

## TEMPORARY TOTAL DISABILITY

**R98-1-04**

**Termination Date-MMI**

**August 6, 1998**

WHEREAS, the Industrial Commission adopted Resolution No. R95-1-02 dated February 9, 1995 and Commission Policy Statement and Guideline Memo No. C.8 of the Hearing Officer Manual dated March 9, 1995; and

WHEREAS, in a decision issued by the Supreme Court on August 5, 1998 in the case of State ex rel. Russell v. Indus. Comm., 82 Ohio St.3d 516, 696 N.E. 1069 (1998), it was determined that the appropriate date on which to terminate disputed temporary total disability compensation on the basis of maximum medical improvement is the date of the termination hearing, and the Commission may not declare an overpayment for payments received by the claimant before that date; and

WHEREAS, the Industrial Commission desires to provide direction to Hearing Officers in conformity with the decision issued by the Supreme Court in the case of Russell; and

WHEREAS, pursuant to R.C. 4121.03(E)(1), the Commission is responsible for establishing the overall adjudicatory policy of the Commission.

THEREFORE BE IT RESOLVED that Resolution No. R95-1-02 dated February 9, 1995 and Commission Policy Statement and Guideline Memo No. C.8 of the Hearing Officer Manual dated March 9, 1995 are hereby rescinded.

BE IT FURTHER RESOLVED that if continued payment of temporary total disability compensation is disputed on the basis of maximum medical improvement, and a Hearing Officer terminates temporary total disability compensation upon a finding that the claimant has reached maximum medical improvement, the proper date to terminate temporary total disability compensation is the date of hearing at which the determination to terminate temporary total disability compensation was made. A Hearing Officer shall not terminate temporary total disability compensation retroactive to a date prior to the hearing in the case where the continued payment of temporary total disability compensation is disputed on the basis of maximum medical improvement as long as the attending physician's medical reports certify that the claimant remains temporarily and totally disabled.

BE IT FURTHER RESOLVED that all claims be identified wherein an order was issued by a Hearing Officer that terminated temporary total disability compensation upon a finding that the claimant had reached maximum medical improvement where the Hearing Officer determined that the proper date to terminate temporary total disability compensation was a date prior to the date of hearing in accordance with Resolution No. R95-1-02 and Policy Statement and Guideline Memo No. C.8 in the Hearing Officer Manual. The Commission finds that under the authority of R.C. 4123.52 and the case of Russell, that supplemental orders be issued in the cases that have been identified. Supplemental orders shall be issued in such claims in conformity with the following language:

"Pursuant to Russell and pursuant to Resolution No. R98-1-04, dated August 6, 1998, the Hearing Officer finds that any prior orders that terminated temporary total compensation due to a finding of maximum medical improvement that determined that the date of termination was prior to the date of hearing be modified to the following extent: that the portion of said order that determined that the proper date to terminate temporary total disability due to a finding of maximum medical improvement on a date prior to the date of hearing and the determination of an overpayment and withholding pursuant to R.C. 4123.511(J) be vacated; that the Hearing Officer finds that the appropriate date to terminate temporary total disability by reason of maximum medical improvement is the date of the hearing held by the Hearing Officer that issued the order identified above. It is ordered that the Bureau of Workers' Compensation/self-insuring employer make the necessary adjustments consistent with this order. Any ongoing temporary total disability compensation that may have been withheld from future awards of compensation shall be reimbursed to the claimant. The prior order of the Hearing Officer identified above is modified consistent with the aforementioned findings. In all other respects, the prior order remains in full force and effect."

**Modification**

This resolution was modified to correct citations and is effective on September 26, 2018