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### Taylor v. Truckee Meadows Fire Prot. Dist., 137 Nev. Adv. Op. 1 (Feb. 4, 2021)

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*Taylor v. Truckee Meadows Fire Prot. Dist.*, 137 Nev. Adv. Op. 1 (Feb. 4, 2021)<sup>1</sup>

## WORKERS' COMPENSATION: SUFFICIENCY OF TEMPORARY, LIGHT-DUTY EMPLOYMENT UNDER NRS 616C.475(8)

### **Summary**

When determining if an employer's offer for temporary, light-duty employment is reasonable and meets the requirements set forth within NRS 616C.475(8), the Court should consider the proximity of the temporary employment to the individual's residence as compared to the prior employment. When determining whether the temporary employment is substantially similar in hours the Court can look both the number hours of worked per week and the schedule. The reasonableness of an employer's offer for temporary, light-duty employment is not dependent on the mere fact that an individual believes that the employment is beneath them.

### **Background**

In April 2016, Appellant Vance Taylor severely injured his shoulder in a training exercise while working as a fire captain for respondent Truckee Meadows Fire Protection District (hereinafter "TMFPD"). After filing a workers' compensation claim, Taylor received temporary total disability benefits from respondent Alternative Service Concepts, LLC ("ASC"). In the three-month period between his injury and shoulder surgery, Taylor accepted light-duty work at TMFPD's administrative office in lieu of temporary total disability benefits. During this time, Taylor worked as a secretary Monday through Friday from 8 a.m. to 5 p.m. and completed data entry and filing projects under the supervision of the office's secretary. In July 2016, Taylor underwent shoulder surgery and began receiving temporary total disability benefits again.

In September 2016, Taylor's doctors released him to light duty and TMFPD offered Taylor the same administrative position he had prior to surgery. Taylor refused this offer, claiming that it did not comply with Nevada law because it changed his work schedule and required him to perform "humiliating and unlawful" duties. Because TMFPD extended a temporary light duty employment, ASC terminated Taylor's temporary total disability benefits.

Taylor administratively appealed ASC's decision to terminate benefits, and the hearing officer upheld the decision to terminate benefits. Taylor appealed that decision, and the appeals officer affirmed the decision of the hearing officer. Taylor then petitioned the district court for judicial review, claiming that the denial of temporary total disability benefits was erroneous. The district court denied Taylor's petition for judicial review and Taylor appealed.

### **Discussion**

NRS 616C.475(8) requires that the temporary, light-duty employment offered by the employer must (1) be substantially similar to the employee's position at the time of his or her injury in relation to the location of the employment and the hours the employee is required to work; (2) provide a gross wage that is substantially similar to the gross wage the employee was

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<sup>1</sup> By Greer Sullivan.

earning at the time of the injury; and (3) have the same employment benefits as the position that the employee had at the time of injury.<sup>2</sup>

The Court found that the temporary, light-duty employment offered by TMFPD was substantially similar in location to Taylor's preinjury position because (1) the new location was similar to Taylor's preinjury work location in proximity and in distance from his residence, and (2) Taylor failed to demonstrate how the new location imposed an unreasonable burden. The Court additionally found that the temporary, light-duty employment offered by TMFPD was substantially similar in hours to Taylor's preinjury position. The Court determined that the term "hours" was ambiguous because it was susceptible to more than one natural and honest interpretation. Using legislative history, the Court determined that "hours" encompassed both the actual number of hours worked and the schedule of work.

The Court held that the temporary, light-duty employment offered by TMFPD was substantially similar in hours. Although the temporary, light-duty employment offered by TMFPD totaled to 40 hours a week, as opposed to the 48 hours in his preinjury employment, Taylor still the same rate of pay. The Court also determined it was substantially similar because both jobs required Taylor to work during the daytime hours for at least half of his shift. Beyond that, the Court concluded that common sense required a determination that the schedules are substantially similar: a determination that the administrative schedule is not substantially similar to the preinjury firefighter schedule would in effect preclude firefighters from ever receiving an offer for temporary, light-duty employment offered by TMFPD because non-firefighter employment does not often run on a firefighter schedule. Thus, some variation in schedule is necessary.

The Court additionally concluded that the temporary, light-duty employment offered by TMFPD was substantially similar in gross wage because the calculation included two holidays and 189 hours of overtime. The Court also held that the offer was reasonable even though some of the tasks were menial or otherwise in a different capacity than the preinjury job. Additionally, the Court held that the mere fact that an employee believes that a position is beneath them does not make that offer unreasonable or invalid.

## **Conclusion**

The Court found that because the temporary, light-duty employment offered by TMFPD was both reasonable and complied with the requirements set forth in NRS 616C.475(8), ASC was justified in terminating Taylor's temporary total disability benefits. As such, the Court affirmed the district court's decision to deny Taylor's petition for judicial review.

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<sup>2</sup> See NEV. REV. STAT. § 616C.475(8) (2020).