Below the Red Line

HEYL ROYSTER

Workers' Compensation Update

"We've Got You Covered!"

A Newsletter for Employers and Claims Professionals *April 2019*

A Word From The Practice Chair

I do hope everyone enjoyed their Easter celebrations. Yes, it is Spring time, but we seem to be moving into Spring at a snail's pace. After the winter we endured, we are owed a long and ideal Spring, and I for one hope we get to collect. About this time you might be thinking about planting, mowing a yard, and what the heck you are going to do with the kids this Summer! That's right, school should be wrapping up in another four to six weeks, and then boom, your kids will be on their phones/laptop devices full time.

I want to thank many of you for contacting me and setting up "house-calls" in the Spring and Summer of 2019. We are developing programs for these visits because as I shared with you last month, Heyl Royster will not be putting on its annual Spring Claims Handling Seminar. Rather, we are re-tooling it to be ready for 2020, and at the same time I and the Heyl Royster Team are hitting the road to come and visit you! Who doesn't like a good road-trip? So, pick up the phone, give me a call, let's get something on the books, and then begin work on the program which best suits your workers' compensation needs.

In this month's newsletter I examine a case that just came out from the Commission about one month ago courtesy of Commissioners Kevin Lamborn, Thomas Tyrell, and Michael Brennan (who is now our Commission Chairman). The topic I will be analyzing and discussing with you is what I call a timely and hot topic: off-site, light duty programs, sometimes referred to as temporary, transitional work programs. Please take a look at this one because it is a favorable decision from the employer's perspective and one that we will want you to cite and use when you are dealing with the claimant's attorney who argues the Illinois Workers' Compensation Act does not allow the employer to force the employee to return to work, in a light duty capacity, at on off-site location. I really like the logic and reasoning used by the Commission in the case of *Gary Stagen v. Reladyne, LLC*, 17 WC 07749, 19 IWCC 0174.

The claim was originally assigned to Arbitrator Jessica Hegarty and arbitrated in August 2017 based upon a reverse 19(b) emergency petition which was presented by Respondent (in order to do so a Respondent must show evidence all applicable benefits have been paid to date in accordance with the statute). At the trial there was just one issue presented: was Petitioner entitled to additional T.T.D. benefits. The claim was accepted and handled as a compensable one. Mr. Stagen injured his shoulder, and was receiving reasonable and necessary treatment for said shoulder. During the course of this treatment his physician allowed him to return to work with restrictions. The employer, Reladyne, was not able to accommodate those restrictions. However, a third party service was hired by the employer and ultimately found a job at a local not-for-profit which was offered to Stagen (off-site). This job was determined to be within the light-duty restrictions placed on Stagen. This temporary transitional work position was offered to Stagen in writing, along with confirmation Stagen would continue to be employed with Reladyne during this transitional employment. The job which Stagen would be performing was explained to him in detail.

Stagen refused to accept the transitional job as offered and argued he did not have to take this job offer because nothing in the Illinois Workers' Compensation Act allowed for such a job to be offered by the employer. He argued any light duty job would have to take place at the employer's own workplace. Arbitrator Hegarty agreed with the employee and ordered T.T.D. benefits should continue and confirmed Stagen did not have to report to work at this not-for-profit agency because there was nothing in the Act which stated Stagen would have to do so.

Reladyne filed an appeal, and the Commission reversed Arbitrator Hegarty's decision. The Commission confirmed it was undisputed Stagen suffered a

compensable claim and that while undergoing treatment for his condition his employer was unable to accommodate his light duty restrictions. Thus, he was not able to return to work with Reladyne as he continued his treatment. The Commission made note the not-for-profit agency and transitional work offered to Stagen did comply with the light duty restrictions. But, Stagen never appeared at this transitional work place. It was noted Stagen offered no explanation as to why he did not appear for this transitional job other than it was not his employer. The Commission found the employer sufficiently detailed, in writing, that Stagen would remain their employee even while working off-site in this transitional position. Further, he would be paid the same salary he was accustomed to at Reladyne, and he would remain subject to the same human resources policies he was used to when working at Reladyne.

The Commission reasoned there is nothing in the case law (involving an employee's right to T.T.D. benefits) that "...holds or suggests that an injured employee remains entitled to T.T.D. benefits if work with the prescribed restrictions can be found regardless of with whom and is not otherwise shown to be unreasonable." The Commission also keyed in on the point that Stagen was to be paid his normal, regular salary. Further, it was just as important to the Commission that Stagen was still an employee of Reladyne and under their supervision and thus controlled by the same policies and procedures in effect when he was working for Reladyne before the injury occurred. The Commission went on to add the equitable argument here does favor the employer wherein Stagen failed to provide any evidence as to why he should not return to work in this transitional job. Because, after all, is that not the purpose of the Act, to be remedial in nature. Thus, the Commission found no credible evidence to support Stagen turning down this job. This resulted in the T.T.D. benefits being suspended at the time the job offer (temporary transitional job) was made and Stagen declined same.

What have we learned here? First, this was a unanimous decision. Which means our current Chairman (Michael Brennan) had a hand in this decision. Now, it may very well go up to the appellate court on appeal, but as of right now this has a good amount of credibility and weight to it. It does not have the precedential value of a claim decided by the appellate court, but it is definitely something you want to cite and use in your arguments when you are trying to convince an employee to go back to work at a transitional position. But, let's make sure we do it the right way. First, the transitional job must comply with the light duty restrictions. Second, make the job offer in writing on behalf of the employer, or better yet, by the employer specifically. Third, make it abundantly clear what job the employee will be performing, who he will report to and details of that nature. Fourth, it will really help if the employee is being paid the same amount he was accustomed to before (focus on no discernable difference other that the actual geographic location). Fifth, make it clear he will be subject to the same rules and policies he was accustomed to when working for his employer. Make sure this new job does not require a substantial amount of travel in comparison to what he was used to doing at this normal job. I would also recommend he knows that he can contact your employer's human resources department at any time for any reason (work-related of course) as he is still your employee. If you need help establishing any or all of this please contact me or any Heyl Royster attorney. We have been on the forefront of pushing this issue (transitional work programs) because we believe in them and as the Commission confirmed, the equity of the argument as to why an injured worker should do this is definitely on our side.

A judicial review has been filed in Cook County, case number 2019-L-50198. We will continue to monitor this case as it proceeds through the circuit court and appellate court. We anticipate that the case could be before the appellate court for disposition as early as mid-2020.

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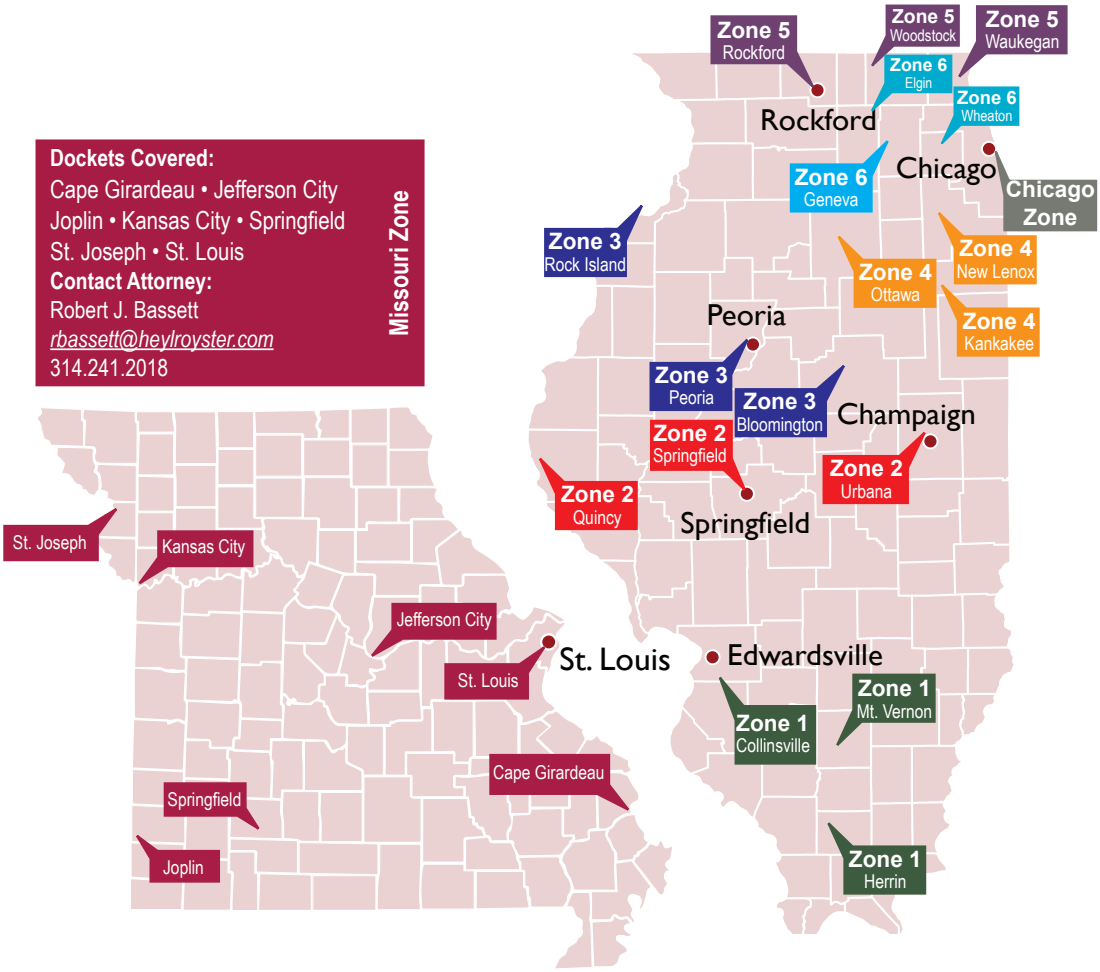

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