

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

SSM HEALTH CARE

Appellant

v.

DONNICE HARTGROVE

Respondent

DOCKET NUMBER WD77560

DATE: December 16, 2014

Appeal From:

LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

Division One

Thomas H. Newton, P.J., Lisa White Hardwick, and Anthony Rex Gabbert, JJ.

Attorneys:

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Counsel for Appellant

Attorneys:

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Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

SSM HEALTH CARE, Appellant, v.
DONNICE HARTGROVE, Respondent

WD77560

Labor and Industrial Relations

Before Division One Judges: Newton, P.J., Hardwick, and Gabbert, JJ.

In June 2001, the employee sustained a work-related injury and timely filed a claim for worker's compensation. In 2004, the employee was awarded lifetime permanent total disability (PTD) compensation from the employer. The employer appealed to the Labor and Industrial Relations Commission (Commission), and the Commission affirmed the award.

In February 2014, the employer terminated the employee's PTD compensation because the employee failed to appear for a scheduled medical examination. The employee filed a motion with the Commission to compel the employer to resume payments. The employer filed a response to the employee's motion, along with a request for an order from the Commission to compel the employee to attend a medical examination (referred to by the Commission as the "employer/insurer's motion"). The employer argued that it was statutorily authorized to schedule the examination, and that it was thus "justified" in terminating the employee's benefits because it timely provided notice of the examination and the employee failed to cooperate.

The Commission denied both parties' motions. It stated that, pursuant to section 287.210.1, the employee is required to submit to a reasonable medical examination "during disability" at the employer's request, but the employer may not "take unilateral action to suspend" PTD compensation based on an employee's failure to attend such an examination. The Commission also found that the employee is entitled to receive PTD compensation, as stipulated by the 2004 award.

The employer and its insurer jointly filed a request to the Commission to reconsider and rescind the order. The Commission denied the request. The employer appeals.

AFFIRMED.

Division One holds:

In its sole point, the employer argues that the Commission erred in holding that it wrongfully terminated compensation benefits after the employee refused to submit to a section 287.210.1 medical examination. The employer contends that, in doing so, the Commission "acted without or in excess of its powers" in that: (1) the order conferred new powers upon the Commission that are not provided in the Workers' Compensation Act; (2) the Commission "failed to require the employee to meet her obligations under section 287.210.1"; and (3) the Commission "failed to strictly construe sections 287.210.1 and 287.203 of the Act."

Pursuant to section 287.210.1, a claimant may be authorized to complete a medical examination at the employer's request. Despite the employer's contention that sections 287.210.1 and 287.203 are controlling, it is clear that section 287.470 is also applicable, in that it gives statutory authority to the Commission to modify an existing award due to an injured worker's change in condition. However, an employer's suspension of benefits without the Commission's prior approval does not appear to be supported by Missouri law; the available law on the subject indicates that employers may not unilaterally conclude that an employee is no longer entitled to *temporary* total disability benefits, and it logically follows that the same is true with respect to *permanent* benefits.

As to the employer's argument that any applicable statutes should be strictly construed, it is a well-established principle that workers' compensation claims are governed by laws in effect at the time the injury occurred. Additionally, it is presumed that statutes operate prospectively. In 2005, the legislature amended the Workers' Compensation Law, and nothing in the legislation indicates that it intended for these amendments to apply retroactively. Therefore, the post-2005 "strict construction" mandate is inapplicable here.

The employer should not have unilaterally terminated the compensation benefits. It should have filed an application for review with the Commission, pursuant to section 287.470—without suspending the employee's benefits. Thus, the Commission did not err in holding that the employer wrongfully terminated the employee's compensation benefits. The employer's point is denied.

For the above reasons, the Commission's order is affirmed.

Opinion by Thomas H. Newton, Presiding Judge

December 16, 2014

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