

The Law Offices of Bolton and Helm, LLP

CASE LAW UPDATE

Sheltered Employment and Refusal of Work Under Fla. Stat. 440.15(6)

Claimant sustained an injury to her right (dominant) shoulder. She underwent surgery, and was placed on a no-work status for approximately one week. Claimant's authorized orthopedist then returned the Claimant to work with significant restrictions relative to her right upper extremity and also recommended three weeks of physical therapy. The Employer sent the Claimant a letter offering a light-duty job, dusting with only the left hand. The Claimant refused the offer of employment saying she would not work until she completed the physical therapy. The Employer then terminated her. The Statute provides that if an injured employee refuses an offer of suitable employment, the employee shall not be entitled to any compensation during the continuance of such refusal unless in the opinion of the JCC such refusal is justifiable. See F.S. 440.15(6). Claimant here argued that her refusal of the modified-dusting position was not continuing as the offer ceased upon her termination. However, Claimant made it clear that she would not return to work until after she received physical therapy, a course of conduct not justified by any medical testimony. She also alleged that the job was sheltered employment. The appellate court disagreed with Claimant's assertions above. They explained that the job was not sheltered and that the Claimant's refusal to accept employment continued even after her termination. See Moore v. Servicemaster Commercial Services, 19 So.3d 1147 (Fla. 1st DCA 2009)(*This case is still in litigation so expect more on this issue in the future*).

Discussion:

Employers should be aware that significant job modifications will not necessarily transform a job into "sheltered employment." Further, termination of a claimant will not necessarily end the claimants "refusal" of employment.

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