

## **\*\*\*Proposed Amendment\*\*\***

### **4121-3-32 Temporary disability.**

- (A) The following provisions shall apply to all claims where the date of injury or the date of disability in occupational disease claims accrued on or after August 22, 1986. The following definitions shall be applicable to this rule:
- (1) "Maximum medical improvement" is a treatment plateau (static or well-stabilized) at which no fundamental functional or physiological change can be expected within reasonable medical probability in spite of continuing medical or rehabilitative procedures. An injured worker may need supportive treatment to maintain this level of function.
  - (2) "Physical capabilities" includes any psychiatric condition allowed in a claim.
  - (3) "Suitable employment" means work which is within the employee's physical capabilities.
  - (4) "Treating physician" means the employee's attending physician of record on the date of the job offer, in the event of a written job offer to an employee by an employer. If the injured worker requested a change of doctors prior to the job offer and in the event that such request is approved, the new doctor is the treating physician.
  - (5) "Work activity" means sustained remunerative employment.
  - (6) "Job offer" means a proposal, made in good faith, of suitable employment within a reasonable proximity of the injured worker's residence. If the injured worker refuses an oral job offer and the employer intends to initiate proceedings to terminate temporary total disability compensation, the employer must give the injured worker a written job offer at least forty-eight hours prior to initiating proceedings. The written job offer shall identify the position offered and shall include a description of the duties required of the position and clearly specify the physical demands of the job. If the employer files a motion with the industrial commission to terminate payment of compensation, a copy of the written offer must accompany the employer's initial filing.
- (B)
- (1) Temporary total disability may be terminated by a self-insured employer or the bureau of workers' compensation in the event of any of the following:
    - (a) The employee returns to work.
    - (b) The employee's treating physician finds that the employee is capable of returning to his former position of employment or other available suitable employment.
    - (c) The employee's treating physician finds the employee has reached maximum medical improvement.
  - (2) Except as provided in paragraph (B)(1) of this rule, temporary total disability compensation may be terminated after a hearing as follows:
    - (a) Upon the finding of a district hearing officer that either the conditions in paragraph (B)(1)(a) or (B)(1)(b) of this rule has occurred.
    - (b) Upon the finding of a district hearing officer that the employee is capable of returning to his/her

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former position of employment.

- (c) Upon the finding of a district hearing officer that the employee has reached maximum medical improvement.
- (d) Upon the finding of a district hearing officer that the employee has received a written job offer of suitable employment.

If a district hearing officer determines, based upon the evidence, that as of the date of the hearing, the injured worker is no longer justified in remaining on temporary total disability compensation, he shall declare that no further payments may be made. If the district hearing officer determines that the injured worker was not justified in receiving temporary total disability compensation prior to the date of the hearing, he shall declare an overpayment from the date the injured worker was no longer justified in remaining on temporary total disability compensation. Such payment shall be recovered from future awards related to the claim or any other claim. The recovery order shall provide a method for the repayment of any such overpayment as is reasonable, taking into account such factors as the amount of money to be recouped, the length of the periodic payments to be made under any future award, and the financial hardship that would be imposed upon the employee by any specific schedule of repayment.

(C) Where the bureau of workers' compensation schedules the injured worker for a medical examination under section 4123.53 of the Revised Code and where the report of the medical examination opines that the medical impairment resulting from the allowed conditions in the claim permanently prohibits the injured worker from performing sustained remunerative employment the claim shall be referred to the hearing administrator to schedule a pre-hearing conference under Rule 4121-3-34(C)(7) to determine if the claim should be referred for consideration of a tentative order under Rule 4121-3-34(C)(6)(a).