary partial benefits of \$11.77 per week. (Finding No. 11.) The judge also found that the employee continued to have physical work restrictions and limitations post-injury, at least through the hearing date. (Finding No. 7.) The judge made no further findings concerning the employee's retained earning capacity existing after he was fired from the employer. She also made no specific finding that the employee was

not entitled to reimbursement of an underpayment of temporary partial disability. The judge does not indicate whether the employer rebutted the presumption that the employee's wages at McDonald's and Equality Diecast were representative of his earning capacity.

Determinations of earning capacity are factual in nature, Einberger, 41 W.C.D. at 737, and this court is very hesitant to overturn factual findings made by a compensation judge. In this case, however, we must determine whether the compensation judge had any basis to determine that the employee's retained earning capacity was \$412.00 per week. We believe that there is insufficient evidence of record here to support that finding, and therefore reverse.

The employee's wage at the time of his firing is not relevant. Instead, the wage the employee was able to earn once he returned to work is a more accurate reflection of his earning capacity. This court has previously held that the "wages earned by an employee in post-injury employment with the pre-injury employer is normally of little relevance in determining an employee's subsequent earning capacity. Where, as here, work with the pre-injury employer is no longer available to the employee, such evidence is normally insufficient to rebut the presumption [that actual post-injury wages are a fair measure of the employee's ability to earn]." Jelinek v. G & K Services, Inc., slip op. (W.C.C.A. Oct. 16, 1996), citing Tottenham v. Eaton Char-Lynn Corporation, 43 W.C.D. 71 (W.C.C.A. 1990).

One factor which may be considered in rebutting a presumption of earning capacity is the availability of other specific job openings which would provide an employee with greater earnings. There was no specific vocational evidence presented here, however, that other higher-paying jobs were available to the employee throughout the time he worked for McDonald's and Equality Diecast. The only information in the record which refers to available jobs is found in testimony by representatives from McDonald's and Equality Diecast as to the work and light duty work and flexible work hours which would have been available to the employee. The employer's owner and manager testified that the employer would still have a light-duty job available for the employee, had the employee not had a conflict with his lead man and arbitrarily decided to go to the doctor. However, since the employee's pre-termination job with the employer is apparently no longer an actual "possibility" for him, it is not evidence useful in rebuttal of the actual wage earning capacity presumption articulated in Patterson v. Denny's Restaurant, 42 W.C.D. 868, 875 (W.C.C.A. 1989). See Stute v. Tom Thumb Food Markets, slip op. (W.C.C.A. Sept. 9, 1999), citing Sellner v. Bituminous Materials, slip op. (W.C.C.A. Nov. 19, 1991).

As the employer and insurer have offered insufficient evidence to rebut the earning capacity presumption referenced in Patterson, we reverse the compensation judge's finding that the employee has a retained earning capacity of \$412.00 per week.

This determination does not resolve, however, the amount of temporary partial disability benefits to which the employee is entitled. Where a disabled employee is released to work on a full-time basis but works only at a part-time job, the employee may still be eligible for temporary partial disability benefits if any wage loss is causally related to the personal injury. Nolan v. Sidal Realty Co., 53 W.C.D. 388 (W.C.C.A. 1995). Working less than full-time may or

may not be reasonable under the particular facts of a case. See e.g. Fisher v. Corn Belt Meats, 52 W.C.D. 687 (W.C.C.A. 1995), summarily aff'd (Minn. June 30, 1995), cited in Nolan, supra. Based upon the witnesses' testimony and the partial wage information included in the hearing record, it appears that the employee worked both full-time and part-time hours during various weeks, while employed by McDonald's and Equality Diecast. We do not have full records available for our review, however, and so we are unable to determine whether temporary partial disability benefits are appropriate during the periods of part-time employment.<sup>3</sup>

We therefore remand this matter to the compensation judge, for determination of the amount of temporary partial disability benefits, if any, to which the employee is entitled, based upon his actual wage records. We also remand this matter to the compensation judge for determination of any amount reimbursable to the intervenor, Minnesota Department of Human Services, in view of its payments to the employee for the period of September 17 through October 1997, while he was re-employed by McDonald's.

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<sup>3</sup> Although the record does not contain wage records documenting the employee's earnings at McDonald's and Equality Diecast, it appears that there is no dispute as to the amount of those wages earned during the period of time the employee claims temporary partial disability benefits. In fact, the employee submitted wage stubs at hearing, which were admitted into evidence as Petitioner's Exhibit A. He submitted the wage stubs to support two claims: underpayment of benefits paid prior to March 6, 1996 (a claim ultimately resolved at the hearing) and temporary partial disability benefits claimed after September 17, 1997.

During pre-testimony discussions between parties, the compensation judge withdrew this wage exhibit, and returned it to the employee; it appears that the judge assumed that the wage stubs were no longer needed in evidence once the underpayment dispute was resolved. (T. 61-62) Although the wage information is not in the hearing record, it appears that it is available to the parties for use in calculating temporary partial disability benefits due to the employee.