

WORKERS' COMPENSATION UPDATE

More on Westphal...

An En Banc Decision From the First DCA was Released Today

The Court held "...that a worker who is totally disabled as a result of a workplace accident and remains totally disabled by the end of his or her eligibility for temporary total disability benefits is deemed to be at maximum medical improvement by operation of law and is therefore eligible to assert a claim for permanent and total disability benefits....If he can prove that he is totally disabled, he is entitled to receive his benefits now and he need not wait until such time in the future as he can offer medical proof that he has reached the point of maximum medical improvement." (emphasis added).

The court receded from the opinions in Matrix Employee Leasing, Inc. v. Hadley, 78 So. 3d 621 (Fla. 1st DCA 2011) and City of Pensacola Firefighters v. Oswald, 710 So. 2d 95, 98 (Fla. 1st DCA 1998), which held that PTD claims were premature before the claimant reached "medical" maximum medical improvement (as opposed to "statutory MMI") unless the claimant could demonstrate that he or she will be totally disabled when MMI is achieved. The court then **certified the following question to the Supreme Court:**

"Is a worker who is totally disabled as a result of a workplace accident, but still improving from a medical standpoint at the time temporary total disability benefits expire, deemed to be at maximum medical improvement by operation of law and therefore eligible to assert a claim for permanent and total disability benefits?"

Until the Supreme Court answers that question (which they are not compelled to do), this means that in cases in which a claimant has received 104 weeks of TTD benefits and is still on a totally disabled status, that claimant is eligible to assert a PTD claim.

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