OAKES v CITY OF STILLWATER and THE WORKERS' COMPENSATION COMMISSION

2025 OK CIV APP 11

Case Number: 121948

Decided: 09/18/2024

Mandate Issued: 04/17/2025

THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION II

Cite as: 2025 OK CIV APP 11, __ P.3d __

TRAVIS LEE OAKES, Petitioner,

vs.

CITY OF STILLWATER (OWN RISK) and THE WORKERS' COMPENSATION COMMISSION, Respondents.

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

SUSTAINED

Daniel J. Talbot TALBOT LAW GROUP Oklahoma City, Oklahoma For Petitioner

R. Dean Lott John Valentine LOTT & VALENTINE Edmond, Oklahoma For Respondent

DEBORAH B. BARNES, CHIEF JUDGE:

¶1 Travis Lee Oakes (Claimant) seeks review of an order of the Oklahoma Workers' Compensation Commission. The Commission reversed an order of an administrative law judge (ALJ) on the issue of temporary total disability (TTD) benefits. The Commission found the ALJ erred in denying the City of Stillwater's motion to terminate TTD benefits. The Commission found that because Claimant -- who had previously resigned his employment with the City in order to work for a different employer out of state -- was released to light duty work, [1] the City did not have a legal obligation to offer Claimant light duty work, and the concomitant reestablishment of an employer-employee relationship, prior to terminating TTD benefits. The Commission otherwise affirmed the rulings of the ALJ. Based on our review, we sustain the Commission's order.

BACKGROUND

¶2 The parties agree that Claimant sustained a compensable injury to his left knee as a result of an accident on June 17, 2021, arising out of and in the course of his employment with the City. Claimant testified at trial that, at the time of the accident, he had been working for the City for almost ten years. He stated that he started out as an electrical journeyman lineworker for the City and, by the time of the accident, was a crew chief. He testified that the injury occurred when he stepped off a forklift and into a pothole and felt a pop in his knee. Claimant was provided medical treatment and, in December of 2022, timely filed a claim for compensation.

¶3 The parties further agree that in October 2021 Claimant voluntarily resigned from his employment with the City to take a higher paying job in California. Claimant testified at trial that, prior to resigning, he underwent arthroscopic knee surgery in August 2021 and was placed on some "light-duty computer work" for the City until he was released back to "full duty" on October 5, 2021.

¶4 On October 11, 2021, Claimant submitted his notice of voluntary termination, stating his last day of employment with the City would be October 21, 2021. At trial, Claimant responded in the affirmative when questioned whether he "took a job as a journeyman lineman with the International Brotherhood of Electrical Workers in California to pay substantially more than the City[.]"

¶5 Although Claimant took the job in California, he visited Oklahoma in May and July of 2022 in order to receive medical treatment in connection with his June 2021 injury. [2] Claimant was still released to work full duty during this time. [3] Nevertheless, Claimant responded in the affirmative when asked at trial whether, in July 2022, he "realized that [he was] likely going to have to have additional treatment that would require [him] to be back in Oklahoma and continuing to commute from California was going to be too hard to do that[.]" Thus, after working in California for nine months, Claimant testified he quit that job and, in July 2022, applied for an open position with the City as an electrical journeyman lineworker. On July 25, 2022, Claimant received communication that the City had decided not to hire him.

¶6 As above stated, Claimant was still on "full-duty release" at this time -- i.e., he had no work restrictions related to his on-the-job injury. However, Claimant responded in the affirmative when questioned whether, in August 2022, his treating doctor changed his restrictions to "sit-down work only[.]" Moreover, Claimant had a partial knee replacement surgery in September 2022. Claimant testified he did not have a good result from that surgery and testified he has had continued problems with his knee. Among other things, he described his left leg as being "half the size of . . . [his] right leg" because "[t]he muscle hasn't come back."

¶7 Claimant testified that, since returning to Oklahoma from California, he has applied to work for the City and "[n]owhere else." He responded in the affirmative when questioned whether he "had to quit [his] job in California because of [his] [work-related] injuries [in Oklahoma] and to come back [to Oklahoma] and get medical treatment[.]"

¶8 In a Physician's Report on Release and Restrictions, dated February 23, 2023, Claimant was released for work with temporary restrictions of no crawling, kneeling, squatting or climbing. The City subsequently filed a motion to terminate TTD benefits based on this light-duty release to work.

¶9 In the ALJ's order filed in March 2023, it found that "Claimant sustained an accidental personal injury to his left knee on June 17, 2021, which arose in the course and scope of his employment with [the City]." The ALJ further found, with regard to TTD benefits, as follows:

> It is undisputed that Claimant was not offered a light duty position. Since no job offer was made to Claimant, he is entitled to continue to receive [TTD] benefits. It is incumbent upon [the City] to follow the statutory mandate and offer Claimant a light duty position in order to avoid payment of [TTD] benefits while Claimant is on light duty restrictions.

¶10 The City appealed the ALJ's decision to the Commission. In its Request for Review, it asserted:

> The evidence adduced at trial shows [Claimant] voluntarily resigned his position to take a job in California where he worked for a subsequent employer, which [Claimant] testified provided better pay and benefits. [Claimant] voluntarily resigned his position with the City . . . in October of 2021. [Claimant] worked for the subsequent employer in California from October of 2021, until he moved back to Oklahoma in July of 2022. For a period of nine months, [Claimant] lived out-of-state and worked for a subsequent employer . . . .

> After [Claimant] returned to Oklahoma, he received additional medical treatment, to include surgery . . . . [Claimant] received TTD benefits following the surgical procedure and [his treating physician] released [Claimant to] light duty on January 16, 2023. [Claimant] requested a change of physician and . . . [a new doctor was appointed] as the treating physician. [The new physician] released [Claimant] to light duty restrictions in his report of February 23, 2023. [The City] filed a motion to terminate TTD benefits based upon [that] light duty release, and [Claimant's] voluntary resignation in October of 2021. [Claimant's] voluntary resignation 14 months prior to the light duty release effectively ended [Claimant's] right to TTD benefits while he is considered to be on light duty. An employer cannot be compelled to offer light duty work to an ex-employee. The requirement to offer light duty work to injured employees simply does not extend to employees who voluntarily resign. Therefore, [the City's] motion to terminate TTD benefits based upon the light duty release [in February 2023] should have been sustained.

¶11 The Commission agreed with the City, stating in its order filed in January 2024 that while "an employer may have a continued legal obligation to pay TTD even after the employee's resignation or termination," "[a]n employer does not have a legal obligation to offer light duty work to an employee that has voluntarily quit . . . and has no obligation to pay TTD to said employee once they have been medically released to light duty work." The Commission stated: "[I]t is undisputed Claimant voluntarily resigned his employment with [the City] after accepting a different job with additional pay and benefits. Thus, the [City] had no obligation to offer light duty work, or otherwise reestablish an employer-employee relationship with Claimant, upon his release to light duty work." Consequently, the Commission vacated that portion of the ALJ's order denying the City's motion to terminate TTD benefits, and it remanded the matter to the ALJ for entry of an order terminating TTD benefits and reserving any issue of overpayment. The Commission otherwise affirmed the ALJ's order, including the finding that Claimant sustained a compensable injury to his left knee on June 17, 2021.

¶12 From that portion of the Commission's order pertaining to the City's motion to terminate TTD benefits, Claimant seeks review.

STANDARD OF REVIEW

¶13 Title 85A O.S. 2021 & Supp. 2019 § 78(C) of the Administrative Workers' Compensation Act (AWCA) [4] provides, in part, as follows:

> The Supreme Court may modify, reverse, remand for rehearing, or set aside the judgment or award only if it was:
>
> 1. In violation of constitutional provisions;
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> 2. In excess of the statutory authority or jurisdiction of the Commission;
>
> 3. Made on unlawful procedure;
>
> 4. Affected by other error of law;
>
> 5. Clearly erroneous in view of the reliable, material, probative and substantial competent evidence;
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> 6. Arbitrary or capricious;
>
> 7. Procured by fraud; or
>
> 8. Missing findings of fact on issues essential to the decision. [5]

The present controversy concerns the proper interpretation of statutory language and, therefore, presents the question of whether the Commission's order is affected by an error of law. "Questions of law are reviewable by a de novo standard. Under this standard, we have plenary, independent and non-deferential authority to determine whether the trial court erred in its legal rulings." *Am. Airlines v. Hervey*, 2001 OK 74, ¶ 11, 33 P.3d 47, 50 (footnotes omitted).

¶14 In addition, the issue raised by Claimant of whether essential findings are in fact missing from the Commission's order also presents a question of law. *Gillispie v. Estes Exp. Lines, Inc.*, 2015 OK CIV APP 93, ¶ 18, 361 P.3d 543, 549.

ANALYSIS

¶15 Claimant argues the Commission "failed to abide by the plain language of the AWCA and failed to strictly construe the provisions of the AWCA related to TTD and light duty." Claimant also argues the Commission misapplied the relevant case law. Claimant asserts a plain reading of the pertinent statutes reveals that he "is entitled to TTD even though he previously resigned his position with [the City]." This is so, according to Claimant, because although he had previously resigned, and although he was released for light-duty work at the time the City sought to terminate TTD benefits, "alternative work was not offered by [the City]." [6]

I. The Obligation to Offer Alternative Work to a Former Employee

A. The Text of the AWCA

¶16 "In construing a statute, our goal is to determine the Oklahoma Legislature's intent." *Sierra Club v. State ex rel. Okla. Tax Comm'n*, 2017 OK 83, ¶ 18, 405 P.3d 691, 698. "This inquiry begins with the text of the statute . . . ." *Hall v. Galmor*, 2018 OK 59, ¶ 45, 427 P.3d 1052, 1070.

¶17 Title 85A O.S. 2021 & Supp. 2019 § 45(A), entitled "Temporary Total Disability," provides, in part, as follows:

> If the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer, he or she shall be entitled to receive compensation equal to seventy percent (70%) of the injured employee's average weekly wage, but not to exceed the state average weekly wage, for one hundred fifty-six (156) weeks.

85A O.S. § 45(A)(1). Section 45(B), entitled "Temporary Partial Disability," provides, in part, as follows:

> If the injured employee is temporarily unable to perform his or her job, but may perform alternative work offered by the employer, he or she shall be entitled to receive compensation equal to seventy percent (70%) of the difference between the injured employee's average weekly wage before the injury and his or her weekly wage for performing alternative work after the injury, but only if his or her weekly wage for performing the alternative work is less than the temporary total disability rate.

85A O.S. § 45(B)(1). Section 45(B)(3) provides: "If the employee refuses to perform the alternative work offered by the [employer], he or she shall not be entitled to benefits under subsection A of this section." [7]

¶18 Claimant asserts that the plain language of these provisions, strictly construed, requires the City to have offered alternative work to Claimant prior to terminating TTD benefits. Claimant points out that 85A O.S. § 106 provides: "The provisions of the [AWCA] shall be strictly construed by the Workers' Compensation Commission and any appellate court reviewing a decision of the Workers' Compensation Commission." [8] The Oklahoma Supreme Court has stated that § 106 "requires this Court to strictly construe the provisions of the AWCA. However, the rule of strict construction comes into play only when the language at issue, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity." *Corbeil v. Emricks Van & Storage, Guarantee Ins.*, 2017 OK 71, ¶ 18, 404 P.3d 856, 861. The Supreme Court has further explained:

> [T]he rule of strict construction, as applied to statutes, does not mean that words shall be so restricted as not to have their full meaning, but merely means that everything shall be excluded from the operation of the statutes so construed which does not clearly come within the meaning of the language used.

Brown v. Claims Mgmt. Res. Inc., 2017 OK 13, ¶ 21, 391 P.3d 111, 118 (citing *Am. Airlines, Inc. v. State ex rel. Okla. Tax Comm'n*, 2014 OK 95, ¶ 30, 341 P.3d 56, 64). [9]

¶19 The statutory language at issue in the present case involves the following key phrases: "If the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer," and "If the employee refuses to perform the alternative work offered by the [employer], he or she shall not be entitled to benefits[.]" The question arises in this case whether the Legislature intended for this language to apply to current *and* (at least a subset of) former employees, or only to current employees. To the extent the language is susceptible to either interpretation, a strict and narrow reading -- e.g., of the language directed toward employees "temporarily unable to perform [their] job or any alternative work offered by the employer" -- would appear to limit application to current employees, i.e., those with an existing employee-employer relationship with the employer. Narrowly construed, and excluding everything from the operation of the statute that does not clearly come within the meaning of the language used, it is reasonable to view the language at issue as limited to an employee who is actually in a position to "refuse[] to perform the alternative work offered by the [employer]" -- i.e., who need not also first be *rehired* by the (former) employer prior to performing or refusing to perform such alternative work. Only a broader construction of these isolated provisions could result in an interpretation that forces a former employer into the dilemma of either (1) offering to rehire the former employee, or (2) continuing to pay TTD benefits to the former employee *who is no longer* temporarily totally disabled. [10]

¶20 However, even a strict construction requires this Court to (strictly) construe *all* pertinent provisions of a statute. "[W]e look not just at the text of the provision at issue, but also at the text of related provisions in the same statute or legislative act, in a manner that achieves full force and effect for each provision." *Hall*, 2018 OK 59, ¶ 45, 427 P.3d at 1070-71. [11] Other textual evidence of the Legislature's intent can be found in 85A O.S. 2021 § 7, which provides, in part, as follows: "E. No employer may discharge an employee during a period of temporary total disability for the sole reason of being absent from work or for the purpose of avoiding payment of temporary total disability benefits to the injured employee." This provision indicates that, with regard to the payment of TTD benefits, it is the intent of the Legislature that an employer should not reap an advantage from terminating employment during a period of temporary total disability based on an injured employee being absent from work or for the purpose of avoiding payment of TTD benefits. [12] Thus, consistent with this language, employers may, in some circumstances, be required to offer light duty to former employees prior to terminating TTD benefits. As discussed in the following section, separate Divisions of this Court have applied older, but similar versions of these legislative provisions to answer the same general question at issue in this case. These earlier cases offer persuasive reasoning we find instructive in determining whether Claimant falls within that subset of former employees to whom alternative work must be offered.

B. The Case Law

¶21 The statutory analysis set forth above is generally consistent with the extant case law in Oklahoma on this subject: Oklahoma Court of Civil Appeals cases that, viewed as a whole, hold that under most, but not all, circumstances, an employer, prior to terminating TTD benefits, has no obligation to offer alternative work to a former employee released to light duty. None of these cases directly addresses the exact statutory language at issue in the present case. However, because the statutory language at issue in this case is substantially similar to earlier versions, the interpretations set forth in the earlier cases remain relevant. Indeed, the Oklahoma Supreme Court has explained:

> Legislative familiarity with extant judicial construction of statutes is presumed. Unless a contrary intent clearly appears or is plainly expressed, the terms of amendatory acts retaining the same or substantially similar language as the provisions formerly in force will be accorded the identical construction to that placed upon them by preexisting case law.

Special Indem. Fund v. Figgins, 1992 OK 59, ¶ 8, 831 P.2d 1379, 1382 (footnotes omitted). *See also* Okla. Sup. Ct. R. 1.200(d)(2), 12 O.S. 2021 & Supp. 2024, ch. 15, app. 1 (providing that opinions released for publication by the Court of Civil Appeals "shall be considered to have persuasive effect").

¶22 In *Urology Center of Southern Oklahoma v. Miller*, 2010 OK CIV APP 137, 246 P.3d 736, a separate Division of this Court confronted the following statutory language:

> If the employee is capable of returning to modified light duty work, the treating physician shall promptly notify the employee and the employer or the employer's insurer thereof in writing. In the event that the treating physician releases a claimant for light-duty work and provides written restrictions from normal work duties, and the employer makes a good-faith offer in writing to provide a light-duty position at the same rate of pay that the claimant was receiving at the time of the injury, and the claimant refuses to accept the light-duty assignment, the claimant is not entitled to temporary total disability; provided, before compensation may be denied, the employee shall be served with a notice setting forth the consequences of the refusal of employment and that temporary benefits will be discontinued fifteen (15) days after the date of such notice.

85 O.S. Supp. 2010 § 14(A)(2). The *Miller* Court discussed at length several previous cases addressing even earlier versions of the statutory language, and treated those cases as confronting substantially similar provisions. [13] In 2011, the year after *Miller* was decided, the Legislature enacted the Workers' Compensation Code in which the language at issue remained nearly identical to the language confronted by the Court in *Miller*. [14] The language remained unchanged until, in 2014, the Legislature enacted the AWCA, which contains the language discussed in the preceding section of our Analysis, including: "[i]f the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer," and "[i]f the employee refuses to perform the alternative work offered by the [employer], he or she shall not be entitled to benefits[.]"

¶23 Thus, the earlier version and the current version both refer to the ability of the employee to "return[] to" (or "perform") "modified light duty" (or "alternative") work. The differences between the versions are not substantial such as might indicate a clear departure from interpretations in prior case law. Moreover, the earlier version stated:

> In the event that the treating physician releases a claimant for light-duty work and provides written restrictions from normal work duties, and the employer makes a good-faith offer in writing to provide a light-duty position at the same rate of pay that the claimant was receiving at the time of the injury, and the claimant refuses to accept the light-duty assignment, the claimant is not entitled to temporary total disability[.]

The current version is somewhat more concise, stating that TTD is appropriate "[i]f the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer," and that "[i]f the employee refuses to perform the alternative work offered by the [employer], he or she shall not be entitled to benefits[.]" However, the differences here are also not substantial such as might indicate a clear departure from prior case law.

¶24 Turning to that case law, the conclusion was reached in several of the past cases that the employer was not obligated to offer light-duty work to its former employee. *See, e.g.*, *AmeriResource Grp., Inc. v. Alexander*, 2005 OK CIV APP 68, 120 P.3d 901(employee was terminated for cause prior to independent medical examiner visit and therefore employer was not required to offer him light duties); *Smith v. Millwood Schs.*, 2004 OK CIV APP 41, 90 P.3d 564(injured worker's contract with school expired before light-duty determination was made); *Tubbs v. Okla. Tax Comm'n*, 2001 OK CIV APP 97, 28 P.3d 624(employee's resignation effectively ended his right to TTD benefits); and *Akers v. Seaboard Farms*, 1998 OK CIV APP 169, 972 P.2d 885(employer not obligated to offer light duty to employee fired for failing post-accident drug test).

¶25 In *AmeriResource Group*, another Division of this Court explained:

> Generally, in order to avoid paying TTD benefits to an injured worker capable of light duties, it is the employer's burden to advise the employee that such work is available. Also, as a general rule, if the employer has no light duty work available, the injured employee is nonetheless entitled to TTD benefits. However, the Court of Civil Appeals has also held that where, as here, there is no longer an employer-employee relationship at the time the employee is found capable of light duties, an employer is not legally obliged to offer that work.

2005 OK CIV APP 68, ¶ 12, 120 P.3d at 903 (citations omitted). The Court in *Tubbs* similarly stated that "[t]he requirement to offer light duty work to injured employees simply does not extend to former employees." 2001 OK CIV APP 97, ¶ 5, 28 P.3d at 625. These Courts reasoned that while the Oklahoma Supreme Court has decided that an employer-employee relationship is not a prerequisite to continued receipt of TTD benefits, and that a former employee may continue to receive such benefits during the TTD period, [15] these Supreme Court decisions -- which, importantly, do not hold that TTD benefits must continue post-employment under all circumstances [16] -- leave at least partially unanswered the question of whether the former employer has an obligation to offer alternative work to (and, concomitantly, to rehire) the former employee upon release to light-duty work.

¶26 Although these Courts have sometimes spoken in absolute terms -- stating, as in *Tubbs*, that the alternative work requirement "simply does not extend to former employees" -- the cases have nevertheless examined the reason for the discontinuation of the employment relationship. Indeed, in *Akers*, this Court's analysis reveals the importance of determining whether the employment is ended "for reasons unrelated to [a worker's] disability." *Akers*, ¶ 11, 972 P.2d at 887. In *Akers*, the employer fired the claimant after he was injured and while he was working for the employer with restrictions and in a light-duty capacity. The claimant argued that the employer must pay him TTD benefits from the time of termination because the termination was tantamount to a refusal to offer him light-duty work. However, because the claimant was fired for failing a drug test and for violating company policy, this Court explained: "There is nothing in our law which compels an employer to continue offering light duty, or for that matter, any type of work, to employees who violate the employer's policies." *Id.* ¶ 10, 972 P.2d at 887.

¶27 The importance of the details of the termination of the employer-employee relationship is also reflected in *Miller*. In *Miller*, this Court found in favor of the claimant despite the fact that the employment ended as a result of a voluntary decision to terminate on the part of the claimant. However, the claimant submitted her two-week notice prior to her injury -- i.e., only upon her next-to-last day of work did the claimant sustain a single-event back injury. The *Miller* Court emphasized "the specific and unique facts of this case" which led to the Court reaching what it described as the "counter-intuitive" conclusion that the employer was required "to offer a light duty job to a person no longer employed because of that person's voluntary decision to terminate her employment[.]" *Miller*, 2010 OK CIV APP 137, ¶¶ 21 & 38, 246 P.3d at 740 & 743. Notably, the claimant in *Miller* was not aware of her (future) injury at the time she submitted her two-week notice to the employer; nevertheless, the injury occurred during the course of her employment and resulted in the claimant's inability to work.

¶28 Although Claimant argues that *Miller* supports his position on appeal, we view *Miller* as limited to what the *Miller* Court described as its "specific and unique facts" involving a voluntary resignation that was made prior to, and without knowledge of, the claimant's injury. [17] Implied in the *Miller* Court's analysis is that, *generally*, a claimant's voluntary decision to terminate the employer-employee relationship will result in the employer having no obligation to extend an offer of alternative work to its former employee when that former employee is released to work light duty. Indeed, as noted above, the Oklahoma Supreme Court has implied that, in circumstances in which an employee's resignation can be properly categorized as voluntary, an employer has no obligation to pay post-employment TTD benefits. *See Abbott*, 2002 OK 75, ¶¶ 12-13, 59 P.3d at 42-43; *see also City of Tulsa*, 2017 OK CIV APP 1, ¶¶ 14 & 16-19, 387 P.3d at 371-73.

¶29 Turning to the circumstances of the present case, it is undisputed that Claimant voluntarily resigned approximately four months after his injury. Indeed, Claimant was released to work full duty at the time of his resignation, and neither his injury nor his disability status was relevant to the severing of the employer-employee relationship. Claimant was clearly not discharged "for the sole reason of being absent from work or for the

purpose of avoiding payment of temporary total disability benefits," nor did his employment even end "during a period of temporary total disability[.]" 85A O.S. 2021 § 7(E). Moreover, the unique chronology of events presented in *Miller* did not occur in the instant case. Our interpretation of the statute and the case law requires that we conclude the City had no obligation to extend an offer of alternative work to Claimant prior to terminating payment of TTD benefits upon Claimant's release to light-duty work in February 2023. Therefore, we sustain the Commission's decision finding that the ALJ erred in denying the City's motion to terminate TTD benefits.

II. Additional Arguments

¶30 Claimant makes the additional argument that the Commission's order is clearly erroneous in view of the evidence. Claimant points to evidence establishing that the City never made an offer of light-duty work; that Claimant never refused such an offer; and that the City did not have light-duty work available for Claimant in any department that would not require climbing. These facts, however, are rendered irrelevant by our conclusion, above stated, that the City had no obligation to extend an offer of alternative work to Claimant. Therefore, we find that this argument lacks merit.

¶31 Claimant also argues that the Commission's order is arbitrary and capricious because "the *Miller* case is the only case whose facts and applicable law is almost identical to the case at hand." [18] Claimant also states the Commission "ignore[d] the plain language of the statute[.]" However, for the reasons set forth at length in the preceding section, we reject this argument.

¶32 Finally, Claimant asserts the Commission's order is missing findings of fact on issues essential to the decision. In particular, Claimant asserts "the Commission fails to make any findings as to why they are not relying on the *Miller* decision[.]" Claimant quotes, in part, the following from *Gillispie v. Estes Express Lines, Inc.*, 2015 OK CIV APP 93, 361 P.3d 543:

> It is fundamental that an absence of required findings is fatal to the validity of administrative decisions even if the record discloses evidence to support proper findings. Findings of an administrative agency acting in a quasi-judicial capacity should contain a recitation of basic or underlying facts drawn from the evidence sufficiently stated to enable the reviewing court to intelligently review the decision and ascertain if the facts upon which the order is based create a reasonable basis for the order.

Gillispie, ¶ 17, 361 P.3d at 549 (quoting *Jackson v. Indep. Sch. Dist. No. 16 of Payne Cnty.*, 1982 OK 74, ¶ 13, 648 P.2d 26, 32).

¶33 However, a missing explanation as to why the Commission did not rely on the *Miller* decision does not equate to the absence of a "basic or underlying fact drawn from the evidence." [19] Therefore, Claimant's argument lacks merit.

CONCLUSION

¶34 We conclude the City had no obligation to extend an offer of alternative work to Claimant prior to terminating payment of TTD benefits upon Claimant's release to light-duty work in February 2023. Therefore, we sustain the Commission's order finding that the ALJ erred in denying the City's motion to terminate TTD benefits but otherwise affirming the ALJ's rulings.

¶35 **SUSTAINED**.

WISEMAN, P.J., and FISCHER, J., concur.

FOOTNOTES

DEBORAH B. BARNES, CHIEF JUDGE:

[1] "Work with [certain] restrictions is commonly known as light duty." *AmeriResource Grp., Inc. v. Alexander*, 2005 OK CIV APP 68, ¶ 10, 120 P.3d 901, 903.

[2] Claimant responded in the affirmative when questioned whether "the adjuster sent you to Dr. Jameson at OrthoOklahoma because you were having some continued complaints." Claimant states in his Brief-in-chief that he "was still having issues with his knee when he resigned so he held off settling his workers' compensation claim and kept in touch with the adjuster handling the claim."

[3] Claimant testified in the affirmative when questioned at trial whether the treating physician, during this time, "allowed [him] to work full duty[.]"

[4] The AWCA "shall apply only to claims for injuries and death based on accidents which occur on or after February 1, 2014." 85A O.S. Supp. 2019 § 3(C). Moreover, "[i]n the realm of workers' compensation, the law in effect at the time of the injury controls both the award of benefits and the appellate standard of review." *Brown v. Claims Mgmt. Res. Inc.*, 2017 OK 13, ¶ 9, 391 P.3d 111, 115. Therefore, the version of the AWCA in effect at the time of Claimant's injury on June 17, 2021, applies to this case.

[5] Section 78(C) also provides, among other things, that "[t]he proceedings shall be heard in a summary manner and shall have precedence over all other civil cases in the Supreme Court, except preferred Corporation Commission appeals," and that "[t]he action shall be subject to the law and practice applicable to other civil actions cognizable in the Supreme Court."

[6] (Emphasis omitted.)

[7] Section 45(B)(3) actually states: "If the employee refuses to perform the alternative work offered by the *employee*, he or she shall not be entitled to benefits under subsection A of this section or under this section." (Emphasis added.) The City points out that Claimant's proposed strict and plain reading of the statute must give way, at least in part, because such a reading of § 45(B)(3) would result in the absurdity of interpreting the Legislature as specifying that an employee is not entitled to benefits if the employee refuses to perform work offered by the employee. As stated by the City: "If construed strictly, the employee would have to refuse to perform alternative work offered by him or herself." Answer Br. at 11. Claimant responds by stating that this "is obviously a typo or scrivener's error that was not caught by the Legislature. When read in conjunction with [other provisions], it is abundantly clear the Legislature meant for it to say 'offered by employer.'" Reply Br. at 7. We agree with the parties that § 45(B)(3) should be read as stating: "If the employee refuses to perform the alternative work offered by the [employer], he or she shall not be entitled to benefits under subsection A of this section or under this section."

[8] Section 1 of the AWCA also states that "[t]he provisions of the [AWCA] shall be strictly construed." Such language can also be found in earlier versions of Oklahoma workers' compensation statutes, such as 85 O.S. Supp. 2005 § 1.1(C) of the Workers' Compensation Act. Claimant treats this language as supporting his position, but, as set forth below, it appears that a strict construction of the language at issue could result only in the *narrowing* of its application, particularly with regard to the subset of claimants who no longer have an employer-employee relationship with the employer at the time the alternative work would be performed or refused.

[9] The *American Airlines* case, cited in *Brown*, involved circumstances outside the context of workers' compensation law in which the Supreme Court was tasked with interpreting statutory provisions to determine whether they exempted certain property from taxation. The *American Airlines* Court explained that "[s]tatutes exempting property from taxation are to be strictly construed against the claimant." 2014 OK 95, ¶ 30, 341 P.3d at 64.

[10] *See Bodine v. L.A. King Corp.*, 1994 OK 22, ¶ 10, 869 P.2d 320, 322 ("We have held that the petitioner's ability to do light work, though not to engage in the manual labor he had formerly performed, was sufficient to sustain a finding of the Workers' Compensation Court that his temporary total disability period had ended."); *Tubbs v. Okla. Tax Comm'n*, 2001 OK CIV APP 97, ¶¶ 4 & 5, 28 P.3d 624, 625 ("The employee's ability to do light work, but not the same labor he had formerly performed, is sufficient to establish that the employee is not temporarily totally disabled" -- i.e., "fit for light duty" means "no longer TTD[.]"). *See also Am. Airlines v. Hervey*, 2001 OK 74, ¶ 14, 33 P.3d 47, 51 ("A claimant who is gainfully employed, *or who is able to work*, is not entitled to temporary total disability compensation." (emphasis added)).

[11] "[A]ll statutory provisions upon a particular subject will be considered and given effect as a whole." *Tulsa Cnty. Deputy Sheriff's Fraternal Ord. of Police, Lodge No. 188 v. Bd. of Cnty. Comm'rs of Tulsa Cnty.*, 2000 OK 2, ¶ 10, 995 P.2d 1124, 1129.

> [S]tatutes will be interpreted in a manner which renders every word and sentence operative rather than in a manner which would render a specific statutory provision nugatory. *TWA v. McKinley*, 1988 OK 5, 749 P.2d 108, 110. All relevant provisions must be considered together, whenever possible, so that force and meaning is given to each provision. *Dana P. v. State*, 1982 OK 140, 656 P.2d 253, 258. Statutes should be construed so as to reconcile the different provisions and render them consistent and harmonious and give intelligent effect to each. *Eason Oil Co. v. Corporation Commission*, 1975 OK 14, 535 P.2d 283, 286.

Bryan Cnty. Sheriff's Dep't v. Weatherly, 2000 OK CIV APP 35, ¶ 5, 2 P.3d 383, 384. "In ascertaining the Legislature's intent, a court looks to each part of an act, to other statutes upon the same or relative subjects, to the evils and mischiefs to be remedied, and to the natural and absurd consequences of any particular interpretation." *Schiewe v. Cessna Aircraft Co.*, 2024 OK 19, ¶ 19, 546 P.3d 234, 243 (internal quotation marks omitted) (citation omitted).

[12] However, § 7(G) states that "[t]his section shall not be construed as establishing an exception to the employment-at-will doctrine."

[13] Thus, we need not undertake a detailed examination of even earlier versions of the statute. In versions of the statute following *Miller*, the Legislature is deemed to be familiar with the *Miller* Court's analysis. Regardless, we note, briefly, that earlier versions contained the following language, as found, for example, in 85 O.S. Supp. 1996 § 14(A)(2):

> If the employee is capable of returning to modified light duty work, the attending physician shall promptly notify the employee and the employer or the employer's insurer thereof in writing and shall also specify what restrictions, if any, must be followed by the employer in order to return the employee to work.

The similarity in the language -- "If the employee is capable of returning to modified light duty work" -- is clear.

[14] Only the first sentence of the above-quoted language was modified to state that "[i]f the employee is capable of returning to modified light duty work, the physician shall *within seven (7) days* notify the employee and the employer or the employer's insurer thereof in writing." (Emphasis added.)

[15] *See generally Patterson v. Sue Estell Trucking Co. Inc.*, 2004 OK 66, 95 P.3d 1087; *B.E. & K. Const. v. Abbott*, 2002 OK 75, 59 P.3d 38. However, we note that the *Abbott* Court specified that "[s]ome courts find that where an employee's separation from employment is voluntary, workers' compensation benefits are not payable." *Abbott*, ¶ 12, 59 P.3d at 42. Although the *Abbott* Court, applying the Workers' Compensation Act, 85 O.S. 2001 §§ 1 *et seq.*, did not expressly endorse this line of cases, its analysis implies that a truly voluntary resignation relieves the employer of the responsibility to pay TTD benefits. Although the *Abbott* Court found in favor of the claimant, it did so because the claimant's volunteering to be included in an employer-planned reduction in force was not equivalent to a voluntary resignation. Instead, the employer, in effect, ultimately made the decision to terminate. Citing *Abbott*, this Court in *City of Tulsa v. Mayes*, 2017 OK CIV APP 1, 387 P.3d 367, stated that "an employee who voluntarily quits his or her position is not entitled to an award of TTD benefits and, under that circumstance, the separation from employment will relieve the employer of the responsibility for paying TTD." *City of Tulsa*, ¶ 14, 387 P.3d at 371. However, the City in the present case has failed to raise the argument that it had no obligation to pay post-employment TTD benefits as a result of the voluntary resignation and argues only that it properly sought termination of benefits following the February 2023 release. Nevertheless, the reasoning in *Abbott* bolsters our analysis, as set forth below.

[16] *See supra* note 15 and *infra* note 17.

[17] We note disagreement, however, with one line of reasoning contained in *Miller*. The *Miller* Court states that earlier cases finding in favor of the employer, including *Smith* and *Tubbs*, "appear to conflict with [Oklahoma Supreme Court cases holding] that an employer-employee relationship is not a prerequisite to continued receipt of TTD benefits . . . ." *Miller*, ¶ 34, 246 P.3d at 742. *See also id.* ¶ 36, 246 P.3d at 742 (The *Miller* Court implies a conflict exists between Oklahoma Supreme Court cases holding "the existence of an employer-employee relationship is not required for TTD benefits to continue," and Court of Civil Appeals cases "deny[ing] benefits based on the fact that no employer-employee relationship existed at the time the employee became released for light duty."). However, those Oklahoma Supreme Court cases do not imply that a former employer must offer light-duty work when the former employee is, in essence, no longer temporarily totally disabled because the former employee has been released to work (with restrictions). Therefore, we disagree with the *Miller* Court regarding the existence of such a conflict in the case law. Indeed, if the *Miller* Court believed such a conflict truly existed, it would not have needed to limit its "counter-intuitive" holding to its "specific and unique facts[.]" *Miller*, ¶¶ 21 & 38, 246 P.3d at 740 & 743. Moreover, as noted above, the Oklahoma Supreme Court in *Abbott* implied that in circumstances in which the employee has voluntarily quit, an employer has no obligation to continue to pay TTD benefits, with the caveat that the resignation must actually be voluntary.

[18] Br.-in-chief at 24.

[19] Moreover, the *Miller* decision has "persuasive effect" but does not constitute mandatory authority. Okla. Sup. Ct. R. 1.200(d)(2).

Cite	Name	Level
2004 OK CIV APP 41, 90 P.3d 564,	SMITH v. MILLWOOD SCHOOLS	Discussed
2005 OK CIV APP 68, 120 P.3d 901,	AMERIRESOURCE GROUP, INC. v. ALEXANDER	Discussed at Length
2010 OK CIV APP 137, 246 P.3d 736,	UROLOGY CENTER OF SOUTHERN OKLAHOMA v. MILLER	Discussed at Length
2015 OK CIV APP 93, 361 P.3d 543,	GILLISPIE v. ESTES EXPRESS LINES, INC.	Discussed at Length
2017 OK CIV APP 1, 387 P.3d 367,	CITY OF TULSA v. MAYES	Discussed at Length
2000 OK CIV APP 35, 2 P.3d 383, 71 OBJ 1255,	BRYAN COUNTY SHERIFF'S DEPT. v. WEATHERLY	Discussed
1998 OK CIV APP 169, 972 P.2d 885,	Akers v. Seaboard Farms	Discussed

Oklahoma Supreme Court Cases

Cite	Name	Level
1988 OK 5, 749 P.2d 108, 59 OBJ 325,	TWA v. McKinley	Discussed
1992 OK 59, 831 P.2d 1379, 63 OBJ 1377,	Special Indem. Fund v. Figgins	Discussed
1994 OK 22, 869 P.2d 320, 65 OBJ 793,	Bodine v. L.A. King Corp.	Discussed
2001 OK 74, 33 P.3d 47, 72 OBJ 2716,	AMERICAN AIRLINES v. HERVEY	Discussed at Length
2002 OK 75, 59 P.3d 38,	B. E. & K. CONSTRUCTION v. ABBOTT	Discussed at Length
2004 OK 66, 95 P.3d 1087,	PATTERSON v. SUE ESTELL TRUCKING CO.	Discussed
1975 OK 14, 535 P.2d 283,	EASON OIL COMPANY v. CORPORATION COMMISSION	Discussed
2014 OK 95, 341 P.3d 56,	AMERICAN AIRLINES, INC. v. STATE ex rel. OKLAHOMA TAX COMMISSION	Discussed at Length
2017 OK 13, 391 P.3d 111,	BROWN v. CLAIMS MANAGEMENT RESOURCES INC.	Discussed at Length
2017 OK 71, 404 P.3d 856,	CORBEIL v. EMRICKS VAN & STORAGE	Discussed
2017 OK 83, 405 P.3d 691,	SIERRA CLUB v. STATE ex rel. OKLAHOMA TAX COMMISSION	Discussed
2018 OK 59, 427 P.3d 1052,	HALL v. GALMOR	Discussed at Length
2000 OK 2, 995 P.2d 1124, 71 OBJ 111,	Tulsa Co. F.O.P., Lodge No. 188 v. Board of County Commissioners of Tulsa Co.	Discussed
2024 OK 19, 546 P.3d 234,	SCHIEWE v. CESSNA AIRCRAFT CO	Discussed
1982 OK 74, 648 P.2d 26,	Jackson v. Independent School Dist. No. 16 of Payne County	Discussed
1982 OK 140, 656 P.2d 253,	Dana P. v. State	Discussed

Title 85. Workers' Compensation

Cite	Name	Level
85 O.S. 1.1,	Repealed	Cited
85 O.S. 14,	Repealed	Discussed

Title 85A. Workers' Compensation

Cite	Name	Level
85A O.S. 3,	Applicability of Act	Cited
85A O.S. 45,	Compensation Rates - Temporary Total Disability - Temporary Partial Disability - Permanent Partial Disability - Permanent Total Disability - Vocational Rehabilitation - Disfigurement	Discussed
85A O.S. 106,	Act Construction	Cited