

COURT OF APPEALS OF GEORGIA
DOCUMENT RETURN NOTICE FOR BRIEFS OR MOTIONS

May 8, 2015

To: Mr. Clinton Jared Hawkins, 666 Greenvale Road, Lawrenceville, Georgia 30043

Docket Number: A15A1705 **Style:** Clinton Jared Hawkins v. TRC Staffing, Inc.

Your document(s) is (are) being returned for the following reason(s).

1. Your Appellant's Brief, was not accompanied by the statutory filing fee (\$300.00 civil; \$80.00 criminal *Effective July 1, 2009) or a sufficient pauper's affidavit. OCGA§5-6-4 and Rule 5 **Please be advised that your pauper's affidavit should be notarized by a notary public.**
2. A Request for Oral Argument must be filed as a separate document. Rule 28 (a) (3)
3. Your document(s) was (were) not signed by counsel (No signatures with expressed permission are permitted). Rule 1 (a)
4. **No Certificate of Service accompanied your document(s). Rule 6**
5. Your Certificate of Service did not include the complete name and mailing address of each opposing party. Rules 1(a) and 6. You should provide a copy of your filing to the District Attorney and include his/her name and address on your Certificate of Service.
6. There were an insufficient number of copies of your document. Rule 6.
7. Your document exceeds page limits. Rules 24 (f) and 27 (a)
8. Your document was submitted without permission to file (supplemental brief or second motion for reconsideration). Rules 27 (a) and 37 (d)
9. Letter briefs and letter cites are not permitted. Rule 27 (b)
10. Your request for court action must be submitted in motion form. Rule 41 (a)
11. Your motions were submitted in an improper form (joint, compound or alternative motions in one document). Rule 41 (b)
12. Type was on both sides of the paper; type font was smaller than 10 characters per inch; and/or the type was not double-spaced. Rules 1(c), 37(a) and 41(b).
13. The pages were not sequentially numbered with arabic numerals. Rule 24 (e)
14. Case and/or record citations were not made in the proper form. Rules 24 (d) and 25 (c) (2)
15. Margins were too small or paper size incorrect. Rules 1(c), 24(c), 37 (a) and 41(b)
16. Your document(s) was (were) not securely bound at the top with staples or round head fasteners. Rule 1 (c)
17. The Motion to Supplement has not been granted.
18. Other: _____

For Additional information, please go to the Court's website at: www.gaappeals.us

COURT OF APPEALS OF THE
STATE OF GEORGIA

FILED IN OFFICE
MAY 19 2015
COURT CLERK
CLERK COURT OF APPEALS OF GA

CLINTON JARED HAWKINS

Appellant/Claimant

Civil Action

Superior Court Case No.: 14A 11957 4

Vs.

Court of Appeals No: A15A1705

TRC STAFFING, INC.

Appellee/Employer/Insurer

RECEIVED IN OFFICE
MAY 21 2015
COURT CLERK
CLERK COURT OF APPEALS OF GA

APPELLANT'S OPENING BRIEF

The Order to be reviewed is a Superior Court Order dated February 20, 2015, affirming the Decision of the Appellate Division of the State Board of Workers Compensation.

**Clinton Jared Hawkins, Appellant
666 Greenvale Road
Lawrenceville, GA.30043**

678-768-4293

TABLE OF CONTENTS

NATURE OF ORDER TO BE REVIEWED.....	1
BASES FOR APPEAL	1
STATEMENT OF CASE	2
THE NATURE OF THE CASE AND RELIEF SOUGHT	2
ASSIGNMENT OF ERROR 1	3
ASSIGNMENT OF ERROR 2	5
ASSIGNMENT OF ERROR 3	9-10
ASSIGNMENT OF ERROR 4	16
ARGUMENT 1	3-4
ARGUMENT 2	6-7
ARGUMENT 3	10
ARGUMENT 4	16-17
STATEMENT OF FACTS #1	4
STATEMENT OF FACTS #2	6-7
STATEMENT OF FACTS #3	9-14
STATEMENT OF FACTS #4.....	17-19
CONCLUSION	20

TABLE OF AUTHORITIES

CASES

Pages

PADGETT v. WAFFLE HOUSE, INC. 269 Ga. 105 (1998)3

Scandrett v. Talmadge Farms, 174 Ga. App.547 (1985) 3

CODES

O.C.G.A. 34-9-2615, 8, 10

O.C.G.A. 34-9-105(C) 1

O.C.G.A 34-9-22120

RULES

Board Rule 200(a)(1)8

Rule 2018

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing **Appellant's Opening Brief** upon counsel for the Employer/Insurer by depositing a true copy thereof in the United States mail addressed as follows:

Heather D. Froy
3775 Mansell Road
Alpharetta, GA. 30022

May 19, 2015

Clinton Hawkins

CLINTON JARED HAWKINS

Appellant

COURT OF APPEALS OF THE
STATE OF GEORGIA

CLINTON JARED HAWKINS

Appellant/Claimant

Civil Action

Superior Court Case No.: 14A 11957 4

Vs.

Court of Appeals No: A15A1705

TRC STAFFING, INC.

Appellee/Employer/Insurer

_____ /

APPELLANT'S BRIEF

Nature of the Order to be reviewed

The order to be reviewed is a Superior Court Order dated February 20, 2015, affirming the Decision of the Appellate Division of the State Board of Workers Compensation.

BASES FOR APPEAL

O.C.G.A. 34-9-105(C)

The Superior Court Order is contrary to law.

The Appellate Division Decision is contrary law.

STATEMENT OF CASE

The Nature of the Case and Relief Sought

Appellant/Claimant is a Workers' Compensation Claimant whose claim for TTD benefits was denied by Appellee/Employer/Insurer. The Appellee/employer/Insurer bases for their denial was that Claimant is not entitled to TTD benefits because he unjustifiably refused suitable light duty work, he was released to return to work without restrictions and effective September 16, 2013 and he returned to work for a new employer.

Appellant/Claimant seeks reversal of the Workers' Compensation Board's (Appellate Division) Order dated December 22, 2014, affirming the Administrative Law Judge's Order of September 16, 2014, which had approved Employer/ Insurer denial of Claimant's TTD benefits.

On the basis that his Employer/Insurer, TRC Staffing, provided **no evidence**:

1. That Claimant was physically able to work from August 12, 2014 to August 19, 2014, and August 22, 2014 to September 15, 2013.
2. That Claimant refused to work or refused to search for work from September 16, 2013, to June 15, 2014.

On the basis that the Employer/Insurer, TRC Staffing, failed make light duty work available for the Claimant, while he is on Light duty from June 16, 2014 to present.

Claimant seeks TTD benefits for the periods of August 12, 2013 to August 19, 2013 and August 22, 2013 to September 15, 2013, September 16, 2013 to September 29, 2013 and October 13, 2013 to June 15, 2014 and June 16, 2014 to present, based on the July 25, 2013 accident.

ASSIGNMENT OF ERROR #1

The Superior Court Order dated February 20, 2015, erred in its Order affirming the Decision of the Appellate Division of the State Board of Workers Compensation, based on the following conclusion:

1. Legal Error

“However, as it relates to the last prong, I find that the Claimant failed to prove that he made a diligent but unsuccessful effort to secure suitable employment after June 16, 2014. The Claimant’s job search evidence after June 16, 2014 consisted of submission of a resume for a part-time filing/data entry clerk on or July 8, 2014. All other decipherable job search information dealt with dates before June 16, 2014 and there is no evidence of the Claimant’s job search between June 6, 2014 and July 8, 2014. I find that submission of one resume in the approximately 4-week period from June 16, 2014 to July 16, 2014 (the date of the hearing) does not amount to a diligent effort to secure suitable employment.”[See ALJ award dated 9/11/2014 Page 10-11, State Board of Workers’ Compensation INDEX OF THE RECORD Page 71, dated 9/11/2014]

The ALJ’s / Workers’ Compensation Board Appellate Division cites *Scandrett v. Talmadge Farms*, 174 Ga. App.547 (1985)

ARGUMENT #1

The Appellant/Claimant cites the case of The Supreme Court of Georgia in PADGETT v. WAFFLE HOUSE, INC. 269 Ga. 105 (1998) which states in part the following:

“When an employee, who had previously been out of work due to a work related injury, has been released to return to work with restrictions, an employer must either provide suitable work or continue to pay temporary total disability benefits. The employer may terminate the disability benefits only by showing that the employee has the ability to return to work and that work suitable is available for the employee’s with restrictions is available.”

“ The issue presented in this granted certiorari is whether a Worker’s Compensation claimant who is on restricted duty due to a compensable injury and who is discharged because of those restrictions is required to show that she had made a diligent effort to obtained employment in order to receive benefits. We decline to place the burden of proving work availability on the employee in this situation because such a rule would be inconsistent with prior case law and illogical in light of other rules governing worker’s Compensation cases. Therefore, we reverse the Court of Appeals.”

It is an undisputed that Claimant’s employer, TRC Staffing, did not offer any work to the Claimant, after he was released to work with restrictions on June 16, 2014. [C8 1-3]

Claimant’s work restrictions were made permanent on August 16, 2014, but Claimant’s Treating Physicians medical records were not allowed into evidence by Administrative Law Judge Mitchell. [See Claimant’s Trial Brief page 12 and letter to administrative Law judge Mitchell, dated August 14, 2014] and [Claimant’s Appeals Division brief page 14 and letter to administrative Law judge Mitchell, dated August 14, 2014]

Claimant, by law is entitled to his TTD benefits from June 16, 2014 and continuing.

Summary of Facts #1

It is undisputed that Claimant was never **terminated** from his Job.

On June 16, 2013 Dr. Tamara Chachasvili diagnosed the Claimant as having a Chronic Cervical & Thoracic Strain.

Claimant’s Work Restrictions are 50 lbs max w/frequency lifting and or carrying of objects weighing up to 24 lbs.

Dr. Tamara Chachasvili ordered an FCE Report.

Continued taking Advil .

No Treatment was started because of 2 previous emergency visits, Eastside Medical Center and Emory Johns Creek Hospital and Physical Therapy made my condition worse.

[See Exhibit .C8 Pages 1-3]

On June 16, 2014 Claimant was released to return to work with restrictions. Trc Staffing, Inc. has not provided work for the Claimant. The Claimant by Law is entitled to temporary total disability benefits. [C8-1 Pages 1-3]

O.C.G.A. 34-9-261: Compensation for Total Disability, if you are unable to work at all because of your injury.

While the disability to work resulting from an injury is temporary total, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the employee's average weekly wage but not more than \$500.00 per week nor less than \$50.00 per week.....

The *ALJ's / Workers' Compensation Board Appellate Division* decision denying Claimant's TTD benefits because he did not prove that he made a diligent but unsuccessful effort to secure suitable employment after June 16, 2014 is, therefore, legal error.

ASSIGNMENT OF ERROR #2

2. Legal Error

The Superior Court Order dated February 20, 2015, erred in its Order affirming the Decision of the Appellate Division of the State Board of Workers Compensation, based on the following conclusion

“The second period of disability at issue is from September 16, 2013, when the Claimant was released to return to work without restrictions, through June 15, 2014, the day before the new ATP placed him on restrictions. An employer/Insurer has no responsibility or liability for temporary total or temporary partial disability benefits after the authorized treating physician releases an injured worker to return to work without restrictions. Indeed, even if the Claimant had been receiving TTD or TPD benefits before September 16, 2013, after he was released to return to work without restrictions, the Employer/Self-Insurer would have been authorized to unilaterally suspend benefits either when the Claimant actually returned to regular duty work or within 10 days notice if the Claimant did not return to regular duty work. Board Rule 221(i)(1). While I recognize that the Claimant did not believe he had recovered from his injuries, Dr. Jones,

the ATP at the time, opined that he was capable of returning to work without restrictions. In this case, I find that the Claimant's testimony alone was not sufficient to establish disability. Instead, I place greater weight on Dr. Jones' opinion regarding the Claimant's ability to return to work."

[See ALJ award dated 9/11/2014 page 11, See State Board of Workers' Compensation INDEX OF THE RECORD Page 71, dated 9/11/2014]

ARGUMENT #2

Claimant, contends that since he has not been terminated from his job and is off work due to his work related injury and his Employer refuses to offer suitable work and Claimant made a diligent search for work he is entitled to TTD benefits, from September 16, 2013 to September 29, 2013 and October 13, 2013 to June 15, 2014.

While waiting for TRC Staffing to call him back to work, Claimant worked for two weeks at \$10.00 an hour with Global Solutions [C2 page 12] . Claimant's Job at TRC Staffing pays 11.67 an hour. [C2 13-18] Claimant performed his job at Global while still having neck and back pain. [C2 page 1]

Additionally, the ALJ made no finding as regards the Claimant's diligent search for work.

- 1). September 3, 2013, CompuCom Position Windows 7 Refresh Technician 2).
- September 3, 2013, Randstad Position PC Technician 3). September 4, 2013 HCA Recruiting , Position Mail Clerk 4).
- September 13, 2013, Position File Clerk 5). October 17, 2013, ESG Consulting Position Technical Support. 6).
- October 25, 2013, McKesson Position Customer service 2 Rep. 7).
- October 31, 2013, CVS Caremark Position Pharmacy Technician Trainee/Pharmacy Service Associate. 8).
- November 3, 2013, Vayu Inc. Position Administrative Clerk. 9).
- November 17, 2013, Emtec, Inc. Position Deployment Team Member. 10).
- December 12, 2013, McKesson Position Sales Casual Worker. 11).
- December 16, 2013 Qts Position Data Center technician. 12).
- January 5, 2014, Manpower Position 1st Shift Repair. 13).
- January 6, 2014 Insight Global Position PC technician 14).
- January 18, 2014 Ask Staffing Position Order Scheduler 15).
- January 11, 2014, The Myers Group, Position Mail Clerk. 16).
- January 28, 2014, ESG Consulting Position Entry Level IT. 17).
- February 6, 2014, The Myers Group, Position Survey Data Validator. 18).
- February 13, 2013, Automation Personnel Services, Position Laboratory technician. 19).
- February 24, 2014 Assurant Position Mail Service Specialist. 20).
- March 13, 2014 ESG Consulting Position Customer Support. 21).
- April 12, 2014, National Vision, inc. Position System Support Rep. 22).
- April 15, 2014,

Johnson Service Group Position Data Entry Rep. **23**). April 25, 2014, QTS Position Customer Service Rep. **24**). May 26, 2014, McKesson Position Customer Rep. **25**). April 29, 2014, NCR Position MIS Intern. **26**). June 6, 2014, National Visions, inc. Position Returns Clerk. **27**). June 3, 2014, Navicure Position Desktop Administrator. **28**). July 8, 2014, Axiom staffing Group, Position Filing/Data Entry [C7 Pgs. 1-56]

Statement of Facts #2

There is **no evidence** that on after September 16, 2014, That Claimant's Employer TRC Staffing, Inc. offered him work.

Claimant who has not been terminated from employment with TRC Staffing, Inc., was released to work without restrictions on September 16, 2013. The Claimant was still diagnosed as having the Following: Cervicalgia, Pain in Thoracic Spine, and Spinal Enthesopathy. [C8- Pages 11, 60-62]

Claimant was told to Follow-up with Dr. Jones as needed. [C8- Pages 11 ,60-62]

On September 17, 2013 Claimant again stated his availability of work and requested TTD benefits from August 12, 2013, to September 15, 2013. [See Exhibits C2 Page 3]

On September 30, 2013, While waiting for TRC Staffing to call me for a 1st shift return or similar position I Began working a Temporary assignment for Global Solutions as a PC Repair Tech. The pay rate was \$10.00 hourly [See Exh. C2 Page 12]

Note: On October 13, 2013, I stopped working (assignment ended) at Global Solutions. I also had continued neck and back pain. [See Exh.C2 Page 1]

After my employment with Global Solutions I resumed my job search.

[See Exhibit C7 pages 13-56, C7 1-4]

On October 30, 2013, I was Unable to complete Part-time classes at Gwinnett Technical College because of Neck and Back pain. (Could not concentrate on studies)

- 1.) Data Center 1 (Thursdays from 6: 00 pm to 7:20 pm)
- 2.) Information security (Online course) [See Exh. C2
Page 1-2]

On January 13, 2014, I again contacted Resurgens workers comp. Department, regarding changing Physicians. Resurgens stated that the Insurance company did not approve change.
[Exh. C5 Pages 1-9]

On January 27, 2014, my Change of Physician was denied by Employer/Insurer Attorney Heather Froy. [Exh. C5 Pages 1-9]

Claimant, on August 27, 2013, January 13, 2014, January 27, 2014, requested a one time change of Physician within the Panel of Physicians. [C5-Pages 1-9]

Claimant's right to have an one time change of Physician was denied for over 9 months (August 27, 2013 to June 16, 2014) [C5-Pages 1-9]

Board Rule 200(a)(1)

further explains that the: "Employer/Insurer have a duty to provide all reasonable and necessary medical treatment in a timely manner and to give appropriate assistance in contacting medical providers when necessary." Similarly, **the Employer and Insurance company must approve and authorize this treatment without significant delay.**

Rule 201 PANEL OF PHYSICIANS

"The employee may make one change of Physician to another on the same panel without authorization of the Board."

Denying me access to a Physician who would immediately reinstate my work restrictions for nine months. [see Exh. C5 1-9]

O.C.G.A. 34-9-261: Compensation for Total Disability, if you are unable to work at all because of your injury.

While the disability to work resulting from an injury is temporary total, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the employee's average weekly wage but not more than \$500.00 per week nor less than \$50.00 per week.....,

Claimant is due his temporary total disability benefit from September 16, 2013 to September 29, 2013 and October 13, 2013 to June 15, 2014.

ASSIGNMENT OF ERROR #3

3. Legal Error

The Superior Court Order dated February 20, 2015, erred in its Order affirming the Decision of the Appellate Division of the State Board of Workers Compensation, based on the following conclusion:

“Since the Claimant was on light duty restrictions from August 12, 2013 through September 15, 2013 and had not been terminated, in order to prove entitlement to indemnity benefits, the Claimant has to prove that either the Employer/Self-Insurer did not offer suitable light duty or that he was justified in failing to perform the light duty work the Employer offered. Pursuant to O.C.G.A. 34-9-240(a), if an injured employee refuses employment procured for him and suitable to his capacity, such employee shall not be entitled to any compensation (except PPD benefits) at any time during the continuance of such refusal, unless in the opinion of the Board such refusal is justified.

I find that the preponderance of the competent and credible evidence supports a finding that the Employer/Self-Insurer offered suitable light duty work from August 12, 2013 through September 15, 2013. I find Ms. C's testimony credible in this regard. Further, the Claimant admitted that the Employer/Self Insurer offered light duty work, but the evidence shows it was work he did not want to perform. Consequently, I find that Claimant refused to perform the light duty job offered by the Employer was not justified. The preponderance of the competent and credible evidence shows that the Claimant wanted to return to work in 1st Shift Returns. However, he failed to cite case law, and I am unaware of any, that stands for the proposition that an employer has to offer

specific light duty job. Instead, an employer has to offer work that fits within the restrictions outlined by the treating physician. Although, the Claimant may have been hired to work in 1st Returns, for whatever reason he never actually worked in that position and for whatever the Employer never gave him an opportunity to work in that position. I find that the preponderance of the competent and credible evidence establishes that the Employer offered suitable light duty work in a different position, the Claimant performed the light duty job from July 29, 2013 through August 11, 2013 and again on August 20, 2013 and August 21, 2013 and Employer continued to offer suitable light duty work that the Claimant refused to attempt because it was not the position he was hired to perform. Consequently, the Claimant failed to prove entitlement to TTD benefits From August 12, 2013 through September 15, 2013.” [See **ALJ award dated 9/11/2014 pages 8-9, See State Board of Workers’ Compensation INDEX OF THE RECORD Page 71, dated 9/11/2014**]

ARGUMENT #3

Claimant contends that pursuant to **O.C.G.A. 34-9-261: Compensation for Total Disability, if you are unable to work at all because of your injury.**

There is **no evidence** that Claimant was physically able to work for the period of August 12, 2014 to August 19, 2014 and August 22, 2014 to September 15, 2014.

Claimant’s Treating Physician, Dr. Jones, did not state that the Claimant was able to work from August 12, 2013 to August 19, 2013 and August 22, 2013 to September 15, 2013.

Claimant tried returning to work, August 20, 2013 and August 21, 2013, but, because of his job related injuries, he could not continue. [**Reporter’s Transcript page 16**]

Statement of Facts #3

On July 8, 2013 Claimant started his 1st Shift Return data entry position. [**Exh. C3 1-3**]

On July 25, 2013 Claimant reported back pain, after repetitive heavy lifting, pushing and pulling. [Exh. C4 5] At time of injury Claimant was moving a 400 lb pallet load of products with a pallet jack. [Exh. C8 20]

On July 26, 2013, Claimant Reported Back Pain to Dr. Jones, Peachtree Spine Physicians.

Dr. Jones Diagnosed me as having a Sprain/Strain Neck, Spinal Enthesopathy and Lumbar Sprain. Claimant's Work Restrictions were No lifting, pushing or pulling greater than 20lbs.

Dr. Jones Ordered Physical Therapy for Cervical or Lumbar Stabilization.

No Cervical and Thoracic Spine X-Ray or MRI.

Dr. Jones Prescribed Meloxicam [See Exh. C8 Pages 16, 17, 24, 26, 33, 34]

On July 29, 2013, Claimant left work at 12:30pm and went to East Side Medical Center (Emergency)

Claimant Reported: Nausea, Dizziness, Pain.

Claimant was Diagnosed with having a Strained Thoracic Spine.

Claimant Work Restrictions was Unchanged.

Claimant was Prescribed Lortab and Flexeril.

The X-Ray of my Back was negative, No MRI of Cervical and Thoracic Spine was performed.

[See Exh. C8 Pages 82-93]

On August 2, 2013, Claimant Reported Pain Cervical and Thoracic spine to Dr. Jones, Peachtree Spine

Physicians. Dr. Jones Diagnose diagnosed me as having Cervicalgia and Spinal Enthesopathy,

Claimant Work Restrictions was no lifting, pushing or pulling greater than 20lbs.

Dr. Jones Ordered a MRI of my Cervical and Thoracic Spine.

Dr. Jones prescribed Meloxicam and Tramadol [See Exh. C8 Pages 15, 37, 38, 39, 41]

On August 6, 2013, Claimant started his Physical Therapy Treatments. [See Exhibit. C8 Pages 48-52]

On August 8, 2013, Claimant reported increased pain, after first Physical Therapy Treatment.

Physical Therapist manipulated my spine. [See Exhibit. C8 Pages 42-44]

On August 9, 2013, Claimant made emergency visit to Johns Creek Emory Hospital.

Claimant left work at 11:30 am and went to Emory Healthcare Emergency Department.

Claimant Reported Back and neck injury, Nausea, Dizziness, Pain, vomited at Hospital

Claimant was Diagnosed with Weakness, Fatigue and Back Pain

No Cervical and Thoracic Spine MRI was ordered.

Claimant Patient Discharge Instructions was

Mediations: NS 1000 mL bag(Sodium Chloride 0.9%)

Ondansetron 4 mg/2mL and Continue: Flexeril, Meloxicam, tramADOL

Note: Work Restrictions: 24 hours off from work. If symptoms continue and employee is unable to perform the full duties of their job by this date, please advise the employee to return to this facility or make an appointment with the referral physician for further evaluation.

Claimant's Medical Report was revised on 9/27/2013 Reported vomiting at ER and back pain

[See Exhibit C8 Pages 63-81]

On August 12, 2013, Claimant mailed a letter to TRC Staffing regarding hireturn to work status, after my Emory Johns Creek Hospital visit.

“TO: Tara Hendricks, TRC Staffing Services, Inc.,

On August 9, 2013, Dr. Jones stated that he needs the MRI results before he can treat me again. Dr. Jones has also stopped my Physical Therapy treatments, because my medical condition had gotten worse.

On August 10, 2013, the nausea and weakness returned. To keep from returning to the Emory Hospital Emergency Department again, I am staying off my feet as much as possible.

I won't be able to return to work until Dr. Jones reviews my MRI on August 19, 2013 and continues to treat my injuries." [See Exhibit C2 Pages 10,11]

From August 10, 2013, to August 19, 2013, Claimant was Off Work.

Claimant was Still in pain and unable to work. Appointment was scheduled with Dr. Jones for August 19, 2013. [See Exh. C2 Page 10,11]

On August 15, 2013, Dr. McKeown, Peachtree Spine Physicians, MRI Specialist, reported that Claimant has the following:

Cervical Spine MRI Results: Minimal Posterior disk bulge

Thoracic Spine MRI Results: Minimal Left posterolateral bulge

[See Exh. C8 Pages 53,54]

On August 19, 2013, Claimant Reported Pain, Nausea, weakness and vomiting to Dr. Jones, Peachtree Spine Physicians.

Dr. Jones diagnosed Claimant as having Sprain/Strain Neck, Spinal Enthesopathy,

Claimant's Work Restrictions was no lifting, pushing or pulling greater than 20lbs.

Dr. Jones changed Claimant's Physical Therapy treatments. **No Manipulation**, Scapular Stabilization, Massage/Soft Tissue Mobilization.

Dr. Jones prescribed Meloxicam and Tramadol.

Dr. Jones reviewed Claimant's MRI results: The MRI is negative for significant disc pathology.

[See Exh. C8 Pages 13,55,56,57,]

His oral instructions was off for three weeks if I can't tolerate Physical Therapy Treatment

Claimant's father attended appointment with the Claimant.

On August 20, 2013, while at work *I noticed that my employer had me working in the sleeving department, while the other workers hired to work with me in the 1st shift returns positions were assigned to work in their 1st shift returns positions.*

[See Exhibit C1 Page 5]

On August 21, 2013, I experienced a lot of pain at work, the day after my Physical Therapy Treatment. **[See Exhibit C1 Page 5]**

August 21, 2013, was claimant's Last Day worked. **[See Exhibit C1 Page 6]**

On August 22, 2013, Claimant called Tara Hendricks, TRC Staffing. Claimant told her that he wasn't feeling well and would not be in to work and that he has an appointment to see Dr. Jones on Monday August 26, 2013. **[See Exhibit C1 Page 6]**

On August 22, 2013, Select Physical Therapy called and cancelled Claimant's appointment scheduled for today. Select Physical Therapy wanted the Claimant to reschedule his Physical Therapy appointment.

Claimant did not reschedule a Physical Therapy appointment because his last Physical Therapy treatment was too painful, causing nausea, dizziness and vomiting. **[See Exhibit C1 Page 6]**

On August 22, 2013, Select Physical Therapy called and cancelled Claimant's appointment scheduled for today. Select Physical Therapy wanted the Claimant to reschedule his Physical Therapy appointment.

Claimant did not reschedule a Physical Therapy appointment because his last Physical Therapy treatment was too painful, causing nausea, dizziness and vomiting. **[See Exhibit C1 Page 6]**

On August 23, 2013, Claimant Received call from Tara Hendricks. She wanted to know why Claimant didn't come to work today. Claimant stated that I'm still sick and still have an appointment with Dr. Jones on Monday August 26, 2013.

Note: The Physical Therapy only made my condition worst, so I waited to see Dr. Jones on August 26, 2013 because he had stated to me on August 19, 301, that he was going to take me off for 3 weeks if I couldn't tolerate physical therapy treatments. **[See Exhibit C1 Pages 6-7]**

On August 26, 2013, Claimant's Reported Pain, nausea, weakness, vomiting to Dr. Jones Peachtree Spine Physicians.

Dr. Jones diagnosed me as having a Sprain/Strain Neck, Spinal Enthesopathy,

Claimant's Work Restrictions were no lifting, pushing or pulling greater than 20lbs.

Claimant's Prescription was Tramadol

Claimant's Physical Therapy Treatments were discontinued

Claimant's was to Follow-up in 3 weeks [See Exh. C8 Pages 12,58,59,]

Oral instructions: Off 3 weeks of Physical Therapy Treatments

Claimant's father attended this appointment with him

Note: Dr. Jones decided that he was returning me to regular duties with no restrictions on September 16, 2013, despite my medical condition. (See work status report dated 8/26/13)

On August 27, 2013, Claimant requested a change of Physician to TRC Staffing because on August 26, 2014, Dr. Jones stated to me that he cannot do anything to relieve my neck and back pain along with the nausea I'm having. Physical Therapy only made my condition worse. Dr. Jones discontinued my Physical Therapy treatments. Claimant could not lift, push, or pull 20lbs without pain.

Because of constant neck and back pain along with nausea I am changing to a Resurgens pain and management Doctor [Exhibit C5 1-9]

On August 28, 2013 Claimant first requested TTD benefits for the period between August 12, 2013 and September 16, 2013, because of Claimant's injuries Claimant was only able to work 2 days. August 20, 2013, and August 21, 2013. [See Exhibits C2 Pages 7,8,9]

On September 2, 2013, claimant requested TTD benefits from August 26, 2013 to September 1, 2013. [See Exh. C2 Pages 6]

Beginning September 3, 2013, claimant began searching for other work because TRC Staffing was refusing to return him to his 1st shift Return Position and because Claimant Physically could not do the work TRC Staffing was calling Light Duty work.

[See Exhibit C7 Pages 5-14]

Despite Claimant's medical condition and Claimant's request for a change of Physician, on September 5, 2013, Gallagher Bassett denied Claimant's TTD benefits. [See Exhibit C2 Page 5]

On September 9, 2013, I mailed a letter to Gallagher Bassett stating my availability for work. Because of my medical condition I would try to do the work I was hired for. [See Exhibit C2 Page 4] I did not receive a response from Gallagher Bassett or TRC Staffing.

ASSIGNMENT OF ERROR

#4

4. Legal Error

Claimant was denied Rebuttal evidence:

“The record closed on August 8, 2014, upon receipt of an independent medical examination (IME) report. At the hearing, the undersigned indicated that the claimant would be given an opportunity to obtain rebuttal evidence and the parties were asked to participate in a conference call initiated by counsel for the Employer/Self-Insurer on Tuesday, August 12, 2014, to discuss whether the Claimant wanted to obtain rebuttal evidence (T75-78). The parties never called. Instead, in a motion dated August 12, 2014 and functional capacity evaluation (FCE), the medical report from a follow-up appointment with the new authorized treating physician that he had not yet received and an IME that had not been scheduled. The Claimant's motion was denied by Order dated August 22, 2014.” [See ALJ award dated 9/11/2014 page 2, See State Board of Workers' Compensation INDEX OF THE RECORD Page 71, dated 9/11/2014]

ARGUMENT

#4

Claimant was denied his rights to have own IME Report for Rating and Work Restrictions purposes.

Claimant was denied the following rebuttal evidence:

The ALJ allowed the Employer/Insurer the right to have an IME Report, but denied the Claimant the right to have his own IME Report. **[See State Board of Workers' Compensation INDEX OF THE RECORD Order on Motion dated 8/22/2014.]**

Before the record was closed the Claimant on August 7, 2014, I requested to have his own IME Report made part of the record, the Claimant's request was denied by ALJ on August 22, 2014. **[See State Board of Workers' Compensation INDEX OF THE RECORD Order on Motion dated 8/22/2014.]and [Letter to ALJ/Board dated 8/7/2013]**

Claimant was denied the opportunity to have Dr. Chachashvili's August 16, 2014 medical records made part of record. **[See State Board of Workers' Compensation INDEX OF THE RECORD Order on Motion dated 8/22/2014.]**

Claimant was denied the opportunity to have a Functional Capacity Evaluation (FCE) report made a part of the record **[See State Board of Workers' Compensation INDEX OF THE RECORD Order on Motion dated 8/22/2014.] and [Letter to ALJ/Board dated 8/7/2013]**

Statement of Facts #4

On July 16, 2014, a Hearing was held and the record was left open because Employer/insurer wanted an IME report included in the record. The IME was done on July 30, 2014, after the hearing.

On August 7, 2014, I Emailed and mailed a letter to the Judge asking that the record be kept open for the following reasons:

1. The Johns Creek Physical Therapy office will not provide me with a copy of my **FCE Report** for my FCE visit on July 24, 2014. I want this report included in the record. I was told by office manager, Holly Casey that she was told by a Workers Compensation representative not to give me a copy.
2. I wrote a letter to Workers Compensation Attorney, Heather Froy, requesting a copy of my FCE report. She mailed me a copy of an IME Report, but did not send me a copy of the FCE Report.

3. I have a **Follow-up Doctor visit** with Doctor Chachashvili on August 14, 2014, and I also want her report to be included in the record.

4. Since Dr. Kelly's IME Report did not review or consider my FCE Report I will be scheduling my own IME.

[See letter to State workers compensation Board, dated August 7, 2014.]

On August 10, 2014, I sent a response to Dr. Kelly's July 30, 2014, IME Report. I stated the following:

"This letter is in response to your July 30, 2014, IME Report.

Your IME report stated that Mr. Hawkins completed his functional capacity evaluation on July 14, 2014, is not correct. My functional capacity evaluation was completed on July 24, 2014.

Your IME report did not review or consider the July 24, 2014, Johns Creek Functional capacity evaluation report. (Neither Johns Creek Physical Therapy or Ciba vision/TRC Staffing would provide me with a copy of the report to give to Dr. Kelly)

Your IME report omitted the fact that Mr. Hawkins reported back pain and vomiting at Emory Healthcare Emergency Room.

I did not state that I worked at my regular duty from 07/25/13 until sometime in 08/2013.

I did not state that I worked at light duty from 8/13 until some time in 09/2013.

I was treated on July 26, 2013, by Dr. Jones, before I was treated on July 30, 2014, at Eastside Medical Center.

Dr. Jones did not state that my MRI scans were normal.

The pain I experienced after the July 24, 2014, Functional Capacity Evaluation and the July 30, 2014, IME is rated 8 out of 10.

I will still seek medical treatment for my Injuries."

[See letter to State workers compensation Board, dated August 10, 2014.]

On August 14, 2014, I was seen by Dr.Chachashvili for a Follow-up to my July 24, 2014, Functional Capacity Evaluation and for Back pain following the July 24, 2014, Functional Capacity Evaluation and the July 30, 2014, Independent Medical Evaluation.

[[See Letter with a copy of my work status and work restrictions to Workers Compensation Judge dated August 14, 2014]

On August 14, 2014, I also received my July 24, 2014, Functional Capacity Evaluation Report from Dr. Chachashvili.

[See Letter with Functional Evaluation Capacity report to Workers Compensation Judge dated August 14, 2014]

On August 19, 2014, I received a Letter from Employer/Insurer Attorney Heather Froy, objecting to the record being left open. **[See letter dated August 18, 2014, objecting to record being held open.]**

On August 20, 2014, I mailed a reply to Employer/Insurer Attorney Heather Froy, objecting to the record being left open. **[See letter dated August 20, 2014, Reply to opposition of record being held open.]**

On August 22, 2014, my motion to keep the record open was denied.

LITIGATION EXPENSES

O.C.G.A. 34-9-108(b)(4)

(4) Upon a determination that proceedings have been brought, prosecuted, or defended in whole or in part without reasonable grounds, the administrative law judge or the board may, in addition to reasonable attorney's fees, award to the adverse party in whole or in part reasonable litigation expenses against the offending party. Reasonable litigation expenses under this subsection are limited to witness fees and mileage pursuant to Code Section 24-10-24; reasonable expert

witness fees subject to the fee schedule; reasonable deposition transcript costs; and the cost of the hearing transcript.

Cost of Court Reporter's Transcript: \$335.75

Traveling expenses to Hearing: Mileage [\$20]

Parking at Hearing: \$20

O.C.G.A 34-9-221

PENALTIES

If income benefits are paid late, the employer will pay you a 15% penalty on all accrued benefits. If benefits are paid late after an award has been issued, the employer/insurer will pay you a 20% penalty.

Employer/Insurer has wrongly denied me my TTD benefits for over a year

CONCLUSION

For all of the reasons set above, the Superior Court Order of February 20, 2015, affirming the Decision of the Appellate Decision should be reversed.

Respectfully Submitted,

Dated: May 19, 2015

Clinton Hawkins
CLINTON JARED HAWKINS
Appellant/Claimant