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The Nevada Supreme Court clarifies temporary total and partial disability issues regarding injured workers capable of working part-time schedules.

## *Amazon v. Magee*: New Case Law Clarifies Temporary Partial Disability Benefits In Nevada

By John D. Moore and Karyn M. Taylor

A recent Nevada Supreme Court case, *Amazon v. Magee*, 119 P3d 732 (2005), shed light on a workers' compensation topic that previously received very little attention: Temporary Partial Disability ("TPD") benefits available under Nevada Revised Statutes (NRS) 616C.500. Prior to *Amazon*, no Nevada case evaluated when an employee is eligible for TPD benefits. Hearing officers and appeals officers of the Nevada Department of Administration, which reviews the administration of workers' compensation benefits in Nevada, wrestled with the issue for many years. Alarming, even though the Court's analysis in *Amazon* has been available to insurers, employers, attorneys, and the Nevada Department of Administration for several months, employers continue to struggle with the unique situation of when an employee injured on the job can only work a part-time schedule.

This raises the question posed in *Amazon*: "How should employers handle injured workers who are eligible for workers' compensation benefits, but whose work restrictions do not prevent them from working part-time, i.e., are they temporarily totally disabled or temporarily partially disabled?" According to NRS 616C.500, "every employee... who is injured by accident arising out of and in the course of employment, is entitled to receive for a temporary partial disability the difference between the wage earned after the injury and the compensation which the injured person would be entitled to receive if temporarily totally disabled when the wage is less than the compensation..." Logically, under this

statute, if an employee is only able to work a part-time schedule, he would be entitled to the difference between the wage he received for part-time work and 66 $\frac{2}{3}$ % of his pre-injury wage (or the value of benefits the employee would receive if Temporarily Totally Disabled, as that term is defined under NRS 616C.475).

Prior to the Nevada Supreme Court's ruling in *Amazon*, many injured workers in Nevada argued that they were entitled to recover their full pre-injury wage during the period of injury, even though the injured worker was capable of working only part-time throughout the injury period. This argument stemmed from an inappropriate reading of NRS 616C.475, where attorneys argued that any light-duty job offer, even part-time light-duty offers, had to "[provide] a gross wage... equal to, or substantially similar to, the gross wage the employee was earning at the time of his injury." NRS 616C.475(8)(b)(1)-(2).

In *Amazon*, Dee Dee Magee received medical treatment for possible carpal tunnel syndrome following a work-related injury she incurred on April 18, 2001. On June 11, 2001, Ms. Magee was released to light-duty work, with a four-hour-a-day work restriction. Prior to her injury, Ms. Magee worked approximately ten hours per day, forty hours per week. Because of the four-hour-per-day work restriction, after June 11th, Ms. Magee generally only worked sixteen hours per week, or 40% of her pre-injury work capacity. On October 30, 2001, Ms. Magee was released to full-duty work with no restrictions.

During the period of time in which Ms. Magee could only work four hours per day, from May 5th to October 30th, and in accordance with NRS 616C.500, Amazon paid Ms. Magee wages for hours worked, plus an additional amount of TPD benefits to cover the difference between the wages she earned and the amount she would receive if she were temporarily totally disabled (66⅔% of her pre-injury wage – wages earned part-time = TPD payments). Disputing Amazon's payment of TPD benefits under these circumstances, Ms. Magee filed an appeal. At the hearing level, Ms. Magee argued that she was entitled to either (1) temporary total disability benefits, in the amount of 66⅔% of her pre-injury wage, in addition to the wage she received for working four hours per day, or (2) her entire pre-injury salary.

At the hearing level, the hearing officer disagreed with Ms. Magee's arguments, finding that Ms. Magee was only entitled to TPD benefits, or the difference between the wage she earned working four hours per day and 66⅔% of her pre-injury wage. At the appeal hearing, the appeals officer overturned the hearing officer's decision and found that Amazon was obligated to pay Ms. Magee her entire pre-injury wage, even though she was working only four hours per day, sixteen hours per week. The appeals officer relied on Ms. Magee's argument, which was common among injured workers' attorneys, that NRS 616C.475(8)(b)(1) or (2) applied under these circumstances.

When considering the decision of the appeals officer, the Nevada Supreme Court reviewed NRS 616C.475, and concluded that Ms. Magee was not temporarily totally disabled, as that term is defined under the statute. According to the Supreme Court, a "temporary total disability" is "a condition that temporarily incapacitates a worker from performing any work at any gainful employment..." Even though Ms. Magee could not earn her entire pre-injury wage, the ability to do so was not the determining factor of whether Ms. Magee was temporarily

totally disabled. Instead, the Supreme Court found that the measure of disability was whether "her physical disabilities and work limitations, for the most part, [prevented] her from earning wages."

Because Ms. Magee's doctor released her to work four hours per day, Ms. Magee was not prevented, for the most part, from earning wages. Because she was not so prevented, the Nevada Supreme Court concluded that Ms. Magee was not temporarily totally disabled, but that she was temporarily partially disabled because her work restrictions only partially impeded her ability to earn wages. Accordingly, Amazon prevailed, and the Nevada Supreme Court held that Ms. Magee was entitled to recover the difference between her current wage for working four hours per day and 66⅔% of her pre-injury wage, not her entire pre-injury wage.

Even though *Amazon* has been Nevada law for several months, employers should ensure that hearing officers and appeals officers at the Nevada Department of Administration do not award pre-injury wages to injured employees who are working part-time. Injured workers and their attorneys continue to rely on past decisions of hearing officers and appeals officers to contend that they are entitled to their entire pre-injury wage even for part-time work. Accordingly, employment law counsel should be contacted to discuss the legal ramifications of *Amazon* and appropriate arguments should be made at the hearing and appeal levels when the injured worker is capable of only part-time work.

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