RI CLE Workers' Comp s. 3.4

Massachusetts Continuing Legal Education, Inc. (MCLE) | 2023 2nd Edition

A Practical Guide to Workers' Compensation in Rhode Island
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§ 3.4 PARTIAL DISABILITY

Partial disability is not specifically defined in the Workers' Compensation Act but is defined by default based on the statutory definition of total disability. Partial disability describes a situation where the employee cannot perform the requirements of the full-duty job but can function in some modified-duty position, whether or not that type of position exists or is available with the employer. Partial disability is typically proven based on a medical report or expert medical testimony stating that the individual is capable of working within certain physical restrictions.

Practice Note

In cases where the employer is seeking a modification from total to partial, the employer's burden is not to just produce a medical report stating that the injured party can work in some capacity. The employer's burden in such cases is to demonstrate, through an expert medical opinion, a comparative improvement in the employee's condition between the time the individual was placed on total and the time of the request for modification. For discussion of this standard see *Costello v. Narragansett Electric Co.*, 623 A.2d 441 (R.I. 1993); *C.D. Burnes Co. v. Guilbault*, 559 A.2d 637 (R.I. 1989); and *Martinez v. Bar-Tan Manufacturing*, 521 A.2d 134 (R.I. 1987). Thoroughly review the medical opinion on which the requested modification is based to make sure that there is an actual comparison and not just a blanket statement that the employee's condition has improved. Be sure that the point of comparison is the appropriate one. Often the opinion being relied on compares the injured party's condition to some random point during the party's period of total. Such a comparison does not meet the standard. The comparison must be made to the condition at the time that the current period of total began. Also, make sure that the comparison is based on objective physical findings. The employer does not meet its burden by simply showing a comparative improvement in subjective complaints. *See Turex, Inc. v. Michael Fallon*, WCC No. 94-10404 (App. Div. 1997).

One issue, about which there is much discussion but no case law, is the situation where an employer seeks a reduction from total to partial based on the opinion of the treating physician, who was the same one relied on in the earlier determination of total. In such cases the doctor, in the context of ongoing office notes, rarely identifies specific comparative improvements but simply says the employee is released for light-duty work. The argument is made, and usually accepted, that the comparison is implied when the opinion on partial comes from the same doctor who gave the opinion that was relied on in starting the period of total. It is worth arguing the point, however, that the requirement of a comparative improvement is not suspended simply because the employer is relying on the treating physician.