

Employees Are Not Always Entitled To Temporary Disability Benefits Following Termination From Employment

Weber Gallagher successfully defended a claim involving a petitioner's entitlement to disability benefits for a compensable loss. In the matter of *Katzenstein v. Dollar General*, A-1141-13T3 (2016), the Appellate Division of the Superior Court rendered a decision on whether an employee, who was terminated after sustaining a compensable accident at his former employment and later deemed unable to work was entitled to temporary disability benefits during his subsequent unemployment. This was an unpublished decision.

In this case, the petitioner sustained a compensable injury to his right knee while working for the respondent. The petitioner was provided authorized medical treatment and was placed on light duty. Thereafter, the petitioner was terminated for violating company policy. Following termination, the petitioner's authorized treating doctor deemed the petitioner unable to work and recommended that he receive arthroscopic knee surgery. At that time, the petitioner was not employed and did not have any offers of employment. The petitioner did offer testimony that he made an effort to find a job after his termination. Moreover, the petitioner had applied for unemployment benefits. The petitioner testified that he was denied unemployment benefits due to his inability to work. In actuality, the Division found that the petitioner was ineligible for unemployment benefits because he was terminated from his employment for misconduct.

The judge of compensation did not find that the petitioner was entitled to any temporary disability benefits pursuant to the *Cunningham v. Atlantic State Cast Iron Pipe Co.*, 386 N.J. Super. 423, 432 (App. Div. 2006). *Cunningham* requires a petitioner to demonstrate that he was available and willing to work, but that he would be working if not for the disability. Despite the petitioner's offer of proofs regarding his employment search, the judge found the petitioner's testimony lacking in credibility as he provided untruthful statements regarding his denial of unemployment benefits. Furthermore, the judge noted that there was no evidence in the record that he had any promise or prospect of employment that he had to forego due to his disability.

The Appellate Division did not find any reason to question the judge of compensation's findings of facts or conclusions of law. The Court held that they would not second guess a judge when sufficient credible evidence in the records supports his or her credibility findings.

Comment: This case further confirms that a petitioner will not always be entitled to temporary disability benefits following termination from employment. Simply providing proofs of employment searches does not make it compensable. A petitioner without any credibility weakens the effectiveness of his proofs.