

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: March 6, 2015

CLAIM NO. 201393581

EMERSON ELECTRIC

PETITIONER

VS.

APPEAL FROM HON. R. ROLAND CASE,  
ADMINISTRATIVE LAW JUDGE

KATHRYN WRIGHT  
HON. R. ROLAND CASE,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

**RECHTER, Member.** Emerson Electric Co. appeals from the September 3, 2014 Opinion, Award and Order and the October 30, 2014 Order on Petition for Reconsideration rendered by Hon. Roland Case, Administrative Law Judge ("ALJ"). The ALJ awarded Kathryn Wright temporary total disability ("TTD") benefits, permanent partial disability benefits, and medical

benefits for work-related bilateral carpal tunnel syndrome. On appeal, Emerson Electric argues it is entitled to a credit for TTD paid to Wright during the periods she was earning a full wage while working light duty. We affirm.

Wright began working for Emerson Electric in 1972. On August 30, 2012, she experienced pain in both wrists while at work. At the time of her injury, she was working as an assembler, a position which required her to pull wires through tubing and to insulate motors. Wright informed the company nurse and was placed on light duty. At her deposition, she described this work as paperwork with no lifting, and also as "doing nothing." She continued on light duty, earning her regular wages, until April 23, 2013.

Wright underwent bilateral carpal tunnel release surgery on April 24, 2013. She was paid TTD benefits while she was off-work during her recovery period. On May 27, 2013, she was released to return to work on light duty, with no repetitive pulling, pushing, or lifting over ten pounds. She was released to full duty on July 11, 2013.

The ALJ was ultimately convinced by the evidence that Wright's bilateral carpal tunnel syndrome is work-related. In addition to permanent partial disability benefits and medical benefits, the ALJ awarded Wright TTD benefits from August 30, 2012 through July 11, 2013. He

also awarded Emerson Electric a credit for TTD benefits paid from April 24, 2013 to May 26, 2013.

Emerson Electric filed a petition for reconsideration, arguing it is entitled to a credit against the TTD award for the wages paid to Wright while she worked light duty. The ALJ denied the petition, determining an employer is not entitled to a credit for wages paid while a claimant has not returned to his or her customary work. Emerson Electric now appeals, again challenging the award of TTD benefits. It first argues Wright is not entitled to TTD benefits during the periods she was earning her full wages, albeit on light duty. Alternatively, it argues it is entitled to a credit for wages paid during Wright's period of light duty work.

Temporary total disability is "the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment." KRS 342.0011(11)(a). The Kentucky Supreme Court has interpreted the phrase "a return to employment" as work that is customary or that the employee was performing at the time of the injury. Central Kentucky Steel v. Wise, 19 S.W.3d 657, 659 (Ky. 2000). "[I]t would not be reasonable to terminate the benefits of an employee when he is released to perform

minimal work but not the type that is customary or that he was performing at the time of his injury." Id.

The ALJ awarded TTD benefits from August 30, 2012 through July 11, 2013, the date upon which Dr. Keith Morrison released Wright to full duty. On appeal, Emerson Electric does not specifically contest July 11, 2013 as the date Wright reached maximum medical improvement. Rather, it argues she returned to employment prior to this date. The ALJ concluded Wright's light duty tasks were not her "customary employment", a conclusion which is well supported by the record. There is little dispute that the paperwork Wright performed during the light duty period was entirely distinct from the tasks she performed as an assembler. She testified she performed none of her previous duties while on light duty, and there was no evidence presented to the contrary. Thus, the award of TTD benefits was proper under the facts of this case. See Bowerman v. Black Equipment Co., 297 S.W.3d 858 (Ky. App. 2009).

Emerson Electric also argues it is entitled to a credit for the wages paid to Wright during her period of light duty work. We disagree. "An employer seeking credit against its workers' compensation liability has the burden to show a proper legal basis for the request." Millersburg Military Inst. v. Puckett, 260 S.W.3d 339, 342 (Ky. 2008).

Chapter 342 provides two circumstances in which an employer can receive a credit against its TTD obligation: for unemployment insurance benefits paid during any period of TTD or permanent total disability, or for payments made under a qualifying employer-funded disability or sickness and accident plan. KRS 342.730(5) and (6). Neither of these statutory circumstances applies to Wright's situation.

Furthermore, there is no indication that Wright's wages were intended to replace her TTD benefits during her period of light duty. A similar argument was advanced in Millersburg Military Inst. v. Puckett, wherein the claimant worked light duty during the period he otherwise qualified for TTD benefits. The employer sought a credit for the wages paid. The Supreme Court rejected the argument, explaining the employer had confused wages and benefits: "Wages are paid for performing labor; income benefits are paid for work-related disability. The claimant's wages were 'bona fide' because they were paid ostensibly for labor and because the evidence did not permit a reasonable finding that the employer intended to pay them in lieu of workers' compensation benefits." Id. at 342. Here, Emerson Electric has advanced no argument that Wright's light duty wages were not "bona fide" wages for work performed.

Emerson Electric's arguments on appeal are founded in public policy arguments. It asserts light duty wages are preferable to TTD benefits because the employee receives a full salary and returns more quickly to the workforce. These policy arguments have been advanced in other cases. See e.g. Quad/Graphics, Inc. v. Holguin, 2014 WL 2553296 (Ky. App. 2014). While these arguments may be well founded, we are without authority to permit a credit where none exists in Chapter 342.

For the foregoing reasons, the September 3, 2014 Opinion, Award and Order and the October 30, 2014 Order on Petition for Reconsideration rendered by Hon. Roland Case, Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

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