IN THE COURT OF APPEALS
STATE OF GEORGIA

John Taylor,	)	
	)	
Appellant,	)	
	)	Case Number: A24A1246
v.	)	
	)	
Argos, USA et. al.	)	
	)	
Appellees.	)	

APPELLANT'S BRIEF

Veronica L. Richardson
Georgia Bar No. 351120

RICHARDSON LAW, LLC
1000 Parkwood Circle, SE, Suite 350
Atlanta, Georgia 30339
(404) 689-6502 (phone)
(404) 420-2546 (facsimile)
VRichardson@RichardsonLaw-LLC.com

COUNSEL FOR APPELLANT

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BRIEF OF APPELLANT

COMES NOW Appellant, John Taylor, Claimant-Employee in the workers' compensation claim below, and submits his BRIEF OF APPEALLANT showing that the State Board of Workers' Compensation's Award denying his request for accrued and ongoing income benefits should be reversed because: (1) the Board improperly conflated the two prongs regarding suitability of light duty employment and justification for refusing to attempt a light duty job; (2) the Board failed to hold the Employer accountable to the requirements of proper commencement and suspension of income benefits; and (3) the Board failed to acknowledge the Employee's willingness to return to light duty work; thus ending any permissible suspension of benefits.

PART ONE:

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PART TWO:

INTRODUCTION

This is a workers' compensation claim involving an on-the-job accident that occurred on September 4, 2019. The parties agree that Mr. Taylor's accident arose out of and occurred in the course and scope of his employment. The parties also agree that a few days following the accident, Argos offered a light duty job to the Employee, performing general cleaning duties at the plant. The Employee accepted the job and performed his duties for several weeks. After which, Argos informed him that light duty at the plant was no longer available, and they assigned him to work at a non-profit (Arms Wide Open), which had a job available within Mr. Taylor's light duty job restrictions. Mr. Taylor worked for the non-profit for approximately three (3) months until it shut down on March 16, 2020 due to the COVID-19 pandemic.

After the non-profit closed, Argos did not offer Mr. Taylor any suitable light duty work for approximately four (4) weeks. During that timeframe, Argos inexplicably failed to commence temporary total disability income benefits as required under the Workers' Compensation Act. On April 14, 2020, Argos offered a light duty job at the plant. However, Mr. Taylor's prior attorney raised concerns about the pandemic and requested that Argos provide information regarding safety precautions as Mr. Taylor was a high-risk, 68-year-old diabetic. Argos failed to specifically address Mr. Taylor's concerns, and instead, on May 19, 2020, Argos's

attorney emailed Mr. Taylor's prior attorney informing her that they were putting him on the schedule immediately for the light duty job. Mr. Taylor did not show up for the job, and later, the Employer produced a Separation Notice dated May 18, 2020, noting that Mr. Taylor was terminated for job abandonment.

Approximately six (6) months following his termination, during his deposition, Mr. Taylor informed Argos that he would be willing to return to a light duty job with them if a light duty job was offered. However, Argos did not offer Mr. Taylor any light duty jobs.

The Superior Court and the Board erred in determining that Mr. Taylor was not entitled to accrued and ongoing benefits because: (1) Mr. Taylor was justified in refusing to return to work until Argos provided information regarding safety precautions against the COVID-19 virus; (2) The Employer failed to timely commence and suspend temporary total disability income benefits; and (3) Argos refused to offer Mr. Taylor a light duty job after he informed him that he was willing to return to work.

PART THREE:

STATEMENT OF JURISDICTION

This matter was heard before Administrative Law Judge Viola Drew on November 7, 2022. (V2-135). Judge Drew filed an Award on January 9, 2023 awarding benefits from March 16, 2020 and continuing. (V2-141). Argos appealed

Judge Drew's Award on January 26, 2023. (V2-142-146). The Appellate Division filed an Award on June 12, 2023, reversing Judge Drew's Award regarding Mr. Taylor's entitlement to ongoing temporary total disability benefits. (V2-197). Mr. Taylor timely appealed the Appellate Divisions Award on June 30, 2023. (V2-189).

Pursuant to O.C.G.A. §34-9-105, a hearing took place within the requisite timeframe in the Superior Court of Dekalb County before the Honorable Alan C. Harvey. (V2-849:860). The hearing took place on October 9, 2023. (V2-856). Pursuant to O.C.G.A. §34-9-105(b), the superior court was required to enter an order disposing of the appeal within 20 days. Here, the 20th day fell on Sunday, October 29, 2023. Accordingly, the superior court had until Monday, October 30, 2023, to enter an order disposing of the appeal. As the superior court did not enter an order on Monday, October 30, 2023, the Award from the Appellate Division of the State Board of Workers' Compensation was affirmed by operation of law.

Mr. Taylor filed an Application for Discretionary Review with this Court within thirty (30) days of when the Board's Award was affirmed by operation of law pursuant to O.C.G.A. §5-6-35. Following a review of Mr. Taylor's Application, this Court granted Mr. Taylor's request on December 21, 2023. (V2-865). Thereafter, Mr. Taylor filed a Notice of Appeal on December 22, 2023. (V2-1). This Court docketed this case on April 1, 2024.

The Court of Appeals, rather than the Supreme Court of Georgia, has jurisdiction of this case on appeal because it is not one in which appellate jurisdiction is exclusively vested in the Supreme Court by the Constitution of the State of Georgia. Therefore, in compliance with the Rules of the Court of Appeals, as well as O.C.G.A. §5-6-35(a)(1), the Applicant filed this Application for Discretionary Appeal and jurisdiction is proper in this Court.

STATEMENT OF JURISDICTION

Pursuant to O.C.G.A. §34-9-105, a hearing took place within the requisite timeframe in the Superior Court of Dekalb County before the Honorable Alan C. Harvey. The hearing took place on October 9, 2023. Pursuant to O.C.G.A. §34-9-105(b), the superior court was required to enter an order disposing of the appeal within 20 days. Here, the 20th day fell on Sunday, October 29, 2023. Accordingly, the superior court had until Monday, October 30, 2023, to enter an order disposing of the appeal. As the superior court did not enter an order on Monday, October 30, 2023, the Award from the Appellate Division of the State Board of Workers' Compensation was affirmed by operation of law.

This petition is filed within thirty (30) days of the day when the Board's Award was affirmed by operation of law pursuant to O.C.G.A. §5-6-35. The Court of Appeals, rather than the Supreme Court of Georgia, has jurisdiction of this case on

appeal because it is not one in which appellate jurisdiction is exclusively vested in the Supreme Court by the Constitution of the State of Georgia.

Therefore, in compliance with the Rules of the Court of Appeals, as well as O.C.G.A. §5-6-35(a)(1), the Applicant filed this Application for Discretionary Appeal and jurisdiction is proper in this Court.

PART FOUR:

ENUMERATION OF ERRORS

Mr. Taylor complains of the Award from the Appellate Division of the State Board of Workers' Compensation, which was affirmed in Dekalb County Superior Court by operation of law on October 30, 2023. The Superior Court and State Board erred as a matter of law in the following respects:

1. The Superior Court and Board erred in failing to find that the Claimant, a 68-year-old diabetic male, was justified in refusing to return to work at the beginning of the COVID-19 pandemic unless the Employer informed him of their safety precautions and protocol.
2. The Superior Court and Board erred in failing to find that the Claimant was entitled to ongoing temporary total disability benefits due to the Employer/Insurer's failure to timely commence and suspend said benefits when the Claimant's light duty employment ended.

3. The Superior Court and Board erred in failing to find that the Claimant was entitled to ongoing temporary disability benefits due to the Employer's failure/refusal to offer a light duty job despite the Claimant's testimony that he would be willing to return to work.

PART FIVE:

STATEMENT OF RELEVANT FACTS AND PRESERVATION OF ERROR

A. Relevant Facts

The September 4, 2019 Accident.

At the time of his September 2019 accident, the Employee, Mr. John Taylor, was a 68-year-old diabetic who worked for Argos USA for thirty-three (33) years. (V2-802). On September 4, 2019, he sustained injuries to his neck, back, shoulder, and left hand due to an accident that occurred in and arose out of the course and scope of his employment with Argos, USA. (V2-763:764). The accident occurred when Mr. Taylor, while sitting in his truck, was hit by another vehicle traveling at a high rate of speed. (V2-794). Specifically, Mr. Taylor testified that the other vehicle was driving approximately 65 miles per hour at the point of impact. (V2-794). The other driver never hit the brakes, and the impact nearly caused Mr. Taylor truck to roll over. (V2-794:795). The Employer/Insurer accepted the claim as compensable and Mr. Taylor received medical treatment at Caduceus. (V2-135:136).

Light Duty Work at Argos and Arms Wide Open.

Following the accident, Mr. Taylor was completely out of work for four days, from September 5, 2019, through September 8, 2019. (V2-135). He then returned to Argos on light duty per restrictions from Caduceus Urgent Care. (V2-135). Specifically, Caduceus restricted Mr. Taylor from bending, stooping, and lifting, pushing, or pulling more than 20 lbs. (V2-500). However, Argos did not have enough light duty work to offer Mr. Taylor for an extended period. (V2-780). During the hearing, Mr. Taylor's supervisor, Mr. Warren McMichael testified, "after you file so much paperwork at one location and you do so much, you just – pretty much. . .run out of work for him to do." (V2-780). As a result, Argos sent Mr. Taylor to a nonprofit organization, Arms Wide Open, to perform light duty work. (V2-779-780). Under this arrangement, Mr. Taylor continued to be an employee of Argos, however, he was simply "assigned" to a non-profit organization to perform light duty assignments. However, as Mr. Taylor no longer worked as a driver, his average weekly income decreased, and Argos commenced payment of temporary partial disability benefits in the amount of $234.39 per week pursuant to O.C.G.A. §34-9-262. (V2-760:761).

The End of the Light Duty Job and Mr. Taylor's Termination from Argos.

Mr. Taylor continued to perform the light duty assignments at Arms Wide Open until March 15, 2020, when Arms Wide Open closed because of the pandemic.

(V2-136). Although the light duty job ended, Argos never began paying Mr. Taylor temporary total disability benefits at the rate of $675.00 per week as required under O.C.G.A. §34-9-261. Instead, they simply continued paying him the lowered rate of $234.39 per week. (V2-136). Approximately four (4) weeks after the light duty job at Arms Wide Open ended, Argos contacted Mr. Taylor through his then attorney, Lisa Reeves, and made a light duty job offer. (V2-353:354). They noted that the light duty job would be in the Argos plant, and Mr. Taylor would be required to sign material tickets, maintain daily files, and clean the break room. (V2-353:354). Ms. Reeves responded that she would speak with Mr. Taylor regarding the job offer and "get back" to Mr. Goodman. (V2-353). On April 16, 2020, Ms. Reeves emailed Mr. Goodman noting that Mr. Taylor was diabetic and wanted "to make sure Argos USA [was] taking necessary precautions for safety of workers that are high risk." (V2-352). Mr. Goodman did not respond with any information regarding Argos's precautions. Instead, he replied, "The company is taking all the necessary precautions to allow employees to rtw safely. Let me know when he is going to return." (V2-352).

On May 19, 2020, Mr. Goodman sent another message to Ms. Reeves regarding the light duty job. He noted that there was light duty work available, and Argos planned to put Mr. Taylor on the schedule "immediately." (V2-367). In response, Ms. Reeves informed counsel for the Employer/Insurer that Mr. Taylor

was "high risk" and had to shelter in place. She again emphasized that Mr. Taylor was a 68-year-old diabetic African American male. (V2-367). The Employer's attorney, Mr. Goodman, never responded with any details regarding safety precautions. Instead, a review of the record provides that Argos decided to terminate Mr. Taylor effective May 21, 2020. (V2-401). Interesting, a review of the bottom of the Separation Notice shows that it was completed on May 18, 2020 – one day before Mr. Goodman sent the email advising Mr. Taylor's attorney of their intent to place him on the schedule. (V2-401). Mr. Taylor never received the Separation Notice from Argos. Instead, he found out he was terminated when he began having problems with his health insurance. At that time, his attorney, Ms. Reeves, informed him of his termination. (V2-137). At the time of his termination, Mr. Taylor remained under work restrictions as provided by his Authorized Treating Physician, Dr. Krystal Chambers (V2-139; V2-676:677).

Mr. Taylor's Willingness to Return to A Light Duty Job at Argos.

Despite his termination, Mr. Taylor remained faithful to his Employer of 33 years. During his deposition in November 2020, he testified that he would be willing to return to Argos and attempt a light duty job with the employer. (V2-826; V2-140). Even then, the Employer refused to offer Mr. Taylor a light duty job. This is likely because there was no light duty available to Mr. Taylor. During the hearing, the Employer representative, Mr. Warren McMichael testified that light duty

assignments at Argos are "temporary" in nature and are only offered while determining if an employee will be able to return to full duty work sooner rather than later. (V2-780). Mr. McMichael further testified that Argos does not have any "permanent light duty jobs." (V2-782).

B. Preservation of Error

This matter was first heard before Administrative Law Judge Viola Drew on November 7, 2022. Based on the testimony and evidence tendered at the hearing, Judge Drew found that: (1) as of March 16, 2020, when the non-profit, Arms Wide Open closed, there was no light duty job available for the Employee and the availability for him to perform light duty work was "cut off". (V2-139); (2) the Employer/Insurer were responsible for commencing temporary total disability benefits to the Employee after the job with the non-profit organization, Arms Wide Open, closed because of the pandemic. (V2-139); (3) the Employee was justified in not returning to the light duty job in the midst of the Covid-19 pandemic due to his concerns of safety in the workplace – "especially an older employee with underlying conditions"(V2-139); and (4) the Employer/Insurer should have either commenced temporary total disability benefits or offered Mr. Taylor a light duty job after he testified during his November 2020 deposition that he would be willing to return to work to attempt a light duty job. (V2-140). Having found that the Employee was entitled to temporary total disability benefits, the question regarding the

Employer/Insurer's failure to properly suspend temporary partial disability benefits was moot.

The Employer/Insurer appealed Judge Drew's Award to the Appellate Division of the State Board of Workers' Compensation. In defending Judge Drew's Award of benefits, Mr. Taylor argued in his brief that: (1) he was justified in refusing to return to work due to Argos's refusal to provide information regarding safety precautions (V2-176); (2) Argos's failure to commence temporary total disability benefits entitled him to ongoing temporary total disability benefits (V2-175); and (3) Argos's failure to offer Mr. Taylor a job after he informed them of his willingness and desire to return to work in a light duty capacity entitled him to ongoing temporary total disability benefits. (V2-175). Following oral argument and a review of the evidence, the Appellate Division issued an Award on June 12, 2023 in which they: (1) affirmed Judge Drew's finding that the Employer/Insurer were required to commence temporary total disability benefits after the light duty job at Arms Wide Open closed on March 15, 2020; (2) disagreed with Judge Drew's ruling that the Employee was justified in refusing the light duty job offered; and (3) found that the Employee was terminated for reasons unrelated to his work injury and was therefore required to perform a Maloney job search. As a result of these findings, the Appellate Division determined that Mr. Taylor was not entitled to ongoing temporary total disability benefits. (V2-180).

The Appellate division did not address Judge Drew's finding that the employee made his desire to return to a light duty job with Argos during his November 2020 deposition. Neither did they address the consequences of the Employer's failure to commence temporary total disability benefits – which would entitle Mr. Taylor to ongoing temporary total disability benefits. (V2-180).

PART SIX

SUMMARY OF ARGUMENT

The Wolf and the Crane (attributed to Aesop's Fables). A Wolf had been feasting too greedily, and a bone had stuck crosswise in his throat. He could get it neither up nor down, and of course he could not eat a thing. Naturally that was an awful state of affairs for a greedy Wolf. So, away he hurried to the Crane. He was sure that she, with her long neck and bill, would easily be able to reach the bone and pull it out. "I will reward you very handsomely," said the Wolf, "if you pull that bone out for me." The Crane, as you can imagine, was very uneasy about putting her head in a Wolf's throat. But she was grasping in nature, so she did what the Wolf asked her to do. When the Wolf felt that the bone was gone, he started to walk away. But what about my reward called the Crane anxiously. "What!" gnarled the Wolf, whirling around. "Haven't you got it? Isn't it enough that I let you take your head out of my mouth without snapping it off?"

In the present case, Mr. Taylor (the Crane) is an exemplary employee who dedicated 33 years of service to Argos (the Wolf). Even after he sustained severe injuries following an accident, he returned to work within a week, willing to perform whatever light duty jobs Argos made available to him. When they had no more work for him and assigned him to a light duty job at a non-profit, he willingly reported for work. In fact, he only stopped working when the non-profit shut down. Despite knowing that the light duty job was no longer available to Mr. Taylor, thus limiting his income, Argos refused to comply with the Act and commence temporary total disability benefits. Then, during a deadly pandemic, they offered Mr. Taylor the opportunity to return to work at the same plant where they previously stated no work was available. When Mr. Taylor requested information regarding safety precautions due to his diabetes and age – they fired him. At a time of so much uncertainty, Argos decided to fire their 33-year-employee. Then, six months later, after Mr. Taylor informed Argos of his desire to return to a light duty job if one remained available; they simply ignored him. Despite his service, loyalty, and devotion, Argos decided to ignore him and force him to begin this four-year journey through our court system just to obtain the income benefits to which he is entitled.

Mr. Taylor is entitled to ongoing benefits because: (1) he was justified in questioning the precautions Argos would take during the beginnings of the COVID-19 pandemic; (2) Argos failed to timely commence (and therefore failed to properly

suspend) temporary total disability benefits; and (3) When Mr. Taylor informed Argos of his desire to return to light duty work in November 2020, Argos was required to either offer a light duty job or commence temporary total disability benefits.

PART SEVEN:

ARGUMENT AND CITATION OF AUTHORITY

I. Standard of Review

Typically, in workers' compensation claims the appropriate standard of review is that of, "any evidence." However, when the relevant facts are not in dispute, and the appellant contends that the Board applied an erroneous theory of law to the facts, this Court applies a "de novo" standard of review. Freeman v. Southwire Co., 269 Ga.App. 692, 605 S.E.2d 95 (2004). Here, the relevant facts are not in dispute. All parties agree that the employee sustained a work-related injury and returned to light duty work with a non-profit that was closed because of the pandemic. It is also undisputed that four weeks into the very start of the COVID-19 pandemic, the Employer offered a light duty job to the employee that he refused due to his concerns regarding his safety in the midst of the pandemic due to his age and diabetes. Further, all parties agree that approximately four weeks after his refusal, the Employer terminated the employee. Additionally, there is no question that Mr. Taylor informed Argos of his desire to return to work as early as November 2020;

and that Argos did not offer him any light duty jobs after May 2020. Accordingly, as the primary facts are not in dispute, this Court should apply a "de novo" standard of review.

II. The Appellate Division Erred in Failing to Find that the Employee was Justified in Refusing to Immediately Return to Work During the COVID-19 Pandemic Without the Proper Safety Precautions.

In their appeal to the Appellate Division, the Employer/Insurer's concentrated their arguments regarding "suitability" as the only requirement when analyzing an Employer's light duty job offer pursuant to O.C.G.A. §34-9-240. However, as the Supreme Court of Georgia noted in City of Adel v. Wise, "the test of O.C.G.A. §34-9-240 is two-pronged." City of Adel v. Wise, 261 Ga. 53, 401 S.E.2d 522 (1991). The Administrative Law Judge, Viola Drew, properly analyzed the facts of this claim as required pursuant to the holding of Wise. She first addressed suitability and determined that the light duty job was within the employee's work restrictions (V2-139). However, she then correctly determined that Mr. Taylor was justified in refusing to accept the job due to the pandemic.

Unfortunately, the Appellate Division and Argos have improperly conflated the two-prong requirement. In reversing Judge's Drew's Award, the Appellate Division noted, "the discretion afforded the Board under O.C.G.A. §34-9-240 to determine that an employee's refusal of proffered work is justified must relate, in some manner to the employee's physical capacity, or ability to perform the job."

(V2-184). In support of their position, the Appellate Division cited two cases: Brasher v. U.S. Xpress Enterprises, Inc., 328 Ga. App. 20, 761 S.E.2d 448 (2014) and Martines v. Worley & Sons Constr., 278 Ga. App. 26, 28 S.E.2d 113 (2006). However, these two cases are distinguishable from the case at bar. First, the issue in Brasher mostly involved a question of credibility, not justification. In Brasher, the employee argued that he was justified in refusing the light-duty job offered to him because the position required relocation, he did not have enough money to purchase food, and he could not change positions (from standing to sitting) during his shift. However, in that case, the Administrative Law Judge determined that the employee's testimony was not credible because he was allowed to change positions. The facts in that case also provided that traveling a long distance was not a factor because the employee was a long-haul truck driver and was used to traveling long distances. (See Brasher, at 453).

Similarly, Martines is distinguishable from the case at bar since the employee's justification to not perform the light duty job was due to an inability to obtain a driver's license because he entered the country illegally. (See Martines at 114). In Martines, the employer offered the employee a light duty job as a delivery driver. However, when the employee arrived to attempt the job and could not present a driver's license, he was unable to perform the job. In determining that the employee was not justified, this Court specifically noted that, "no evidence was

presented that he was unable to drive for any physical or health-related reason." (Id.).

Unlike the employees in Brasher and Martines, Mr. Taylor's credibility was never called into question and his physical health was the primary issue. Instead of acknowledging Mr. Taylor's concerns regarding a deadly pandemic, the Appellate Division emphasized that "the Supreme Court of Georgia has held that an employee 'is not justified in refusing work due to personal choices unrelated to his work.'" (V2-184). The Appellate Division further noted that Mr. Taylor's "individual health and safety concerns during the pandemic were personal to the Employee and unrelated to his compensable work injury." (V2-185). As if Mr. Taylor's concerns as a 68-year-old diabetic were simply a matter of "personal choice."

Although the Supreme Court made it clear in Wise that the Board's discretion in determining whether an employee's refusal is justified has certain limitations, the Board's pendulum has swung too far in the other direction. Now, instead of a two-prong test where both suitability and justification are analyzed, the Board has conflated the two requirements. In Wise, the employee refused a light duty job solely because the scheduled hours conflicted with a different part-time job. (See Wise at 54). In applying the law to the facts, the Supreme Court noted that the first prong, "suitability" refers to the employee's capacity or "ability to perform the work within his physical limitations or restrictions." (Id. at 55). Regarding the second

prong, "justification," the Court held that "the employee's refusal to accept employment must relate, in some manner, to his physical capacity or his ability to perform the job in order for his refusal to be justified within the meaning of O.C.G.A. §34-9-240). (Id.).

In Wise, the Supreme Court provided examples of when employees' refusals were justified versus when they were not justified. The Court noted that employees who refused work because: (1) she did not the assigned shift or (2) the job was non-union were not justified in refusing the proffered employment. (Id. at 55). In those cases, the employees refused the job due to personal preferences that would cause no physical discomfort or harm.

On the other hand, employees who refused the light duty job because: (1) the unairconditioned plant adversely affected their prosthetic arm; (2) they were incarcerated pending adjudication of guilt; or (3) were required to relocate from their home, which was "life-disrupting" and "unreasonable" were justified. Here, Mr. Taylor's inquiry regarding the safety precautions taken by Argos were surely reasonable. Surely, this Court would find Mr. Taylor's refusal justifiable due to a pandemic where individuals who were diabetic were at a higher risk of contracting a disease that could lead to death. This would certainly be considered "life-disrupting" as it could potentially also be "life-ending." Here, the petitioner does not request a bright-line rule. Instead, each case should be analyzed factually based on

the employee's stated justifications. Furthermore, it is important to note that Judge Drew's Award did not determine that Mr. Taylor was justified in refusing the light duty job, "because of the pandemic." She did not determine that anyone over a certain age with diabetes was not required to work. Instead, in her Award, she found "that the employee or the employee's counsel on his behalf was justified in declining to immediately return to work until Covid-19 precautions were addressed." (V2-139). Mr. Taylor simply requested that Argos address precautions in light of the Covid-19 virus, and they refused.

III. The Appellate Division Erred In Failing to Award the Employee Temporary Total Disability Benefits Due to the Employer's Failure to Timely Commence Same.

"When an employee, who had previously been out of work due to a work-related injury, has been released to return to work with restrictions, an employer must either provide suitable work or continue to pay temporary total disability benefits." Padgett v. Waffle House, 498 S.E.2d 499, 269 Ga. 105 (1998). The Employer may terminate the disability benefits only by showing that the employee has the ability to return to work and that work suitable for the employee's restrictions is available. (Id.) Both the Appellate Division and Administrative Law Judge Drew agreed that Padgett rules the day. However, the Appellate Division

failed to complete the analysis. Having found that Argos was required to commence temporary total disability benefits, the Appellate Division should have then found that Mr. Taylor's entitlement to same would remain until they commenced and properly suspended benefits under the Act. Had Argos complied with the requirements of the Act, after commencing temporary total disability benefits, they would have been required to file a WC-2 in order to properly suspend the employee's benefits. (See O.C.G.A. §34-9-221 and Board Rule 240). In emphasizing that the Workers' Compensation Act must be given a liberal interpretation, this Court held that benefits were due where an employer had not made proper payment and not been excused from doing so. See Southeastern Aluminum Recycling, Inc. v. Rayburn, 324 S.E.2d 194, 172 Ga.App. 648 (1984).

Here, had the Employer/Insurer properly commenced temporary total disability benefits, they would have been required to take additional steps prior to suspending Mr. Taylor's benefits. They should not benefit from their failure to follow the Act. What incentive does an Employer have to comply with the Act if it can simply create additional obstacles to render its failure moot? None.

IV. The Appellate Division Erred in Failing to Award the Employee Temporary Total Disability Benefits After He Notified Them of His Desire to Return to Work on Light Duty.

Six months following his termination for failure to return to a light duty job, Mr. Taylor notified the Employer during his deposition that he was willing to

attempt the job so that he could return to work. However, the Employer ignored his statements and refused to offer any light duty work at that time. This Court held that when an employee is terminated for refusing to accept light duty work, the employee is entitled to temporary disability benefits from the date of his termination. See Coats & Clark, Inc. v. Thompson, 305 S.E.2d 415, 166 Ga.App. 669 (1983). In Thompson, the employee fell while at work, was released to light duty, refused the job, and was then terminated. There, after finding that there was no longer any light duty available to the Claimant, this Court held that compensation to the employee is only suspended during the continuance of their refusal to do the light duty job. Id. Here, Mr. Taylor's refusal to perform the light duty job ended during his deposition on November 4, 2020 (V2-815; V2-826). Accordingly, the Employer was required to either offer him a light duty job or commence temporary total disability benefits. However, they did not. Instead, here, the Employer Representative testified that there are no "permanent light duty" jobs. (V2-782). Moreover, there was no testimony presented during the hearing that the Employer had a light duty job available to Mr. Taylor. Accordingly, under Thompson, this Court should find that the Employer/Insurer were required to commence payment of temporary total disability benefits.

This Court has repeatedly held that a refusal to return to light duty work does not forever ban receipt of future compensation should the availability of light duty

cease. See Liberty Mut. Ins. Co. v. Neal, 231 S.E. 2d 574, 140 Ga. App. 585 (1976); Argonaut Ins. Co. v. Marshall, 240 S.E.2d 767, 144 Ga. App. 217 (1977); Universal Ceramics, Inc. v. Watson, 339 S.E.2d 304, 177 Ga.App. 345 (1985). The public policy in these cases and Thompson is clear: employees must have the ability to state their concerns regarding the suitability of a light duty job. An Employer should not have the ability to simply bully an employee into accepting a light duty job despite its suitability or regardless of any other justification the employee may have for not attempting the light duty job. If an Employer is allowed to simply terminate the Employee, and then refuse to allow that employee to attempt the light duty job later, this would upend the very purpose of the Workers' Compensation Act. Moreover, the Employer is not harmed by allowing the employee to return to the light duty job at a later date. In Argonaut, this Court determined that the employee's compensation is suspended during the period of the employee's refusal. Accordingly, the Employer's decision to terminate the employee and refusal to allow him to attempt the light duty job at a later date blatantly contradicts their responsibilities under the Act. As this Court stated in Georgia Forestry Commission v. Taylor, "the Workers' Compensation Act is a 'humanitarian measure that should be liberally construed to effectuate its purposes." See Georgia Forestry Commission v. Taylor, 526 S.E.2d 373, 241 Ga. App. 151 (1999). Here, the employee should have the opportunity to present questions of the suitability of a job

offered to him during a global pandemic causing serious injury or death to individuals like him – who were diabetic and 68 years old. After receiving some assurances, the employee should have been allowed to return to work to attempt the light duty job. The Employer should not benefit from firing an employee, who worked 33 years without issue, for simply wanting more information before returning to the light duty job. Accordingly, at the very least, this Court should find that the employee is entitled to temporary total disability benefits from November 4, 2020 (the date of his deposition where he informed the Employer that he would like to return to the light duty job) and continuing.

CONCLUSION

If this Court allows the Appellate Division's June 12, 2023 Award to stand, it would undermine the purpose of the Workers' Compensation Act and severely limit employees' ability to make legitimate efforts to return to work in the future. As the Employee was justified in refusing to return to work, he is entitled to ongoing temporary total disability benefits and the Appellate Division erred in denying his request for same. Moreover, even if he was not justified, the Appellate Division erred in failing to find that his entitlement to benefits were only suspended during the period of refusal, which ended on November 4, 2020. The Appellate Division's Award, which was affirmed by operation of law contains reversible error, and their Award should be reversed.

WHEREFORE, the Applicant respectfully requests that this Court reverse the Appellate Division's June 12, 2023 Award, which was affirmed by operation of law on October 30, 2023 by the Superior Court of DeKalb County.

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully Submitted,
Richardson Law, LLC

Veronica L. Richardson, #351120
1000 Parkwood Circle, Suite 350
Atlanta, Georgia 30339
VRichardson@Richardson Law-LLC.com
(404) 689-6277

IN THE COURT OF APPEALS
STATE OF GEORGIA

John Taylor,	)	
	)	
Appellant,	)	
	)	Case Number: A24A1246
v.	)	
	)	
Argos, USA et. al.	)	
	)	
Appellees.	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing, Appellant's Brief to the Court of Appeals upon all parties to this matter by First Class Mail and Electronic Service in accordance with Rule 6 of the Georgia Court of Appeals' Court Rules. I certify that there is a prior agreement with counsel to allow documents in a PDF format sent via email to suffice for service. Said copy was served and address to the parties and counsels of record as follows:

Mark Goodman, Esq.
G. Scott Hoffman, Jr., Esq.
Swift, Currie, McGhee & Hiers, LLP
1420 Peachtree Street, N.E., Suite 800
Atlanta, Georgia 30309
(770) 874-8800
Mark.Goodman@swiftcurrie.com
Scotty.Hoffman@swiftcurrie.com

Respectfully Submitted,
Richardson Law, LLC

Veronica L. Richardson

Veronica L. Richardson, #351120
1000 Parkwood Circle, Suite 350
Atlanta, Georgia 30339
VRichardson@RichardsonLaw-LLC.com
(404) 689-6277