

The Injured Worker and Constructive Refusal of Suitable Employment in NC

September 16, 2013

Media Contact

Erica Gianetti

Marketing & Communications Supervisor

erica.gianetti@mgclaw.com

The purpose of the North Carolina Workers' Compensation Act is to put injured workers back to work. Oftentimes, one of the most difficult challenges faced by carriers and employers is returning an injured worker to suitable employment. Although it is a huge success for carriers and employers alike when an injured worker returns to work, challenges still remain when the injured worker punches his time clock after returning to suitable employment. Once an injured worker returns to work, what happens after he or she engages in behavior that results in termination?

The North Carolina Court of Appeals, in *Seagraves v. Austin Co. of Greensboro*, 123 N.C. App. 228, 472 S.E.2d 397 (1996), addressed the issue of an injured worker constructively refusing suitable employment after returning to work. Ultimately, the Court held that, where an injured worker returns to suitable employment and is subsequently terminated for cause, the claimant may have constructively refused suitable employment and is not entitled to a resumption of indemnity benefits. The rationale is that the employer upheld its end of the bargain by returning the claimant to a position that accommodated any disability resulting from the compensable injury. Once the claimant's own misconduct results in a loss of that employment opportunity, the claimant should not be entitled to disability benefits.

This situation arises when an injured worker returns to work after sustaining a compensable injury. After returning to work, the injured worker is terminated for misconduct. If this situation arises, carriers must ask themselves whether the injured worker's loss of wages is due to the wrongful act resulting in the loss of employment or to his or her work related disability.

In *Seagraves*, the Court established a test that assists carriers in determining whether an injured worker's benefits may be suspended after he or she is terminated from employment. In order to prove constructive refusal of suitable employment, we must show that the employee was terminated for misconduct; the same misconduct would have resulted in the termination of a non-disabled employee; and the termination was unrelated to the injured worker's compensable injury. Unfortunately, indemnity benefits cannot be automatically terminated if carriers prove constructive refusal of suitable employment. In an effort to liberally construe the Act to favor injured workers, the *Seagraves* Court determined that indemnity benefits should be restarted if the injured worker can nonetheless establish that his or her inability to find or maintain another job was due to the work-related disability.

Let's focus on what we can do to try to terminate benefits for constructive refusal of suitable employment. Typically, it is not too difficult to establish that an injured worker was terminated for misconduct. There are numerous workers' compensation cases out there that find an injured worker was terminated for misconduct or violated clear company policies. This includes failing drug tests, stealing from the company, poor job performance, or other misbehavior such as "mooning" a co-worker. The best way to establish that an injured worker was terminated for misconduct is to keep written documentation for each warning. If a carrier or employer can show that an injured worker received written warnings for each indiscretion, then it is typically easy to show that the injured worker was terminated for misconduct.

Additionally, carriers and employers should not have difficulty proving that the same misconduct would have resulted in the termination of a non-disabled employee. Again, it is important to have written documentation to show that non-disabled employees have been terminated for the same misconduct. If that information is not available, it is beneficial to have a clear employment policy establishing the grounds for termination.

Most commonly, it is hardest to establish that the termination was unrelated to the injured worker's compensable injury. To establish this point, it is critical for the carrier and employer to show that the injured worker could perform the duties of the position. As such, the best way to show that the injured worker could perform the job is by having the injured worker's physician approve the job duties prior to the injured worker returning to work. We often do not have a letter from the physician approving the job duties as we are typically in a rush to try to return an injured worker to work when they receive restrictions. In this case, it is important to show that every part of the injured worker's position falls within the assigned work restrictions.

At the end of the day, the best guideline to maintain open lines of communication with the employer and request that the employer maintain detailed documentation of the employment relationship at the start of the claimant's return to work. Following these guidelines may not result in being able to terminate an injured worker's benefits after his termination from suitable employment, but it will substantially increase the chances of disputing a claim for ongoing disability.

ABOUT THE AUTHOR

Colin Cronin is an attorney with McAngus Goudelock & Courie. Mr. Cronin may be reached at 704.405.4648 or at colin.cronin@mgclaw.com.

This article originally appeared on September 16, 2013 on the Workers' Compensation Institute's [website](#), and is republished here with permission.

This legal update is published as a service to our clients and friends. It is intended to provide general information and does not constitute legal advice regarding any specific situation.