

RICHARD R. SNYDER, Employee/Appellant, v. YELLOW FREIGHT SYS., INC., SELF-INSURED, Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
JULY 13, 2001

No. [REDACTED SSN]

HEADNOTES

STATUTES CONSTRUED - MINN. STAT. §176.221, SUBD. 9 - MINN. STAT. §176.101, SUBD. 1k; TEMPORARY TOTAL DISABILITY COMPENSATION. After 104 weeks of payment of full wages under a wage continuation program to the temporarily totally disabled employee, the self-insured employer in this case discharged its liability for payment of temporary total disability compensation and was entitled to discontinue TTD benefits. The employer's error in the calculation of taxable income during this period did not entitle the employee to a further 104-week period of TTD benefits following cessation of the wage continuation payments.

Affirmed.

Determined by Wheeler, C.J., Rykken, J., and Pederson, J.
Compensation Judge: Danny P. Kelly

OPINION

STEVEN D. WHEELER, Judge

The employee appeals from the compensation judge's determination that the self-insured employer was entitled to discontinue temporary total disability compensation August 9, 2000, following payment of 104 weeks of temporary total disability benefits.

BACKGROUND

The employee, Richard R. Snyder, sustained an admitted work injury on August 3, 1998 while working for the self-insured employer, Yellow Freight Systems. The employee was thereafter temporarily totally disabled and was eligible for temporary total disability benefits at the applicable maximum compensation rate, \$615.00 per week. The employer filed a first report of injury and subsequently filed a Notice of Insurer's Primary Liability Determination, indicating that the claim had been accepted for temporary total disability with full wage continuation by the employer under Minn. Stat. § 176.221, subd. 9. The self-insured employer reported the amount of payments to the Department of Labor and Industry and paid the requisite Special Compensation Fund assessments. The employee continued to receive his full wages from the self-insured employer, and sick leave and vacation leave were not inappropriately charged against the employee.

However, the self-insured employer did not properly calculate the employee's tax withholding, in that it failed to deduct from the total paid to the employee that portion of the full wage payment representing the employee's temporary total disability benefit entitlement prior to calculating withholding or reporting taxable income.

On August 14, 2000, the employer filed a Notice of Intention to Discontinue Workers' Compensation Benefits on the basis that the employee had reached 104 weeks of temporary total disability compensation.

Following an administrative conference on the discontinuance a compensation judge of the Settlement Division of the Office of Administrative Hearings issued an order on September 22, 2000 allowing the proposed discontinuance. The employee filed an Objection to Discontinuance on October 3, 2000, resulting in the hearing below. A compensation judge at the Office of Administrative Hearings determined that the self-insured employer was entitled to discontinue temporary total disability compensation, but ordered that the employer recalculate payments made to the employee to assure the proper income tax treatment for the payments. The employee appeals.

STANDARD OF REVIEW

Question of law. The issues on appeal in this matter involve the interpretation and application of case law to undisputed facts. While this court may not disturb a compensation judge's findings of fact unless clearly erroneous and unsupported by substantial evidence in the record as a whole, Minn Stat. § 176.421, subd. 1(3) (1992), a decision which rests upon the application of the law to undisputed facts involves a question of law which this court may consider *de novo*.

DECISION

Pursuant to Minn. Stat. §176.101, subd. 1(k), the employee's entitlement to temporary total disability compensation is limited to 104 weeks of payment of such compensation.

The workers' compensation act permits an employer who elects to continue the payment of full wages to a temporary totally disabled employee to apply part of the wage to discharge its obligation to pay temporary total disability compensation, subject to Minn. Stat. § 176.221, subd. 9, which provides:

Payment of Full Wages. An employer who pays full wages to an injured employee is not relieved of the obligation for reporting the injury and making a liability determination within the times specified in this chapter. If the full wage is paid the employer's insurer or self-insurer shall report the amount of the payment to the division and determine the portion which is temporary total compensation for the purposes of administering this chapter and special compensation fund assessments. The employer shall also make appropriate adjustments to the employee's payroll records to

assure that the employee's sick leave or the vacation time is not inappropriately charged against the employee, and to assure the proper income tax treatment for the payments.

The self-insured employer contended that the full wage continuation payments made by the employer during the employee's temporary total disability qualified as payment toward its temporary total disability obligation and that the employer was thereby entitled to discontinue temporary total disability benefits after 104 weeks of wage continuation payment.

The employee, on the other hand, argued that the full wage payments made to the employee by the self-insured employer following the injury could not be deemed to have been effectively made in lieu of temporary total disability compensation, in that the employer failed to ensure the appropriate tax treatment of the payments when made. The employee contended that a failure to comply precisely with each of the guidelines of Minn. Stat. §176.221, subd. 9, rendered the payment of full wages in lieu of compensation ineffective, entitling him to receive the temporary total disability compensation after the 104 weeks of full wages paid by the employer in this case.

The compensation judge determined that the employer had substantially complied with Minn. Stat. § 176.221, subd. 9, and that the employer was entitled to discontinue temporary total disability compensation, but was required to take the appropriate steps to correct the error in the tax treatment of the payments already made. The employee appeals, renewing his argument that Minn. Stat. § 176.221, subd. 9, must be precisely followed to render post-injury full wage continuation effective to discharge any part of an employer's temporary total disability compensation liability.

We reject the employee's interpretation of the statute. The remedy urged by the employee for the employer's failure to properly calculate and report tax liability would result, in essence, in a windfall of double benefits to the employee. A double recovery is unjust and should be avoided. Pierce v. Robert D. Pierce, Ltd., 363 N.W.2d 761, 37 W.C.D. 514 (Minn. 1985). We do not believe that the legislature intended such a result to follow from the technical noncompliance in this case. The statute simply states that the employer shall make appropriate tax adjustments but does not indicate that the failure to fully comply would result in a forfeiture of the right to consider a part of the payments to have been allocated as temporary total disability benefits. The appropriate remedy for failure to comply with the statute is a recalculation and payment to the employee for losses and expenses flowing from the failure to follow the terms of the statute. The compensation judge ordered that the self-insured employer correct the taxation error by taking corrective measures, including the recalculation of tax withholdings, refiling of tax returns and other measures necessary or appropriate to rectify the error in this case. We conclude that the compensation judge's conclusions and orders in this case were reasonable, and affirm.

The employee also argues on appeal for a remand to the compensation judge to make the specific numerical calculations. We believe this to be premature. There is no dispute over the specific compensation rate applicable in this case, as the employee was entitled to the maximum compensation rate. The self-insured employer has expressed its willingness to do whatever is necessary to correct the error in the tax treatment of the employee's payments,

including payment of interest on the funds denied to the employee and the employee's accounting costs associated with rectifying the problem. We believe it was reasonable for the compensation judge to require the parties to attempt to resolve this matter without taking evidence concerning the accounting issues and without making findings on the correct calculations. If they are not able to agree, either party can then return to the compensation judge for a resolution of the outstanding issues.