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**Job Offer Refusal Does Not *Otto*-matically Discontinue TTD:
An Analysis of W.C.C.A. Decision *Otto v. Heartland Motor Co.***

By Rena T.Z. Cummings

On January 15, 2020, the Workers' Compensation Court of Appeals (WCCA) affirmed Judge Cannon's decision denying the employer and insurer's petition to discontinue temporary total disability benefits based on withdrawal from the labor market, lack of diligent job search, and job offer refusal.

The employer and insurer in this case argued unsuccessfully that because the employee claimed to be incapable of 'any substantial gainful employment' to receive SSDI benefits, the employee had withdrawn from the labor market pursuant to Minn. Stat. §176.101, Subd. 1(f). The WCCA reasoned that there was nothing in the law equating to withdrawal from the labor market. They also affirmed Judge Cannon's findings that given the employee's age, restrictions, and skills, there were few jobs available, so applying for two jobs was sufficient to show he had not withdrawn from the labor market.

Next, the WCCA held that the employee's TTD benefits could not be discontinued for failure to conduct a diligent job search pursuant to Minn. Stat. § 176.101, subd. 1(g). The employee presented no job logs, applied for only two jobs, and testified that he 'looked around' on the internet for jobs. The Court stated that there was no evidence that the employee could have or should have applied for other job opportunities. The employer and insurer's independent vocational examiner had only identified two potential job opportunities. The employer and insurer had twice refused to institute job placement services. The Court held that their refusal to institute job placement services weighed in the employee's favor when determining whether he conducted a diligent job search.

Lastly, the employer and insurer argued that the employee TTD benefits should be discontinued under Minn. Stat. § 176.101, Subd. 1(i) because he had refused a suitable job offer that was consistent with the rehabilitation plan. The WCCA affirmed the judge's finding that the job offered was not an 'economically suitable job' because it paid \$1,000 less per week and the employee would ultimately experience a significant loss of earnings after he exhausted his TPD benefits. The Court reasoned that the job offered did not return the employee to an economic status as close as possible to his pre-injury average weekly wage.

Conclusion: This case is a good reminder of the difficulty of discontinuing TTD benefits for reasons related to labor market withdrawal, job search deficiencies, and/or refusal of a job offer.

If you have any questions or concerns about whether the facts in a particular claim are sufficient to discontinue TTD, please contact me or any of the attorneys at Brown & Carlson to review your concerns and advise you on your options.

Thank you.
Rena T.Z. Cummings

Rena T.Z. Cummings
763-252-6372
rcummings@brownandcarlson.com



Visit our Website

Brown & Carlson, P.A.
300 Highway 169 S.,#500
Minneapolis, MN 55426-1113
763-591-9950
F: 763-591-9202