

# Appellate Court Signals First Positive Departure from *Interstate Scaffolding*

6/27/17

By: [Amber Cameron](#), [acameron@heyloyster.com](mailto:acameron@heyloyster.com)

On June 16, 2017, the Illinois Appellate Court, Workers' Compensation Commission Division, issued its decision in *Holocker v. Illinois Workers' Compensation Comm'n*, 2017 IL App (3d) 160363WC. In *Holocker*, the appellate court clarified the Illinois Supreme Court findings regarding temporary total disability benefits after termination of an employee in *Interstate Scaffolding Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132 (2010). In rendering its decision, the appellate court found that *Interstate Scaffolding* does not support an employee's right to TTD benefits as a matter of law unless he has reached maximum medical improvement. Instead, a claimant is entitled to receive TTD benefits only so long as his work injuries impact his ability to work or his employability.

In *Holocker*, the claimant had suffered a work related injury on September 11, 2012 while operating a crane for his employer, Komatsu America Corporation. He suffered facial and dental injuries when a chainmail strap snapped loose and struck him. After his return to work, the claimant suffered a panic attack and was given a work restriction of no crane use which was able to be accommodated within his normal job title of a transportation operator. In the fall of 2013, the claimant was terminated for cause pursuant to the collective bargaining agreement. After his termination, the claimant underwent additional dental surgery related to the work accident that required him to be off work completely for a few weeks.

The arbitrator found the claimant was entitled to receive TTD benefits from the time he was terminated by the employer until the date of the arbitration. The arbitrator reasoned that the claimant had not reached MMI or been released to full unrestricted work. The Commission reversed the arbitrator's award of TTD benefits, concluding that *Interstate Scaffolding* was distinguishable from the instant case in that *Holocker* had not offered any evidence that he was "significantly limited or precluded from reentering the labor market" by his restriction avoiding crane operation.

On review, the appellate court held the Commission's decision to deny TTD benefits after the claimant's termination. While the claimant had not reached MMI, he had been released to full duty work prior to his termination with a restriction that did not require a modification of an existing job or creation of a light duty position. Further, the employer's vocational expert opined the claimant remained employable in the open labor market.

The appellate court specifically distinguished *Holocker* from *Interstate Scaffolding* and its progeny with regard to the award of TTD benefits post termination. In both *Interstate Scaffolding* and *Matuszczak v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 130532WC, the question was whether the claimant's termination cut off pre-existing entitlement to TTD benefits. In those cases, the claimant was already receiving TTD at the time of termination and the only issue was whether benefits were to continue. The appellate court clarified that *Interstate Scaffolding* does not support entitlement to TTD benefits as a matter of law unless a claimant has reached MMI. Instead, the dispositive question is whether the employee's condition has stabilized to the extent he or she is able to reenter the workforce.

The Illinois Supreme Court's 2010 decision in *Interstate Scaffolding* had a significant impact on an employer's potential exposure for TTD benefits. The appellate court in *Holocker* seeks to clarify *Interstate Scaffolding*, pointing out that it does not stand for continuation of benefits until the moment an employee is declared MMI, but rather until the employee's condition has stabilized and he is able to work full duty. While these periods typically will be one and the same, in a case such as *Holocker* where continuing treatment does not affect the petitioner's ability to work his regular duty job, the appellate court's clarification can significantly limit an employer's exposure.

In our next *Below the Redline* newsletter, we will discuss the appellate court's findings in *Holocker* in more depth and its impact on the defense of workers' compensation claims involving TTD benefits after termination of an employee.