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When Are Vocational Retraining TTD Benefits Due?

Frequently, an injured worker is approved for retraining by the Department of Education. Whether or not the injured worker is entitled to vocational retraining TTD benefits *automatically* after this determination depends on whether the accident occurred before or after the legislative changes of October 1, 2003. In cases involving accident dates prior to October 1, 2003, the E/C was mandated to pay once the Department had approved a Claimant for retraining. Workman v. Joe Brown Aluminum, 816 So.2d 1182 (Fla. 1st DCA 2002). The statute read:

“When it appears that an employee who has attained maximum medical improvement requires training and education to obtain suitable gainful employment, the employer *shall pay* the employee additional temporary total compensation while the employee receives such training and education for a period not to exceed 26 weeks, which period may be extended for an additional 26 weeks or less, if such extended period is determined to be necessary and proper by a judge of compensation claims.”

The only option for defense was to challenge that determination by filing a Petition with DOAH under Chapter 120 to challenge the Department of Education's determination. The proof would be that the injured worker could be returned to work without retraining at the same wage level. Case law held that the JCC lacked authority to rule on the TTD issue. Now, the language that was once used in the Chapter 120 challenge has been incorporated into the new version of F.S. 440.491(6)(b), which requires that the injured worker is unable to earn at least 80% of the AWW **and** requires retraining:

“When an employee who has attained maximum medical improvement is unable to earn at least 80 percent of the compensation rate *and* requires training and education to obtain suitable gainful employment, the employer or carrier shall pay the employee additional training and education temporary total compensation benefits while the employee receives such training and education for a period not to exceed 26 weeks, which period may be extended for an additional 26 weeks or less, if such extended period is determined to be necessary and proper by a judge of compensation claims.”

Accordingly, it is this firm’s opinion that the JCC has been re-instituted with the authority to determine whether these benefits are due and owing under the statute, regardless of the Department of Education’s determination on eligibility for retraining. Therefore, prior to approving vocational retraining TTD benefits, the E/C should determine whether it would be possible to place the injured worker back into employment that would pay 80% of the compensation rate without retraining. If so, the vocational retraining TTD should be denied on the basis that “Claimant is not eligible for temporary benefits under F.S. 440.491(6)(b) because he/she retains ability to earn 80% of his/her compensation rate; accordingly, he/she does not require retraining or education to obtain suitable gainful employment.”

Please feel free to contact Jeff Appel if you have questions about this issue or any other matter concerning workers’ compensation cases under Florida law.