

*Amazon.com v. Dee Dee Magee*, 121 Nev. Adv. Op. 63, 119 P.3d 732  
(Sept. 22, 2005)<sup>1</sup>

**ADMINISTRATIVE LAW - WORKERS' COMPENSATION**

**Summary**

This case is an appeal from the district court's order denying a petition for judicial review in a workers' compensation case.

**Disposition/Outcome**

Reversed and remanded. The Nevada Supreme Court reversed the district court's order denying Amazon.com's petition for judicial review and remanded it for further proceedings. The Court concluded that a worker who is released to work with restrictions is only temporarily partially disabled. Therefore, the employee's position and salary need not comport with Nevada Revised Statutes ("NRS") 616.475<sup>2</sup> that sets forth the standards by which an employer, in offering modified employment to the injured worker, can stop making temporary total disability payments.

**Factual and Procedural History**

On April 18, 2001, Dee Dee Magee ("Magee") injured her right wrist while working for her employer Amazon.com. Magee sought out and obtained medical treatment in which the treating physician diagnosed her injury as possible carpal tunnel syndrome; no x-rays were taken at the time. The treating physician placed her wrist in a forearm splint and prescribed naproxen.

On April 23, 2001, Magee sought further medical advice regarding the cause and extent of her injury. After examination, the physician advised Magee that her symptoms did not coincide with obvious carpal tunnel syndrome but advised Magee to continue wearing the forearm splint for two (2) weeks and placed Magee on restricted duty without elaborating on the nature of the restrictions.

From May 14 to June 10, 2001 Magee sought additional medical advice and after each visit was released to light duty work subject to certain physical restrictions and limitations. After a June 11, 2001 visit, Magee was released to return to work but was limited to light-duty and only for four hours a day.

On August 13, 2001, Magee underwent corrective surgery on her right wrist. Subsequently, Magee was diagnosed with carpal tunnel syndrome in her left wrist. Magee underwent a second surgery to repair her left wrist. Magee was released to full-duty work with no restrictions on October 30, 2001.

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<sup>2</sup> Although NEV. REV. STAT. §616C.475 was amended in 2003 and 2005, the Court relied on the 1999 version because it was in effect at the time of respondent's claim.

Prior to Magee's wrist injury, she worked a total of forty (40) hours per week, approximately ten (10) hours per day, and four days a week. She was paid \$10.00 per hour for a gross weekly wage of \$400.00. After Magee's initial wrist injury in which she was restricted in the number of hours she could work, she continued to earn \$10.00 per hour. Although Magee's daily and weekly work hours varied, she generally never worked more than four hours a day or sixteen hours a week.

Magee submitted workers' compensation claims for her injuries to her wrists. Amazon.com never disputed either the diagnosis or that the condition was the result of her employment. Amazon.com's insurer determined that for the period of May 5 through October 30, 2001 Magee was eligible for temporary partial disability benefits under NRS 616C.500 with at least two (2) periods when she was eligible for temporary total disability benefits. The first period of Magee's temporary total disability began after the right wrist surgery on August 13, 2001 and ended on August 24, 2001 when she returned to light duty work and collected temporary partial disability benefits. The second period of Magee's temporary total disability was after Magee's left wrist surgery on October 3, 2001 and ended on October 16, 2001 after Magee was released to light duty work. All benefits stopped upon Magee's release to return to full duty work without any restrictions.

Magee administratively appealed the insurer's determinations to a workers' compensation hearing officer contending that under NRS 616C.475 she was entitled to temporary total disability benefits for the entire period of May 5 through October 30, 2001. The hearing officer disagreed and affirmed the insurer's determinations.

Magee appealed the hearing officer's decision to an appeals officer asserting that for the periods she was restricted to working four hours a day, she was entitled to either temporary total disability benefits in the amount of 66 2/3 percent of her average monthly salary with no work requirement or her pre-injury gross salary while she worked her modified scheduled. The appeals officer agreed and reversed the hearing officer's decision. The appeals officer relied on NRS 616C.475(8) and ordered Amazon.com to pay Magee her pre-injury gross pay for the periods when Magee was restricted to working only four hours a day.

Amazon.com filed a petition for judicial review with the district court alleging the appeals officer erred in applying NRS 616C.475(8) in calculating Magee's benefits. The district court denied the petition determining NRS 616C.475(8) was the proper statute to apply to the calculation of payments in this case. Amazon.com appealed the district court's order denying its petition.

## **Discussion**

The Court, in reviewing the application of statutes governing disability payments, does so independently and without deference to the district court's conclusions.<sup>3</sup>

Under NRS 616C.475(1) an employee who is classified as temporarily totally disabled is entitled to receive for the period of temporary total disability, 66 2/3 percent of their average

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<sup>3</sup> Washoe Co. Sch. Dist. v. Bowen, 114 Nev. 879, 882, 962 P.2d 1233, 1235 (1998); *see also* General Motors v. Jackson, 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995).

monthly wage. Under NRS 616C.475(5), however, temporary total disability benefits stop when a physician determines the employee is physically capable of any gainful employment for which the employee is suited.<sup>4</sup> When an employer provides a temporarily totally disabled employee with a post-injury job similar in hours, location, and gross pay to the job the employee held prior to the injury giving adequate consideration to the employee's post-injury limitations, the employer can stop paying the employee temporary total disability benefits in the amount of 66 2/3 percent of the employee's pre-injury wage.<sup>5</sup>

Nevertheless, NRS 616C.475 only applies to employees who are considered temporarily totally disabled. Total disability arises when an employee is injured from an accident "arising out of and in the course of employment which prevents the covered worker from engaging, for remuneration or profit, in any occupation for which he is or becomes reasonably fitted by education, training or experience."<sup>6</sup> The Court determined the appeals officer erred by concluding that Magee was totally disabled during the periods when she was restricted to working four hours a day. The Court found that while Magee was unable to earn her pre-injury wages due to her physician restricting her to work only a four (4) hour workday, she was only partially disabled and not totally disabled. Therefore, Magee was not entitled to temporary total disability benefits because her physical disabilities and work limitations did not prevent her from earning wages.

The Court further stated that the appeals officer compounded the error by reading NRS 616C.475(8) to mean Magee was temporarily totally disabled and her employer Amazon.com was required to pay Magee her pre-injury gross salary. The Court stated that NRS 616C.475(8) should not be used to calculate the amount of temporary total disability because its purpose is to define whether a modified job offered by an employer to a temporarily totally disabled employee enables the employer to stop temporary total disability payments. This provision of the statute allows an employer to make productive use of the injured employee in lieu of paying the employee 66 2/3 percent of the employee's gross pay while the employee remains temporarily totally disabled.

## **Conclusion**

The Court concluded the hearing officer was correct in concurring with the insurer's determination that Magee was entitled to temporary partial disability benefits during the periods when she was restricted to four-hour workdays. The Court reasoned that the appeals officer's reliance and interpretation of NRS 616C.475 would result in an absurdity by requiring Magee's employer, Amazon.com, to pay Magee her pre-injury gross wage when she was capable of gainful employment.

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<sup>4</sup> NEV. REV. STAT. §616C.475(5) (1999).

<sup>5</sup> *Id.* §616C.475(8) (1999).

<sup>6</sup> NEV. REV. STAT. §616A.340 (1999).