

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

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

APPELLANT’S REPLY BRIEF

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REPLY BRIEF OF APPELLANT

COMES NOW Appellant, John Taylor, Claimant-Employee in the workers' compensation claim below, and submits his REPLY 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.

ARGUMENT

In its brief, the Employer's contend that the Employee's arguments fail because his former attorney, Lisa Reeves, failed to convey the initial light duty job offer to Mr. Taylor. Interestingly, they contend that the Employee's arguments disingenuously omits this issue throughout his brief. This is another attempt by the Employer to distract the Court from its failure to comply with the Act. The job offer to Mr. Taylor was made in April 2020. A review of the record shows that the Employee retained the undersigned for representation in this matter on July 17, 2020. (V2-30). Accordingly, any conversations between the counselors leading up to and following the April 2020 job offer are not available for review or consideration. However, there is no question that attorneys are allowed to speak for and in the best interest of their clients. The record is clear that at the time the Employer offered the light duty job, this country and the world was at the threshold of a new, deadly pandemic. Further, as noted in the amicus brief, the Employee was a senior citizen with diabetes, and considered by the State of Georgia to be high-risk. It was reasonable for Ms. Reeves to speak on her client's behalf to request that the Employer outline the precautions they planned to take as a result of the COVID pandemic.

Further, the Employer's argument regarding whether Mr. Taylor knew of the initial job offer is a red herring. The record shows that the Employer's job offer was

not made in good faith. Instead, it appears that they never had any true intention of bringing Mr. Taylor back to work. As an initial matter, the Employer Representative, Mr. McDaniel testified that Argos does not have permanent light-duty work. (V2-782). Accordingly, Argos typically only allowed employees to attempt temporary light-duty work for a couple of months. (V2-781). Mr. Taylor exhausted his two-month period of temporary light-duty with the Employer in December 2019; as a result, he was sent to a non-profit to continue working. (V2-781-782).

Additionally, the Employer's argument fails to acknowledge that Argos fired Mr. Taylor because his attorney contended that he was justified in not returning until they outlined their precautions regarding COVID. As outlined in our initial brief, this Court previously 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). Regardless of whether Mr. Taylor called the Employer directly to articulate his justification of not returning to work or if the justification was relayed by his attorney on his behalf; the Employer is still required to follow the law. Here, in its continued effort to distract this Court from its transgressions, Argos requests an exemption from their requirement to commence benefits. The fact remains that Mr. Taylor believed that he was justified in not returning to work in April and May of 2020. Accordingly, Argos was required to commence income

benefits when it decided that it was better to terminate an employee who worked for them for more than 30 years rather than provide information as to how they planned to protect the most vulnerable of our population from a deadly pandemic.

Finally, the Appellee's brief fails to acknowledge or provide any justification for Argos's failure to offer Mr. Taylor a light duty job in November 2020 after he testified that he would be willing to return to work. As noted in the initial brief, 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). Here, there is no dispute that Mr. Taylor informed the Employer that he would be willing to return to a light duty job during his deposition. Yet, a review of the record shows that Argos has completely ignored this argument and refuses to provide any reason as to why they failed to offer a light duty job to Mr. Taylor in November. Instead, they chose to ignore statutory and the rulings of this Court in favor of their own interpretations and desires.

CONCLUSION

This Court should not allow the Employer to distract it from the requirements set forth in the Act. It is imperative that Employees in Georgia know they are

protected when legitimate questions of safety are raised. If this prior ruling is not overturned, Employers will be able to refuse to pay income benefits and terminate an Employee whenever they raise a question concerning the suitability of a light duty job offer. This would provide the Employer with all bargaining power and Employees will be forced with the impossible choice of returning to work and risking injury or illness or going homeless.

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 county limit imposed by Rule 24.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing, Appellant's Reply 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:

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