IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2026 MTWCC 11

WCC No. PI-2025-0001002-WCI

JEREMY RUTLEDGE

Petitioner

vs.

TECHNOLOGY INSURANCE CO., INC.

Respondent/Insurer.

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT

Summary: Petitioner was injured on January 29, 2024, while working for Hoven Equipment, and Respondent accepted liability for a concussion and neck strain. Hoven ended Petitioner's employment on April 25, 2025, citing his medical condition and need for additional leave. Petitioner's treating provider later released him to modified duty with specific restrictions, and on July 21, 2025, Hoven offered him a newly created position within those restrictions at the same wage, with benefits reinstated. Petitioner declined the position, and on July 30, 2025, Respondent gave 14 days' written notice terminating his TTD benefits under § 39-71-701(4), MCA. Petitioner, who has not reached MMI, contends that his April 25, 2025, termination ended any obligation to return to Hoven, that the offered position did not satisfy § 39-71-701(4), MCA, and that Respondent did not comply with § 39-71-609(2), MCA. Respondent contends that it satisfied § 39-71-701(4), MCA, and that § 39-71-609(2), MCA, governs the conversion of benefits, not a pre-MMI refusal of modified work. The parties filed cross-motions for summary judgment.

Held: "An objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease. This objective includes returning workers to alternative positions."[1] Respondent's Motion for Summary Judgment is granted, and Petitioner's Cross-Motion for Summary Judgment is

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[1] *Larson v. Liberty Nw. Ins. Corp.*, 2017 MTWCC 15, ¶ 29 (citation omitted).

denied. Respondent properly terminated Petitioner's TTD benefits under § 39-71-701(4), MCA, because his treating provider released him to modified duty with specific restrictions and his time-of-injury employer offered him a position within those restrictions at an equivalent wage, which he refused. Hoven's earlier termination of Petitioner's employment did not make it a different employer or make the offered position unavailable. Section 39-71-609(2), MCA, governs the conversion of TTD benefits to PPD benefits and does not apply here, and Respondent gave the 14 days' written notice required by § 39-71-609(1), MCA.

I. The Filings

¶ 1 Petitioner Jeremy Rutledge and Respondent Technology Insurance Company filed cross-motions for summary judgment on January 27, 2026. Respondent filed its Motion for Summary Judgment,[2] its Brief in Support,[3] its Response to Petitioner's Cross-Motion,[4] and its Reply.[5] Petitioner filed his Cross-Motion for Summary Judgment,[6] his Brief in Support,[7] his Response,[8] and his Reply.[9]

¶ 2 Counsel conferred and agree that this matter should be decided by summary judgment.[10]

¶ 3 Respondent seeks summary judgment and dismissal of the Petition with prejudice.[11] Petitioner seeks reinstatement of his temporary total disability (TTD) benefits and attorney fees.[12]

II. Grounds Stated in the Motions

A. Respondent's Motion

¶ 4 Respondent moves for summary judgment on four grounds: (1) Petitioner was released to modified duty during the period for which he seeks TTD benefits; (2) Petitioner rejected an alternative position consistent with his restrictions; (3) Petitioner is no longer

[2] Doc. 4.

[3] Doc. 5.

[4] Doc. 11.

[5] Doc. 15.

[6] Doc. 6.

[7] Doc. 7.

[8] Doc. 12.

[9] Doc. 14.

[10] Doc. 6 at 2.

[11] Doc. 5 at 6; Doc. 15 at 6.

[12] Doc. 7 at 2, 11; Doc. 14 at 14; Doc. 1, ¶ 12.

eligible for TTD benefits under § 39-71-701(4), MCA; and (4) Respondent acted reasonably in all regards, including in terminating TTD benefits.[13]

B. Petitioner's Motion

¶ 5 Petitioner moves for summary judgment on five grounds: (1) he is eligible for TTD benefits; (2) termination of employment severs the employment relationship, and the Act pays TTD benefits to terminated workers under § 39-71-701, MCA; (3) a post hoc offer of a modified position does not terminate wage-loss benefits; (4) the statutory and procedural requirements of §§ 39-71-609 and -701, MCA, were not met; and (5) the employer's termination violated the public policy of § 39-71-105(3), MCA.[14]

III. Facts

A. Facts Both Parties State

¶ 6 On January 29, 2024, an auger blade fell on Petitioner's head while he was working for Hoven Equipment in Great Falls.[15]

¶ 7 On March 8, 2024, Respondent accepted liability for a concussion and neck strain.[16]

¶ 8 On March 5, 2025, Dr. Marler took Petitioner off work.[17]

¶ 9 On April 7, 2025, Hoven wrote to Petitioner that, "due to business needs," it could not hold his position past April 25, 2025, and that it would be "happy to consider you for future opportunities."[18]

¶ 10 On April 25, 2025, Hoven terminated Petitioner's employment, citing his "medical condition" and his "need for additional leave."[19]

¶ 11 On June 6, 2025, Char Lewis, FNP, released Petitioner to modified duty. Respondent initiated TTD benefits that day.[20]

¶ 12 On June 13, 2025, Dr. Marler restricted Petitioner from work.[21]

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[13] Doc. 4.

[14] Doc. 6.

[15] Doc. 5, Facts; Doc. 7, Facts 1, 3.

[16] Doc. 7, Facts 4.

[17] Doc. 7, Facts 5.

[18] Doc. 5, Facts 2.

[19] Doc. 7, Facts 7.

[20] Doc. 5, Facts 3; Doc. 7, Facts 8–9.

[21] Doc. 7, Facts 10.

¶ 13 On June 20, 2025, the adjuster told Hoven that Petitioner could return to work if Hoven would accommodate his restrictions.[22]

¶ 14 On July 11, 2025, Lewis again released Petitioner to modified duty.[23]

¶ 15 On July 21, 2025, Hoven offered Petitioner a "newly created position to accommodate your restrictions" at the same wage, with benefits reinstated.[24] The letter states:

> We have received word from Work Comp that you are able to return to work. Attached is a newly created position to accommodate your restrictions. If you are interested in returning to Hoven Equipment Company, this would be your new position. You would return to work full time at the same wage and all benefits would be reinstated. Of course, we need to discuss the balance due on your account and we would need to start payroll deductions right away. You are able to return right away upon acceptance of this offer.

¶ 16 On July 21, 2025, counsel exchanged emails, and Petitioner's counsel stated that Petitioner had no obligation to return to work.[25]

¶ 17 On July 30, 2025, Respondent gave 14 days' written notice terminating Petitioner's TTD benefits. Petitioner did not report to work.[26]

¶ 18 Petitioner is not at maximum medical improvement (MMI).[27]

¶ 19 Petitioner states that the offer came nearly three months after his termination and one day after the insurer's contact.[28]

¶ 20 Benefis dismissed Petitioner from Lewis's care effective July 25, 2025, citing a "lack of trust."[29]

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[22] Doc. 5, Facts 4; Doc. 7, Facts 11.

[23] Doc. 5, Facts 7; Doc. 15 at 4.

[24] Doc. 5, Facts 8, 10.

[25] Doc. 5, Facts 11–13.

[26] Doc. 5, Facts 14; Doc. 7, Facts 14.

[27] Doc. 5, Facts 15; Doc. 7, Facts 15.

[28] Doc. 7, Facts 12.

[29] Doc. 14, Ex. J.

B. Disputed Facts and Characterizations

1. Whether the Offer Was Conditioned on Repaying an Unrelated Debt

¶ 21 Petitioner argues that the phrase "we would need to start payroll deductions right away" is mandatory, so the offer was conditioned on repayment of the debt.[30] Respondent argues that the plain language of the letter shows that the offer was not conditioned on repayment.[31]

2. Whether the Job Was Within the Physician's Restrictions

¶ 22 Petitioner argues that parts and delivery work at an equipment dealer will inevitably require lifting more than 10 pounds. He points out that the job description quantifies no weights, frequencies, or durations; that its reference to "extended periods of sitting or standing" conflicts with his restriction to sit, stand, and walk as needed; and that a fast-paced showroom does not fit his light-sensitive, post-TBI presentation.[32]

¶ 23 Respondent argues that the job description requires no lifting over 10 pounds and that Petitioner offers no contrary evidence.[33] Respondent points out that the offer was for "a newly created position to accommodate [Petitioner's] restrictions."[34] Respondent notes that Petitioner does not dispute receiving the offer or the accuracy of the description, and argues that speculation from a worker who never tried the job raises no genuine issue of material fact.[35]

3. Whether Termination Cost Petitioner His Employment Benefits

¶ 24 Petitioner argues that he and his family lost health, dental, vision, and life insurance.[36] Respondent argues that the offer of employment states all benefits will be reinstated, and COBRA coverage was available post termination.[37]

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[30] Doc. 14 at 4.

[31] Doc. 11 at 2.

[32] Doc. 14 at 7.

[33] Doc. 15 at 1–2.

[34] Doc. 5, Facts 8.

[35] Doc. 15 at 2.

[36] Doc. 7 at 5; Doc. 14 at 3–4.

[37] Doc. 11 at 2.

4. Date of the Second Release

¶ 25 Petitioner argues that there was no June 11 visit and that Respondent likely means July 11.[38] Respondent's Response asserted a June 11 release; its Reply uses July 11.[39] This is clearly a typo, and the July 11th date is used in all subsequent discussion.

5. Treating Physician

¶ 26 Char Lewis, FNP, was Petitioner's treating physician. She released him to modified duty on June 6, 2025, and again on July 11, 2025, and she was the last provider to examine him before the release and the termination of benefits at issue.[40]

¶ 27 The Response to Petition asserted that Dr. Sanders also released Petitioner to work,[41] but Respondent did not argue the point in its summary judgment briefing. This point remains unclear, but does not affect the analysis of the issues presented.

6. Basis Stated in the Termination Notice

¶ 28 Petitioner argues that the July 30 notice relied on § 39-71-105(3), MCA, which cannot independently justify termination of benefits.[42] Respondent argues that it terminated TTD benefits under § 39-71-701(4), MCA, after Petitioner refused the job.[43] Section 39-71-701(4), MCA, is the proper statutory section, and it is applied, along with § 39-71-609, MCA, in determining whether the job offer, and refusal to return to work, terminated benefits.

IV. Summary Judgment Standard

¶ 29 Summary judgment is appropriate when the moving party establishes both the absence of a genuine issue of material fact and entitlement to judgment as a matter of law.[44] Once the moving party meets that burden, the opposing party must present substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact.[45] "The purpose of summary judgment is to encourage judicial economy by avoiding unnecessary trials."[46] Where the parties stipulate to the

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[38] Doc. 14 at 3.

[39] Doc. 11 at 2; Doc. 15 at 4.

[40] Doc. 15 at 4.

[41] Doc. 3, ¶¶ 11, 15.

[42] Doc. 7 at 8.

[43] Doc. 5, Facts 13–14; Doc. 11 at 3.

[44] ARM 24.5.329(2); *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

[45] *Horton*, ¶ 10.

[46] *Abell v. Travelers Ins. Co.*, 204 Mont. 156, 159, 663 P.2d 335, 337 (1983).

material facts and submit cross-motions, the remaining questions are questions of law suitable for resolution on summary judgment.[47]

¶ 30 Here, the parties have filed cross-motions for summary judgment. Both parties agree that the material facts are undisputed and that the issues presented are questions of law, and counsel conferred and agreed that this matter should be decided by summary judgment. The parties do dispute certain characterizations of the record, including whether the July 21, 2025, offer was conditioned on repayment of a debt and whether the offered position exceeded Petitioner's restrictions. The Court addresses below whether those disputes are material to the issues presented. The facts themselves are not in dispute, only the conclusions to be drawn from those facts. Summary judgment remains a viable path to resolving this dispute.

¶ 31 The 2023 version of the Workers' Compensation Act governs Petitioner's entitlement to benefits because that was the law in effect on the date of his injury.[48] Because § 39-71-609, MCA, is procedural, the version in effect when Respondent terminated Petitioner's TTD benefits on July 30, 2025, governs the procedure for that termination.[49] That is the 2025 version, as amended by H.B. 197, which took effect July 1, 2025.[50]

V. Eligibility for TTD Benefits

A. Petitioner's Argument

¶ 32 Petitioner argues that he is eligible for TTD benefits because he has suffered a total wage loss, he is not at MMI, and he has not been released to his time-of-injury job.[51]

B. Respondent's Argument

¶ 33 Respondent argues that Petitioner received all the TTD benefits to which he was entitled up until the point he refused suitable work.[52]

C. Section 39-71-701(4), MCA

¶ 34 Section 39-71-701(4), MCA, provides:

> (4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified

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[47] *See Newbury v. State Farm Fire & Cas. Ins. Co. of Bloomington, Ill.*, 2008 MT 156, ¶¶ 6, 14, 343 Mont. 279, 184 P.3d 1021.

[48] *Buckman v. Mont. Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986); Doc. 7, Facts 2.

[49] *State Comp. Mut. Ins. Fund v. Sky Country, Inc.*, 239 Mont. 376, 379, 780 P.2d 1135, 1137 (1989).

[50] 2025 Mont. Laws ch. 112, § 2 (H.B. 197).

[51] §§ 39-71-116(40), -701(1), MCA; Doc. 7 at 3–4.

[52] Doc. 5 at 1.

> to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker for any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment and if the worker continues to be temporarily totally disabled, as defined in 39-71-116.

D. Discussion

¶ 35 Petitioner was initially qualified for TTD benefits. This is undisputed. The question before the Court is whether benefits were properly terminated when a position within restrictions was offered, and Petitioner refused the position. Section 39-71-701(4), MCA, has a number of requirements, and the parties dispute nearly every one of those.

VI. Section 39-71-701(4), First Sentence: Release to a Position He Is Able and Qualified to Perform

A. Petitioner's Argument

¶ 36 Petitioner argues that no physician approved the actual job or had sufficient information about it.[53] He contends that Respondent quotes *Clark* ¶ 28 but omits the next sentence, which requires that the physician have sufficient information about the position.[54] He notes that Lewis's release came 10 days before the offer and that no provider saw the job description.[55] Lewis requested a time-of-injury job analysis (JA) and never received one.[56] Petitioner argues that "suitable alternative position" is not the test; whether he is able and qualified is set by the provider.[57] Finally, he argues that only the insurer and his former employer say the job fits his restrictions, and that their assertions are self-serving.[58]

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[53] Doc. 14 at 10–11.

[54] *Clark v. Arch Ins. Co.*, 2018 MTWCC 18, ¶ 28; Doc. 14 at 10–11.

[55] Doc. 14 at 6, 11.

[56] Doc. 14 at 7, 11.

[57] Doc. 14 at 6.

[58] Doc. 14 at 11.

B. Respondent's Argument

¶ 37 Respondent argues that Petitioner was twice released to modified duty and that no physician approval of a job description is required.[59] Respondent relies on *Clark*: "[T]his Court does not require a treating physician to approve a JA . . . ."[60] As pointed out by Petitioner, the *Clark* opinion continues: the physician "must have sufficient information about the position for this Court to conclude that the physician actually approved it."[61]

¶ 38 Respondent also argues that a job analysis by a rehabilitation provider is not required.[62] This holding, however, should not be overstated. *Larson* only stands for the rule that § 39-71-712, MCA, does not require a vocational rehabilitation provider to prepare the JA; it is silent on physician approval requirements.

***Tim Clark v. Arch Insurance Company*, 2018 MTWCC 18.**

¶ 39 Tim Clark was injured on October 31, 2017. His physician diagnosed a mild traumatic brain injury in December 2017, noting anxiety, memory loss, headaches, and anger outbursts, and took Clark off work. Over the following months, Dr. Johnson issued a series of inconsistently worded work releases — variously describing Clark as able to do "light duty driving," work "within the region," or "local" work, with "no out of town overnight work" and no heavy machinery — without ever clearly defining those terms' geographic or durational scope. Respondent Arch Insurance Company (Arch), through its nurse case manager, presented Clark with two modified positions: a power-broom operator job whose actual work locations were never disclosed to Dr. Johnson, and a "parts runner" position that in practice required a 66-mile drive to Bynum. When Clark did not return to either position, Arch terminated his TTD benefits, and Clark petitioned the Department of Labor & Industry for interim benefits under § 39-71-610, MCA, which the Department granted; Arch appealed to the Workers' Compensation Court.[63]

¶ 40 The issue presented was whether Clark tendered a strong prima facie case for reinstatement of interim TTD benefits, where his treating physician's restrictions were too vague to determine whether either the power-broom-operator or parts-runner position actually fell within them. The Court applied a § 39-71-701(4), MCA, analysis to determine if benefits were properly terminated. Specifically, under § 39-71-701(4), MCA, a worker loses TTD eligibility once his treating physician releases him to a modified or alternative position at an equivalent wage that he is able to perform.[64]

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[59] Doc. 5 at 4; Doc. 11 at 6–7.

[60] *Clark*, ¶ 28. Doc. 11 at 7.

[61] Clark, ¶ 28; Doc. 14 at 10.

[62] *Larson*, ¶ 25. Doc. 11 at 7.

[63] *Clark*, ¶¶ 3–20, 26.

[64] *Id.,* ¶¶ 23–25, 28.

¶ 41 The Court found Dr. Johnson's successive, imprecisely worded restrictions left it unable to determine what he meant by "light duty driving," "local" work, or the Great Falls "region." Dr. Johnson approved a job analysis for the power-broom position without being told where the work would actually occur, and there was no evidence he was ever asked whether a roughly 66-mile, mostly two-lane drive to Bynum for the parts-runner job fit within his restrictions. Because neither employer nor insurer supplied Dr. Johnson the specific information needed to meaningfully approve either job, his general releases could not establish that Clark had been released to perform the actual duties of either position.[65]

¶ 42 Because the evidence was insufficient to show Dr. Johnson released Clark to perform the actual duties of either the power-broom-operator or parts-runner position, Clark established a prima facie case for reinstatement, and the Court affirmed the Department's order granting him interim TTD benefits.[66]

¶ 43 *Clark* identifies two ways to satisfy § 39-71-701(4), MCA. First, the treating physician can approve the actual job, so long as the physician has sufficient information about the position.[67] Second, the physician can give specific restrictions that clearly describe what the worker can and cannot do.[68] In Clark, the Court did not base its decision on the physician not seeing the actual job description. In fact, the Court's analysis implicitly assumes that a specific job description provided to the physician is not required. What was required, and what was missing, were clearly stated restrictions which would allow the Court to determine whether the offered job fell within those restrictions.

¶ 44 That is different from the case now before the Court, where the restrictions given by the physician are clear and understandable. Petitioner never argues that his restrictions were ambiguous; rather, he argues they would not be complied with. Under the holding in *Clark*, Hoven satisfied the requirements of the first phrase in § 39-71-701(4), MCA.[69]

***Larson v. Liberty Northwest Insurance Corp.*, 2017 MTWCC 15**

¶ 45 Galen Larson was injured January 10, 2017. His job paid $12.00 per hour, usually for more than 40 hours a week. Liberty accepted liability and paid TTD benefits. On August 1, 2017, Dr. Jacobson released Larson to modified duty. The restrictions were 50% weight bearing in a fracture boot. On August 3, the employer offered a temporary janitorial job. It paid $8.25 per hour for 40 hours a week. The job description called for one-third sitting, standing, and walking, with sitting "as needed." The employer promised

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[65] *Id.,* ¶¶ 26–29.

[66] *Id.,* ¶¶ 29, 31, 33.

[67] *Id.,* ¶ 28.

[68] *Id.,* ¶ 29.

[69] It must be kept in mind that *Clark* was an appeal under § 39-71-610, MCA, and as such, Clark only had to establish a prima facie case, i.e. only needed to tender substantial evidence which if believed, would entitle him to TTD benefits. This is a much lower burden than what Petitioner must meet to defeat summary judgment in the case at bar.

to assign only duties within his restrictions. Larson declined. He said the duties exceeded his restrictions and the pay cut was too steep. Liberty terminated TTD benefits. The Department denied interim benefits under § 39-71-610, MCA, and Larson appealed.[70]

¶ 46 This Court affirmed.[71] It held: "[S]ince Larson voluntarily declined the temporary work assignment without attempting it, he is not entitled to reinstatement of benefits."[72] Larson did not tender a strong prima facie case for TTD benefits.[73]

¶ 47 This Court found that the job fit the restrictions. Dr. Jacobson did not bar standing or walking. He limited weight bearing and required a boot. The job description let Larson sit as needed. Larson's claim that the employer would not let him sit was "merely speculative."[74] Larson also argued that a vocational rehabilitation provider had to prepare the job analysis. This Court disagreed. It called a provider-prepared analysis "the better practice" but held that § 39-71-712, MCA, does not require one.[75] The lower wage did not justify refusal. Had Larson worked, he would have received temporary partial disability benefits for the wage difference under § 39-71-712(1)–(2), MCA.[76] The Act's objective is to return workers to work as soon as possible, including in alternative positions. If the duties had exceeded his restrictions, Larson could have asked Dr. Jacobson to clarify them. If Dr. Jacobson disapproved the job, TTD benefits would have been reinstated.[77]

¶ 48 *Larson* was decided under § 39-71-712(3), MCA, not § 39-71-701(4), MCA.[78] The language at issue in *Larson*, from § 39-71-712(3), MCA, states:

> Except as provided in subsection (5), a worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:
>
> (a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;
>
> (b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an equivalent or higher wage than the worker received at the time of injury; and

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[70] *Larson*, ¶¶ 3, 5, 8, 11, 13–15, 17.

[71] *Id.,* ¶ 30.

[72] *Id.,* ¶ 29.

[73] *Id.*

[74] *Id.,* ¶ 24.

[75] *Id.,* ¶ 25.

[76] *Id.,* ¶¶ 27–28.

[77] *Id.,* ¶ 29.

[78] *Id.,* ¶¶ 21–22.

(c) the worker refuses to accept the modified or alternative position. . . .

¶ 49 The language in § 39-71-701(4), MCA, states:

> If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. . . .

¶ 50 The release language is functionally the same. Both statutes require a release by the treating physician. Both require a position the worker is "able and qualified to perform." Both require that the position be "with the same employer." *Larson*'s analysis of the release and of the job's fit within the restrictions therefore applies equally to § 39-71-701(4), MCA.

¶ 51 Setting aside the termination issue for now, *Larson* and the present case are factually indistinguishable. A physician released to modified duty with restrictions. The employer offered a position accommodating those restrictions. The physician did not review the actual job offer or description. The employee refused to try the job, speculating the restrictions would not be accommodated. The *Larson* court held benefits were properly terminated.[79] Likewise, Hoven satisfied the physician release to a modified job requirement.

Sears v. Travelers Insurance

¶ 52 Both parties cite *Sears v. Travelers Insurance*. There are three *Sears* opinions. The first, 1997 MTWCC 18 (*Sears I*), denied the claimant's motion for summary judgment on April 8, 1997.[80] The second, 1998 MTWCC 12 (*Sears II*), denied the claimant's motion for reconsideration on February 24, 1998; it is the opinion both parties cite.[81] The third, 1998 MTWCC 43 (*Sears III*), entered the order and final judgment on May 13, 1998.[82] Sears was at MMI, which gives a different presentation than the case at bar.[83] Here, Petitioner is not at MMI.

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[79] *Id.,* ¶¶ 29–30.

[80] *Sears v. Travelers Ins.*, 1997 MTWCC 18 (*Sears I*).

[81] *Sears II*, ¶¶ 1–2.

[82] *Sears III*, ¶¶ 8–11.

[83] *Sears I*, FOF ¶¶ 8–9, 14.

¶ 53 Stephen Sears was injured in October 1994. Travelers paid TTD benefits.[84] An IME physician, Dr. McLean, first restricted his lifting, sitting, and standing.[85] Dr. McLean later found him "stationary from his industrial injury without impairment" and, after reviewing a job description, released him to his time-of-injury job.[86] The job description listed no physical demands other than lifting.[87] Travelers terminated TTD benefits in August 1995.[88]

¶ 54 *Sears* applied the *Coles* criteria to a claimant at MMI under the 1995 version of § 39-71-609, MCA.[89] *Larson* applied § 39-71-712(3), MCA, to a modified job before MMI.[90] Neither construed § 39-71-701(4), MCA. However, the language in §§ 39-71-712(3) and -701(4), MCA, is nearly identical, while the language in § 39-71-609, MCA, is not. Because *Sears* was not a § 39-71-701(4) case, it is not helpful on the application of § 39-71-701(4), MCA, to the present facts.

¶ 55 *Sears* holds, correctly, that § 39-71-609, MCA, is a procedural statute.[91] As such, the version in effect at the time the benefits are terminated controls, not the version in effect at the time of injury.[92] Although both sides argue this point, it is not relevant, as the 2025 amendment to § 39-71-609(3), MCA, is limited to return to work at full duty.[93] That is not applicable here.

C. Discussion

¶ 56 Section 39-71-701(4), MCA, does not require a treating physician to approve a job analysis for a modified or alternative position.[94] It does require sufficient evidence that the worker refused a position to which his treating physician released him.[95] That requirement can be met in either of two ways. The physician can approve the actual job with enough information about it, or, "[i]f the treating physician does not approve an actual job, he must give specific restrictions that clearly describe what a worker can and cannot do."[96] In *Clark*, the insurer failed because the physician's restrictions ("light duty driving,"

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[84] *Id.*, FOF ¶¶ 1, 3, 7.

[85] *Sears II*, ¶ 9.

[86] *Id.,* ¶ 10.

[87] *Id.,* ¶ 7.

[88] *Sears I*, FOF ¶ 10; *Sears II*, ¶ 15.

[89] *Sears I*, Discussion pts. I–II; *Sears II*, ¶¶ 3–5, 15–19; *Sears III*, ¶ 1.

[90] *Larson*, ¶¶ 21, 24, 25.

[91] *Sears I*, Discussion pt. II; *Sears II*, ¶ 15.

[92] *Sears II*, ¶ 15.

[93] § 39-71-609(3), MCA (2025).

[94] *Clark*, ¶ 28.

[95] *Id.,* ¶ 31.

[96] *Id.,* ¶¶ 28–29.

"local" work, "work within the region") were too vague for the Court to tell whether the offered jobs fell within them.[97]

¶ 57 By contrast, in *Larson*, this Court held that a written job description fit within the treating physician's restrictions.[98] There, the physician permitted some standing and walking, and the job description allowed the worker to sit as needed. The claimant's contention that the employer would not actually accommodate him was "merely speculative."[99]

¶ 58 Here, the treating physician, Char Lewis, FNP, released Petitioner to modified duty on June 6, 2025, and again on July 11, 2025. Her restrictions were specific and measurable: lifting up to 10 pounds only occasionally; occasional pushing, pulling, and bending; no climbing; and alternating between sitting, standing, and walking as needed.[100] These are precisely the kind of "specific restrictions that clearly describe what a worker can and cannot do" that *Clark* requires. Hoven's written description of the Parts Assistant/Receptionist position lists greeting customers, answering phones, routing messages, clerical work, distributing mail, and organizing parts inventory.[101] Nothing in it requires lifting more than 10 pounds, climbing, or anything else the restrictions prohibit. The duties are predominantly customer service, telephone, and clerical work. Nothing in the description indicates that receiving mail and packages or organizing parts inventory would require more than occasional lifting of light items, and Petitioner offers no evidence that it would. As in *Osborne*, the duties of a receptionist or telephone operator "are not unique or beyond the common understanding of physicians or this Court. A detailed job analysis was unnecessary to a release for claimant to return to work."[102]

¶ 59 Petitioner's arguments that the position nonetheless exceeded his restrictions do not raise a genuine issue of material fact. He argues that handling inventory at an equipment dealership will inevitably exceed 10 pounds, that "extended periods of sitting or standing" conflicts with his sit/stand/walk restriction, and that a showroom is unsuitable for his post-concussive symptoms. These are inferences drawn from the nature of the business, not evidence about the position offered. Petitioner offers no affidavit, medical opinion, or other evidence that the duties required lifting beyond his limit. He also offers none that Hoven would not have accommodated his restrictions. Once the moving party has met its burden, the opposing party must present substantial evidence, "rather than mere conclusory or speculative statements."[103] A statement that the job "may involve"

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[97] *Id.,* ¶¶ 26–27, 29.

[98] *Larson*, ¶ 24.

[99] *Id.*

[100] Doc. 5, Exs. B, F; Doc. 7, Ex. D at 4–5.

[101] Doc. 5, Ex. G (TIC-JR 000801).

[102] *Osborne v. Planet Ins. Co.*, 1994 MTWCC 74, FOF ¶ 47, *amended by* 1994 MTWCC 74A-3.

[103] *Horton*, ¶ 10.

extended sitting or standing does not show that Petitioner would be prevented from changing position as needed, any more than the job description in *Larson* did.[104]

¶ 60 Nor is this case like *Rainey*.[105] There, the insurer relied on a general release to "some unknown job" with no evidence that any job existed.[106] Here, Lewis gave specific restrictions and Hoven offered an identified position written to fit them. Finally, if the duties had in practice exceeded his restrictions, the Act gave Petitioner a remedy: he could have sought clarification or reevaluation from his treating physician, and if she disapproved the job, his TTD benefits would have been reinstated.[107] Petitioner did not attempt the position and did not seek clarification. The Court therefore concludes that Respondent has established the first element of § 39-71-701(4), MCA: Petitioner's treating physician released him to a modified position that he was able and qualified to perform.

VII. Section 39-71-701(4), First Sentence: "With the Same Employer"

A. Petitioner's Argument

¶ 61 Petitioner argues that his termination ended the employment relationship, so Hoven was no longer "the employer" or "the same employer."[108] He contends that an employer that terminates a worker gives up any right to compel the worker's return.[109]

¶ 62 Petitioner argues that termination makes alternative positions unavailable.[110] Petitioner overstates the *Ingebretson* holding.

¶ 63 Petitioner further argues that a worker may refuse a different employer's job without penalty.[111] He argues that the employment relationship in *Walters* survived only through a timely correction.[112] And he argues that *Greene* presupposes an existing relationship, because the claimant there worked the job and then quit.[113]

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[104] *Larson*, ¶ 24.

[105] *Nat'l Union Fire Ins. Co. of Pittsburgh v. Rainey*, 2021 MTWCC 10, ¶¶ 51–53 (*Rainey*).

[106] *Id.,* ¶¶ 51, 53.

[107] *Larson*, ¶ 29; *Osborne*, COL ¶ 2.

[108] Doc. 7 at 6; Doc. 14 at 4–5.

[109] Doc. 14 at 5.

[110] *Ingebretson v. Louisiana-Pacific Corp.*, 1994 MTWCC 113, COL ¶ 3, *aff'd sub nom. Ingbretson v. Louisiana-Pacific Corp.*, 272 Mont. 294, 900 P.2d 912 (1995); Doc. 7 at 5; Doc. 12 at 5.

[111] § 39-71-712(8), MCA; Doc. 12 at 5.

[112] *Walters v. Employers Ins. Co. of Wausau*, 2020 MTWCC 14, ¶¶ 12–15, 38; Doc. 7 at 6.

[113] *Greene v. Uninsured Employers' Fund*, 2002 MTWCC 37, ¶¶ 2c, 7; Doc. 14 at 8.

B. Respondent's Argument

¶ 64 Respondent argues that "same employer" means the time-of-injury employer and that the statute requires no unbroken relationship.[114] Respondent asserts that no case requires an uninterrupted relationship.[115] It argues that § 39-71-712(8), MCA, exempts only a different employer's job, so refusing a job with the time-of-injury employer has consequences.[116] It argues that Petitioner's rule would bar any § 39-71-701(4) offer after a termination for business reasons.[117] Finally, Respondent argues that a former employee and employer may enter into a new contract.[118]

C. Discussion

¶ 65 Both parties cite *Walters* and *Ingebretson* to support their respective interpretations of this requirement.

***Ashley Walters v. Employers Ins. Co. of Wausau*, 2020 MTWCC 14**

¶ 66 Ashley Walters petitioned the Workers' Compensation Court for temporary total disability (TTD) benefits, costs, fees, and a penalty.[119] The parties filed cross-motions for summary judgment on Walters' entitlement to TTD benefits under § 39-71-701, MCA.[120]

¶ 67 Walters injured her back on October 22, 2019, while working for Lake View Care Center (Lake View).[121] Her treating physician took her off work, and his office faxed Lake View a Medical Status Form saying so, but Lake View misplaced it.[122] When Walters missed two scheduled shifts without calling in, Lake View discharged her on November 4, 2019.[123] The next morning, Lake View found the form, realized its mistake, and asked Walters to call to discuss her employment. She did not respond.[124] On November 6, 2019, Lake View sent Walters a letter stating that she had not been discharged and setting expectations for her return after an upcoming medical appointment.[125] In February 2020, a physician assistant released Walters to modified, sedentary work, and Lake View

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[114] Doc. 11 at 3; Doc. 15 at 4.

[115] Doc. 11 at 3.

[116] Doc. 15 at 4.

[117] Doc. 11 at 6.

[118] *Walters*, 2020 MTWCC 14, ¶ 37; Doc. 5 at 5–6; Doc. 15 at 6.

[119] *Walters*, ¶ 27.

[120] *Id.,* ¶¶ 1–2.

[121] *Id.,* ¶ 5.

[122] *Id.,* ¶¶ 9–10.

[123] *Id.,* ¶¶ 11–12.

[124] *Id.,* ¶ 13.

[125] *Id.,* ¶¶ 14–15.

scheduled her for shifts in a position within her restrictions at the same wage.[126] Walters refused, asserting that she had already been fired, and did not report for her shifts.[127] Employers Insurance Company of Wausau (Employers), which had been paying TTD benefits, then stopped them because Lake View had modified work available.[128]

¶ 68 The issue from Walters relevant to the current discussion is Walters' argument that her discharge irreparably severed the employment relationship, so that no modified position with Lake View could be available to her under § 39-71-701(4), MCA.[129]

¶ 69 The *Walters* Court held that a job is "available" under § 39-71-701(4), MCA, if the employer is willing to employ the worker in it.[130] There, the employer offered a modified position within Walters' restrictions at her prior wage.[131] The Court rejected Walters' argument that a discharge, once made, cannot be rescinded. It held that "Montana law is not so rigid that an employer cannot timely correct a mistake" and that "there is no law prohibiting an employer and employee from entering into another employment contract."[132] Walters refused the position without good reason, so her TTD benefits were properly terminated.[133]

¶ 70 *Walters* is of limited application because the employer discharged the worker by mistake and, beginning the next day, worked to rescind the discharge.[134] It does not decide whether the discharge in the present case, which lasted for about three months and was not a mistake, has a different legal effect. Under these facts, *Walters* does not control, one way or another, how the "with the same employer" language is interpreted. *Walters* tells us that a discharge made by mistake and promptly rescinded does not prevent a later offer of modified work with that employer. It does not tell us whether a modified position offered after a discharge that remained in effect for about three months is a position "with the same employer." At most, *Walters* lends modest support to Respondent's position, because it recognizes that "there is no law prohibiting an employer and employee from entering into another employment contract."[135]

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[126] *Id.,* ¶¶ 17–19, 31.

[127] *Id.,* ¶¶ 20, 22, 24.

[128] *Id.,* ¶¶ 16, 23, 26.

[129] *Id.,* ¶¶ 2, 32.

[130] *Id.,* ¶ 34.

[131] *Id.,* ¶¶ 31, 34.

[132] *Id.,* ¶ 37.

[133] *Id.,* ¶¶ 34, 38, 43.

[134] *Id.,* ¶¶ 12–15, 38.

[135] *Id.,* ¶ 37.

¶ 71 Both parties also cite to *Ingebretson*.[136]

¶ 72 Ingebretson worked for Louisiana-Pacific Corporation (LP) at its Libby, Montana, mill.[137] On June 2, 1993, he gave notice of an occupational disease in both elbows.[138] LP denied the claim, but the Employment Relations Division later determined that he had an occupational disease.[139] When he returned to work in August 1993, LP moved him from his forklift job to the stacker.[140] The stacker work required repetitive lifting and was more demanding than the job description his physicians had approved.[141] For the next six weeks, he alternated between the stacker and the guard shack, a non-essential post.[142] On September 27, 1993, LP kept him on the stacker despite his request to be relieved, and he could not sleep that night because of elbow pain.[143] The next morning he called in sick, then changed his mind and went to work, where his foreman sent him to the guard shack, a "boring and insignificant" job.[144] After about two hours, he went to his truck, took Tylenol, and fell asleep.[145] The plant manager found him sleeping and terminated his employment.[146]

¶ 73 The Court found LP's termination pretextual, aimed at ridding itself of a disabled employee and avoiding workers' compensation liability.[147]

¶ 74 The case turned on whether the job was "no longer available," not on the "same employer" language.[148]

¶ 75 The Court expressly declined to decide whether the "no longer available" language applies when a worker refuses a modified or alternative position or is fired for deliberate misconduct.[149] Instead, the employer had used a pretextual firing to make the position

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[136] *Ingebretson*, 1994 MTWCC 113.

[137] *Id.*, FOF ¶ 2.

[138] *Id.*, FOF ¶ 4.

[139] *Id.*, FOF ¶¶ 5, 10.

[140] *Id.*, FOF ¶ 9.

[141] *Id.*, FOF ¶¶ 12–13, 19–20.

[142] *Id.*, FOF ¶¶ 14–16.

[143] *Id.*, FOF ¶¶ 21–22.

[144] *Id.*, FOF ¶¶ 23–24, 27.

[145] *Id.*, FOF ¶ 25.

[146] *Id.*, FOF ¶ 26.

[147] *Id.*, FOF ¶ 29.

[148] *Id.*, COL ¶ 3.

[149] *Id.*

unavailable. Under those circumstances, the Court concluded that the alternative positions previously available to him had become unavailable.[150]

¶ 76 *Ingebretson* also does not answer the question. Ingebretson was fired as a pretext to rid the company of a disabled employee.[151] LP refused to reinstate him, and no modified job was offered following the termination.[152]

¶ 77 Petitioner relies on the first ground of the *Ingebretson* holding: that the employer "fired a worker, and thereby made the position unavailable, because of circumstances created by the worker's occupational disease."[153] But *Ingebretson* does not hold that a position, once unavailable, can never again become available. To the contrary, the Court ordered that benefits continue "so long as claimant remains temporarily totally disabled, or until an appropriate modified or alternative position again becomes available to him."[154] The judgment is to the same effect: benefits continue until "a medically approved alternative position again becomes available to him."[155] *Ingebretson* thus contemplates what happened here. After the termination, a modified position within Petitioner's restrictions again became available, and Petitioner refused it.

¶ 78 In the case at bar, the termination was not disciplinary, and no party contends that it was pretextual or in retaliation for the claim. Whether the termination itself was proper is not before this Court.[156] When Petitioner was medically cleared to return to a modified position, Hoven offered him one at the same wage and benefits. The key facts are so dissimilar that *Ingebretson* does not support Petitioner's position, and its recognition that an alternative position may again become available after a termination supports Respondent's. The Montana Supreme Court noted that the Workers' Compensation Court in deciding *Ingebretson*, did not make a sweeping interpretation of the phrase "no longer available for any reason."[157]

¶ 79 The statute clearly requires the job to be with the same employer. Hoven was the employer at the time of injury. There is no other employer. Petitioner argues *Walters* and *Ingebretson* to support his position that termination cuts off the employment relationship, and therefore, there is no longer a "same employer." Neither case supports that conclusion.

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[150] *Id.*; *Ingbretson*, 272 Mont. at 299, 900 P.2d at 915–16.

[151] *Ingebretson*, FOF ¶ 29.

[152] *Id.*, FOF ¶ 28.

[153] *Id.*, COL ¶ 3; Doc. 7 at 5; Doc. 14 at 5–6.

[154] *Ingebretson*, COL ¶ 3.

[155] *Id.*, Judgment ¶ 2.

[156] § 39-71-317(1), MCA; *Walters*, ¶ 39.

[157] *Ingbretson*, 272 Mont. at 300, 900 P.2d at 916.

¶ 80 The purpose of the workers' compensation program is to return injured workers to the workforce as soon as possible.[158] Section 39-71-701(4), MCA, provides a path back to work for workers who can return to a position within their restrictions. Section 39-71-701(4), MCA, also provides motivation to return to work, as failure to do so terminates benefits.

¶ 81 Interpreting same employer to be synonymous with time-of-injury employer avoids imposing additional restrictions that the legislature did not put in the statute. It also furthers the purpose of the act by providing a path, and motivation, for the worker to return to work.

¶ 82 *Rainey* also states that because the employer had ended Rainey's employment, the insurer "most likely" could not terminate TTD benefits before MMI, and footnote 26 describes a § 39-71-701(4), MCA, suspension where the claimant "was still working for his time-of-injury employer."[159] Those statements are dicta addressed to a claimant whose employer offered no position. They do not hold that § 39-71-701(4), MCA, requires an unbroken employment relationship.[160]

¶ 83 The Court therefore concludes that "with the same employer" means the time-of-injury employer. Hoven was Petitioner's time-of-injury employer, so this requirement is satisfied.

VIII. Section 39-71-701(4): Effect of a Post Hoc Offer

A. Petitioner's Argument

¶ 84 Petitioner argues that an offer of an invented job after a final, unrecanted termination cannot end TTD benefits.[161] He argues that the employer did not err and never recanted, so the termination had "intentional finality",[162] and that the offer came at the insurer's prompting.[163]

B. Respondent's Argument

¶ 85 Respondent argues that the label "post hoc" is irrelevant where the job is genuine, within the worker's restrictions, and available.[164] It relies on *Greene*: "A job is 'available' if the employer is willing to employ the worker in it."[165] It argues that a job does not

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[158] § 39-71-105(3), MCA.

[159] *Rainey*, ¶ 57 & n.26.

[160] *See Walters*, ¶ 37 ("there is no law prohibiting an employer and employee from entering into another employment contract").

[161] Doc. 7 at 6–7.

[162] Doc. 7 at 6.

[163] Doc. 7 at 5, 7.

[164] Doc. 11 at 5.

[165] *Greene*, 2002 MTWCC 37, ¶ 4; Doc. 11 at 5.

become unavailable because the worker quits.[166] It points out that the claimant in *Walters* refused an available modified job and lost her TTD benefits.[167] And it argues that a contrary rule would make TTD benefits a guaranteed payment untethered from disability.[168]

C. Discussion

¶ 86 The statute says nothing about a newly created position being unavailable. The explicit public policy established by the act is to return workers to employment. If an employee is cleared to return to a modified position, and the employer makes a job available with the worker's restrictions, this advances the public policy overlying all application of the workers' compensation system.

¶ 87 Consider the alternative. A TTD worker recovers to the point he can return to work, and the employer makes a position available at the same wage and benefits. Under Petitioner's proposed interpretation of the statute, the worker could refuse to return to work, and continue collecting TTD benefits, even though the worker is not totally disabled. This runs contrary to the plain language of the statute, and the express public policy of the workers' compensation system. Petitioner's interpretation is rejected. A newly created position accommodating the worker's restrictions fits squarely within the return to work path set forth in § 39-71-701(4), MCA.

¶ 88 This Court rejected a similar argument in *Greene v. Uninsured Employers' Fund*. There, the claimant returned to work in a modified position and then quit. He argued that he requalified for TTD benefits when he stopped working because the "reason for the termination of his employment is irrelevant."[169] The Court disagreed, explaining:

> Section 39-71-701(4), MCA, is plain on its face, requiring no interpretation, therefore it must be applied as it is written. *State v. Peplow*, 2001 MT 253, ¶ 20, 36 P.3d 922. The subsection clearly and unambiguously disqualifies a worker from receiving TTD benefits if the worker's treating physician "releases" the worker to "modified" or "alternative" job which the worker is capable of performing and which pays the same wage, and the job is in fact available to the worker. "Available" means "present or ready for immediate use" or "accessible, obtainable." A job is "available" if the employer is willing to employ the worker in it.
>
> A job becomes "unavailable" if the employer later refuses to allow the worker to continue in the job, or creates conditions such that the worker can no longer safely perform the job. It does not become "unavailable" merely

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[166] *Greene*, ¶ 5; *Walters*, ¶ 41; Doc. 11 at 5.

[167] *Walters*, ¶ 34; Doc. 11 at 6.

[168] Doc. 11 at 5.

[169] *Greene*, ¶¶ 2c–2d, 3.

> because the worker quits work. If that were the case, the section would be rendered meaningless since an employee could simply refuse work and collect TTD benefits. *Ingebretson v. Louisiana-Pacific Corporation*, 272 Mont. 294, 900 P.2d 912 (1995), cited by claimant in support of his argument, is inapposite. In that case the employer discharged the worker for pretextual reasons to "rid [itself] of a disabled employee." *Id.*, 272 Mont. at 298, 900 P.2d at 915.[170]

IX. Section 39-71-701(4), First Sentence: Equivalent or Higher Wage

A. Petitioner's Argument

¶ 89 Petitioner argues that the required payroll deductions for an unrelated debt mean that his wages would be reduced.[171]

B. Respondent's Argument

¶ 90 Respondent argues that the letter promised the same wage and reinstated benefits, and that the balance due was only to be discussed.[172]

C. Discussion

¶ 91 Petitioner argues that he lost all health, dental, and vision benefits. Respondent answers that COBRA benefits continued to be available. This discussion is not relevant. The language at issue is whether the offered position was at an equivalent wage.

¶ 92 The statute states only "at an equivalent or higher wage than the individual received at the time of injury." Here, the offer letter states the same wage and reinstated benefits. That satisfies the statutory criteria. Petitioner argues that repayment of the debt defeats the "equivalent wage" requirement. It does not. Wages are the hourly rate times the hours worked. Repayment of a balance due on an account with the employer does not reduce the wage. It is a separate obligation. Petitioner seeks to add restrictions to the statutory language that do not appear within the statute, and are contrary to the common understanding of what a wage is.

¶ 93 For example, if an employee asks an employer for a $100 advance this week, the employee's wages have not been increased by $100. Similarly, if the employee has $100 withheld from his check the next pay period to repay the advance, the employee's wages have not been reduced.

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[170] *Id.*, ¶¶ 4–5 (emphasis omitted).

[171] Doc. 14 at 4.

[172] Doc. 11 at 2.

¶ 94 The offer of employment was at the same wage and benefits. The statute is satisfied, and Petitioner's argument is not compelling.

¶ 95 Respondent argues that the offer was not conditioned on the repayment of unrelated debts.[173] That statement is inconsistent with the actual language of the letter: "we would need to start payroll deductions right away." The offer clearly incorporated beginning repayment of the debt, with the balance due open for discussion. Respondent's interpretation of the letter is rejected. However, as discussed above, the only issue is whether the wage is the same. It is. Section 39-71-123(1), MCA, defines "wages" as "all remuneration paid for services performed by an employee for an employer."[174] A payroll deduction to repay a balance owed on an account with the employer does not change the remuneration paid for the employee's services; it is a separate obligation satisfied from wages already earned. The definition also excludes employer payments for health and life insurance, so the loss or reinstatement of those benefits does not bear on whether the wage is equivalent.[175]

X. Duty to Attempt the Offered Job

A. Petitioner's Argument

¶ 96 Petitioner argues that the cases requiring a worker to try the job involved workers who were still employed and physicians who knew the job.[176] He points out that the *Larson* claimant remained employed throughout.[177] The *Osborne* claimant was never terminated.[178] In *Osborne*, the physician approved desk and phone work, which satisfies *Clark*.[179] The *Osborne* claimant was awarded TTD benefits retroactively.[180] The *Vallance* claimant was working, then resigned, and was not receiving TTD benefits.[181]

¶ 97 Petitioner also argues that *Larson* applied an interim-benefits standard and misstated § 39-71-609, MCA, in footnote 10.[182] And he argues that *Osborne* predates *Schoeneman I* and cannot displace the procedure of § 39-71-609, MCA.[183]

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[173] Doc. 11 at 2.

[174] § 39-71-123(1), MCA.

[175] § 39-71-123(2)(b)(iii)–(iv), MCA.

[176] Doc. 12 at 4–5; Doc. 14 at 12–14.

[177] *Larson*, ¶ 11; Doc. 12 at 4.

[178] *Osborne*, FOF ¶ 48; Doc. 12 at 5.

[179] *Osborne*, FOF ¶ 33; Doc. 14 at 13.

[180] *Osborne*, Judgment, ¶¶ 1–2; Doc. 14 at 13.

[181] *Vallance v. Mont. Contractor Comp. Fund*, 2006 MTWCC 15, ¶¶ 16, 45–46; Doc. 14 at 12.

[182] *Larson*, ¶¶ 20, 25 n.10; Doc. 14 at 12.

[183] *Schoeneman v. Liberty Ins. Corp.*, 2007 MTWCC 28 (*Schoeneman I*); Doc. 14 at 13–14.

B. Respondent's Argument

¶ 98 Respondent argues that a worker must at least try a suitable job, and that refusal ends TTD benefits.[184] It argues that physician approval imposes "at least the burden to try the job."[185]

> The statute does not excuse a worker from returning to work even though the worker believes that he or she is unable to work. While the worker may refuse to return to work, the consequence of such refusal is no job and no benefits.[186]

¶ 99 Respondent argues that the consequence of refusal is "no job and no benefits."[187] It points out that the *Vallance* claimant refused tasks within his restrictions and lost his TTD benefits.[188] It argues that Walters' refusal was the sole cause of her wage loss.[189] And it argues that a worker who tries the job and cannot perform it makes the job unavailable.[190]

C. Discussion

¶ 100 This Court has consistently held that a worker released to an available modified position must at least attempt it. A physician's approval of a light-duty position "imposes on claimant at least the burden to try the job offered . . . and make a good faith, bona fide effort to do the job."[191] A worker who "voluntarily declined the temporary work assignment without attempting it" is not entitled to reinstatement of benefits.[192] When the worker refuses an available modified position, the refusal, not the injury, is the cause of the wage loss.[193] A worker who believes the assigned tasks exceed his restrictions should clarify them with his treating physician rather than refuse the work.[194] Petitioner points out that the *Vallance* claimant was not receiving TTD benefits and resigned.[195] That is true, but *Vallance* is cited here only for the principle that a worker who believes the assigned tasks exceed his restrictions should seek clarification from his treating physician rather than

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[184] *Larson*, ¶ 29; Doc. 5 at 4; Doc. 11 at 8.

[185] *Osborne*, COL ¶ 2; Doc. 5 at 4.

[186] *Osborne*, COL ¶ 2.

[187] *Id;* Doc. 11 at 8; Doc. 15 at 3.

[188] *Vallance*, ¶¶ 29, 45–46; Doc. 11 at 8.

[189] *Walters*, ¶ 34; Doc. 15 at 3.

[190] *Ranes v. Lumbermens Mut. Cas. Co.*, 1996 MTWCC 49, COL ¶ 2; Doc. 11 at 8.

[191] *Osborne*, COL ¶ 2.

[192] *Larson*, ¶ 29.

[193] *Walters*, ¶ 34.

[194] *Vallance*, ¶¶ 29, 45–46 (decided under § 39-71-712, MCA); *Larson*, ¶ 29.

[195] Doc. 14 at 12.

refuse the work. It was decided under § 39-71-712, MCA, and does not decide when TTD benefits may be terminated. By contrast, a worker who tries the position and cannot perform it requalifies for TTD benefits, because the position is then "no longer available."[196] That the workers in *Larson*, *Osborne*, and *Walters* remained employed does not change the rule. As discussed in Section VII, Hoven was Petitioner's time-of-injury employer, and the position was available to him.

¶ 101 Petitioner was released to modified duty by his treating physician. His time-of-injury employer offered a specific job within his restrictions. The prior injury was not the cause of Petitioner's ongoing wage loss; rather, Petitioner's refusal to report for work was the cause of the wage loss. Petitioner refused to return to employment. TTD benefits were properly terminated.

XI. Section 39-71-701(4), Second Sentence: Requalification When the Position Is No Longer Available

A. Petitioner's Argument

¶ 102 Petitioner argues that any non-disciplinary termination is a termination for "any reason" that falls within none of the listed exceptions, so he requalified for TTD benefits.[197] He argues that the reason for a non-disciplinary firing, whether business or medical, is irrelevant.[198] He points out that the for-cause label in *Ingebretson* was rejected as pretext.[199] And he relies on *Greene* for the proposition that a job is unavailable if the employer refuses to let the worker continue.[200]

B. Respondent's Argument

¶ 103 Respondent argues that the second sentence does not apply because the offered job remained available and Petitioner refused it.[201] It argues that *Ingebretson* expressly reserves refusal cases.[202] It points out that the Montana Supreme Court declined to give "no longer available for any reason" a "sweeping interpretation."[203] It notes that the *Ingebretson* employer refused to rehire the claimant and offered no post-termination job.[204]

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[196] *Ranes*, COL ¶ 2.

[197] *Ingebretson*, COL ¶ 3; Doc. 7 at 2, 5; Doc. 14 at 5–6.

[198] Doc. 14 at 6.

[199] Doc. 14 at 5–6.

[200] *Greene*, ¶ 5; Doc. 14 at 8.

[201] Doc. 11 at 3–5.

[202] *Ingebretson*, COL ¶ 3; Doc. 11 at 4; Doc. 15 at 4.

[203] *Ingbretson*, 272 Mont. at 300, 900 P.2d at 916; Doc. 11 at 4.

[204] *Ingebretson*, FOF ¶¶ 27–29; Doc. 11 at 4.

C. Discussion

¶ 104 Petitioner cites *Ingebretson* for the sweeping rule that termination makes alternative positions with the time-of-injury employer unavailable. That is not a correct reading of the holding in *Ingebretson*. This Court and the Montana Supreme Court both held that the firing was a pretext for the employer to rid itself of an injured employee. That pretextual firing of the injured worker made the job unavailable.

¶ 105 The instant case is very different. Here, no party contends that the termination was pretextual; in *Ingebretson*, the Court found that it was. Here, the employer offered a specific job within the worker's limitations at the same pay and benefits. The employer in *Ingebretson* did not. These facts do not make the offered job with Hoven unavailable. In fact, the job was very available; all Petitioner had to do was show up for work.

¶ 106 The text of the second sentence of § 39-71-701(4), MCA, leads to the same result. A worker "requalifies" for TTD benefits if "the modified or alternative position is no longer available to the worker." The modified or alternative position referred to is the one to which the treating physician released the worker and which the employer offered under the first sentence. Here, the termination came first. Hoven ended Petitioner's employment on April 25, 2025, before Lewis released him and before Hoven offered the position on July 21, 2025. The offered position did not later become unavailable; it remained open, and Petitioner refused it. A job does not become unavailable because the worker declines it.[205] Because the requalification sentence is never triggered, its exceptions for incarceration, resignation, and disciplinary termination do not come into play.

XII. Whether § 39-71-609, MCA, Applies, and What It Requires

¶ 107 Section 39-71-609, MCA, as amended in 2025, reads:[206]

> AN ACT REVISING WORKERS' COMPENSATION LAWS RELATING TO TOTAL DISABILITY BENEFITS; PROVIDING GUIDELINES IN WHICH TEMPORARY TOTAL DISABILITY BENEFITS ARE TERMINATED WHEN A CLAIMANT IS RELEASED TO FULL DUTY PRIOR TO OR ON REACHING MAXIMUM MEDICAL IMPROVEMENT; PROVIDING THAT THE BENEFITS ~~ARE~~ MAY BE TERMINATED ~~ON~~ AS OF THE DATE THAT A WORKER ~~HAS BEEN RELEASED~~ RETURNED TO FULL DUTY; AMENDING SECTION 39-71-609, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE.
>
> **Section 1.** Section 39-71-609, MCA, is amended to read:
>
> "**39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer -- 14-day**

[205] *Greene*, ¶ 5.

[206] 2025 Mont. Laws ch. 112, § 1 (H.B. 197).

notice required -- criteria for conversion of benefits -- claimant released to full duty. (1) Except as provided in ~~subsection~~ subsections (2) and (3), if an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer shall give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

(2) Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity. Unless the claimant is found, at maximum healing, to be without a permanent physical impairment from the injury, the insurer, prior to converting temporary total disability benefits or temporary partial disability benefits to permanent partial disability benefits:

(a) must have a physician's determination that the claimant has reached medical stability;

(b) must have a physician's determination of the claimant's physical restrictions resulting from the industrial injury;

(c) must have a physician's determination, based on the physician's knowledge of the claimant's job analysis prepared by a rehabilitation provider, that the claimant can return to work, with or without restrictions, on the job on which the claimant was injured or on another job for which the claimant is suited by age, education, work experience, and physical condition;

(d) shall give notice to the claimant of the insurer's receipt of the report of the physician's determinations required pursuant to subsections (2)(a) through (2)(c). The notice must be attached to a copy of the report.

(3) Notwithstanding subsections (1) and (2), when a claimant is released to full duty prior to or on reaching maximum medical improvement, temporary total disability benefits may be terminated as of the time the claimant returned to work or after 14 days' written notice, whichever is earlier."

¶ 108 In summary, § 39-71-609, MCA, as amended in 2025, applies here in part. Subsection (1) requires 14 days' written notice before an insurer terminates all biweekly compensation benefits. Respondent gave that notice on July 30, 2025. Subsection (2) governs the conversion of temporary total disability benefits or temporary partial disability

benefits to permanent partial disability benefits, and sets out the steps an insurer must take before converting benefits. Respondent did not convert Petitioner's benefits, so subsection (2) does not apply. Subsection (3) applies only when a claimant is released to full duty. Petitioner was not released to full duty, so subsection (3) does not apply.

¶ 109 Accordingly, § 39-71-701(4), MCA, supplies the basis for terminating Petitioner's TTD benefits, and § 39-71-609(1), MCA, supplies the procedure. Respondent complied with both.

A. Basis Versus Procedure

1. Petitioner's Argument

¶ 110 Petitioner argues that § 39-71-701(4), MCA, is the basis for termination and § 39-71-609, MCA, is the procedure, so a defect in either voids the termination.[207]

2. Respondent's Argument

¶ 111 Respondent argues that § 39-71-609(2), MCA, governs MMI and conversion to permanent partial disability benefits, not a refusal under § 39-71-701(4), MCA.[208]

¶ 112 The parties cite three cases regarding the applicability of § 39-71-609, MCA.

Schoeneman v. Liberty Insurance Corp.

¶ 113 Petitioner relies on *Schoeneman v. Liberty Insurance Corp*. There are two *Schoeneman* opinions. The first, 2007 MTWCC 28 (*Schoeneman I*), granted the claimant's motion for summary judgment and reinstated his TTD benefits. The second, 2007 MTWCC 46 (*Schoeneman II*), denied the insurer's motion for reconsideration. In *Schoeneman II*, Judge Shea clarified the scope of the first decision. He explained that benefits were reinstated because the insurer terminated them without the 14 days' written notice the statute requires.[209] He also explained that *Schoeneman I* did not hold that a physician must approve a job analysis before pre-MMI TTD benefits may be terminated. Because "absolutely no evidence of any job existed," the Court "did not need to reach the specifics of what kind of evidence would suffice."[210] Both opinions are discussed below.

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[207] Doc. 7 at 7 (citing *Daulton v. MHA Workers' Comp. Trust*, 2001 MTWCC 37, ¶ 31 (*Daulton I*); *Rainey*, ¶¶ 47–48); Doc. 14 at 11.

[208] Doc. 11 at 6 (citing *Daulton I*, ¶ 31; *Rainey*, ¶ 55).

[209] *Schoeneman II*, ¶ 9.

[210] *Id.,* ¶ 10.

Schoeneman I, 2007 MTWCC 28

¶ 114 Schoeneman injured his back at work in 2005 and 2006. His employer terminated his employment on August 3, 2006.[211] Liberty paid benefits under a reservation of rights (§ 39-71-608, MCA) and then stopped them without 14 days' written notice.[212] He was not at MMI, had a 30-pound lifting restriction, and could not return to his time-of-injury job, which required lifting 100 pounds and could not be modified. No other job or job analysis had been approved.[213] The parties agreed that the chiropractor's August 10, 2006, letter, which "purported to release Petitioner to return to work without restriction," was written solely to assist his job search and was not a genuine release.[214] The 2005 version of the Act applied.[215]

¶ 115 The issue was whether an insurer may terminate pre-MMI TTD benefits on a generic release to work "in some capacity," without regard to whether any job exists, and without notice.

¶ 116 Liberty argued the first sentence of § 39-71-609(2), MCA, governs pre-MMI claimants and the *Coles* criteria in § 39-71-609(2)(a)–(d), MCA, govern only post-MMI claimants, so a pre-MMI claimant released to work in some capacity could be cut off without notice whether or not any job existed.[216] Liberty conceded at oral argument that this reading creates a "black hole" for pre-MMI workers.[217] The Court rejected it: §§ 39-71-608, -609, and -701, MCA, "contemplate a claimant who is employable in the sense that a job exists which the claimant is physically and vocationally qualified to perform."[218] Schoeneman was not released in any practical sense: he was not at MMI, could not return to his time-of-injury job, and there was "absolutely no evidence that any job exists that he may perform."[219] *Edgar*, *Sears*, and *Daulton* were distinguished because in each the claimant was at MMI, received notice, and had a physician-approved job description or analysis.[220]

¶ 117 The *Schoeneman I* Court did not say what evidence of a potential job was sufficient. That question was addressed in *Schoeneman II*.

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[211] *Schoeneman I*, ¶ 3.

[212] *Id.,* ¶¶ 4–6.

[213] *Id.,* ¶¶ 8–11.

[214] *Id.,* ¶ 13.

[215] *Id.,* ¶ 15.

[216] *Id.,* ¶¶ 23–24.

[217] *Id.,* ¶ 44.

[218] *Id.,* ¶ 39.

[219] *Id.,* ¶ 45 (emphasis omitted).

[220] *Id.,* ¶¶ 38, 41–43.

¶ 118 *Schoeneman I* is not a § 39-71-701(4), MCA, case; it applied only § 39-71-609, MCA. It does not interpret the language of § 39-71-701(4), MCA.

¶ 119 Applying the *Schoeneman I* analysis here, two facts distinguish this case. The first is physician approval of an actual job. *Schoeneman I* does not hold that a physician must approve an actual job before pre-MMI TTD benefits end. It holds that a release must be practical, not hypothetical, where no job exists. *Schoeneman II* makes this explicit.[221]

¶ 120 In the case at bar, Mr. Rutledge had specific, measurable restrictions from his treating provider and an identified position with his time-of-injury employer, at the same wage, written to fit those restrictions. His capacity to work was practical, not hypothetical.

¶ 121 The second is notice. *Schoeneman I* turned on the lack of notice; this case does not. Schoeneman received no notice. Petitioner received 14 days' written notice on July 30, 2025.

¶ 122 Schoeneman had also been terminated by his employer,[222] yet the Court rested its decision on the absence of any job and the lack of notice, not on the termination. *Schoeneman I* offers no support for Petitioner's argument that termination ends the "same employer" relationship.

¶ 123 The *Schoeneman I* Court rejected reading one sentence in isolation to create a "black hole" that leaves a worker unable to work and without benefits.[223] It does not hold that § 39-71-105, MCA, policy overrides § 39-71-701(4) , MCA. Here, applying § 39-71-701(4), MCA, advances the return-to-work policy; there is no black hole because an actual job was available.

Schoeneman II, 2007 MTWCC 46

¶ 124 After *Schoeneman I* reinstated Schoeneman's TTD benefits, Liberty moved for reconsideration. It argued that the Court had held a statutory sentence contrary to public policy, impliedly overruled *Edgar* and *Sears*, relied on dicta, left unclear whether notice was required, wrongly addressed the meaning of "released to return to work in some capacity," and in effect required a pre-MMI job analysis.[224]

¶ 125 The Court responded. "I reinstated [Schoeneman's] benefits because [Liberty] failed to give 14 days' written notice, and as [Schoeneman] argued, such notice was statutorily required."[225] The Court also rejected the premise that the first sentence of § 39-71-609(2), MCA, is "somehow extractable from the whole"; § 39-71-609(2), MCA, is not

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[221] *Schoeneman II*, ¶ 10.

[222] *Schoeneman I*, ¶ 3.

[223] *Id.,* ¶ 44.

[224] *Schoeneman II*, ¶¶ 1, 4–10.

[225] *Id.,* ¶ 9.

divisible into separate pre- and post-MMI definitions of "released to return to work in some capacity."[226]

¶ 126 Of particular importance here, Liberty argued that the Court had effectively required a physician's pre-MMI approval of a job analysis.[227]

¶ 127 The Court emphasized that it did not conclude that a pre-MMI approval of a job analysis was required.[228] The statutes contemplate a claimant "employable in the sense that a job exists," and like *Coles*, *Edgar*, and *Sears*, the Court "did not hold that a complete, technical, and current job analysis is the only way to fulfill this requirement." Because "absolutely no evidence of any job existed," the Court "did not need to reach the specifics of what kind of evidence would suffice," leaving that question for "a future case when that issue is actually before the Court."[229]

¶ 128 This case presents that issue.

¶ 129 Petitioner cites *Schoeneman I* for the rule that a physician must approve an actual job before pre-MMI TTD ends.[230] *Schoeneman II* says the Court did not so hold and left open what evidence of a job suffices.[231]

¶ 130 Respondent in the instant case supplies the evidence *Schoeneman II* left open: specific, measurable restrictions from the treating provider and an identified position with the time-of-injury employer written to fit them, which satisfies the *Clark* standard.

¶ 131 The *Schoeneman I* holding rested on the lack of notice.[232] Petitioner received 14 days' written notice on July 30, 2025, so the actual holding does not assist Petitioner.

Daulton v. MHA Workers' Compensation Trust

¶ 132 Both parties cite *Daulton v. MHA Workers' Compensation Trust*. There are two *Daulton* opinions also. The first, 2001 MTWCC 37 (*Daulton I*), entered findings of fact, conclusions of law, and judgment after trial, holding that the claimant was not entitled to reinstatement of her TTD benefits. The second, 2001 MTWCC 37A (*Daulton II*), denied the claimant's motion for reconsideration. Both opinions arose under the 1997 version of § 39-71-609, MCA, before the 2001 amendments added the conversion criteria now found in § 39-71-609(2)(a)–(d), MCA.[233] In both, the claimant had reached MMI, her physicians

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[226] *Id.,* ¶ 8.

[227] *Id.,* ¶ 10.

[228] *Id.*

[229] *Id.* (emphasis added) (internal emphasis omitted).

[230] *Schoeneman I*, ¶ 45; Doc. 14 at 10.

[231] *Schoeneman II*, ¶ 10.

[232] *Id.,* ¶ 9.

[233] *Daulton I*, ¶¶ 29, 34.

had approved a vocationally identified job, and the insurer had given 14 days' written notice.[234] In *Daulton II*, the Court clarified that a physician's release is sufficient where the physician considered the claimant's physical condition, and that the Court does not make "a de novo determination, based on claimant's subjective testimony, as to whether she in fact is capable of performing the job."[235] Both opinions are discussed below.

Daulton I, 2001 MTWCC 37

¶ 133 Marsha Daulton, an RN at St. Peter's Hospital, had an accepted occupational disease of both shoulders. She worked part time in a modified, non-nursing data-entry job at St. Peter's after right rotator cuff surgery, then quit working altogether on July 17, 1998.[236] Dr. Carpenter found her at MMI for the right shoulder (Feb. 1999, 8%) and left shoulder (Apr. 1999, 4%).[237]

¶ 134 Dr. Weinert, at the insurer's request, gave specific restrictions and reviewed job analyses prepared by the insurer's vocational consultant. He disapproved two jobs, unconditionally approved RN Diabetes Coordinator, and conditionally approved nurse case manager.[238] Dr. Carpenter concurred, adding that she "may continue to have symptoms" that could make computer work impossible.[239] On November 24, 1999, MHA gave 14 days' written notice terminating TTD, citing MMI and the approved jobs; the reports and job descriptions had been sent to claimant or her attorney.[240] The approved jobs were vocationally identified positions, not positions offered by the time-of-injury employer. The 1997 version of the act applied.[241]

¶ 135 The issue was whether a claimant at MMI, released by her physicians to a vocationally identified job and given 14 days' notice, is entitled to reinstatement of TTD benefits.

¶ 136 TTD eligibility ends when the worker reaches maximum healing.[242] Section 39-71-701, MCA, "must also be read together with section 39-71-609, MCA (1997), which governs termination of claimant's temporary total disability benefits."[243] The 1997 version of § 39-71-609, MCA, consisted of subsection (1) (14 days' notice) and a one-sentence

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[234] *Id.,* ¶¶ 22, 26–27.

[235] *Daulton II*, ¶ 2.

[236] *Daulton I*, ¶¶ 6–12.

[237] *Id.,* ¶¶ 16–17.

[238] *Id.,* ¶ 18.

[239] *Id.,* ¶ 21.

[240] *Id.,* ¶¶ 22–23.

[241] *Id.,* ¶ 29.

[242] § 39-71-701(1)(a), MCA (1997); *Daulton I*, ¶ 30.

[243] *Daulton I*, ¶ 31 (citing § 1-2-101, MCA).

subsection (2): “Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity.”[244]

¶ 137 The claimant’s entitlement to TTD ceased when she reached MMI.[245] The requirements of § 39-71-609, MCA, were satisfied: the 14-day notice in subsection (1) was given, and “[m]oreover, under subsection (2), no notice was required because claimant had ‘been released to return to work in some capacity.’ ”[246] The release finding rested on Dr. Weinert’s unqualified approval of a vocationally identified job, seconded by Dr. Carpenter.[247]

¶ 138 The second issue was whether the insurer had to satisfy the *Coles* criteria (MMI, restrictions, physician approval of a job based on knowledge of its duties, and notice with the report) before terminating TTD.

¶ 139 The Court said no. Under the post-1995 statute, the *Coles* criteria were inapplicable; § 39-71-609(2) , MCA, required only a release to “work in some capacity,” a term that “is broad, indicating a release to any sort of work is sufficient.” “Had the legislature intended a more careful job analysis, then it could have set forth additional criteria,” and the Court may not insert them.[248] The Court noted the 2001 Legislature had reimposed the *Coles* requirements.[249] Alternatively, *Coles* was satisfied on this record.[250]

¶ 140 Petitioner cites *Daulton I* for the rule that §§ 39-71-701 and 39-71-609, MCA, are read together and that § 39-71-609, MCA, governs TTD termination,[251] and for the point that *Daulton* applied § 39-71-609, MCA, to a TTD termination with no PPD or PTD issue.[252] Respondent cites the same paragraph as a § 39-71-609, MCA, case arising in the MMI context.[253]

¶ 141 *Daulton* does support reading §§ 39-71-701 and 39-71-609, MCA, together.[254] *Daulton* is a post-MMI case. It does not decide which part of § 39-71-609, MCA, applies to a pre-MMI § 39-71-701(4), MCA, refusal.

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[244] *Id.,* ¶ 32.

[245] *Id.,* ¶ 30.

[246] *Id.,* ¶ 32.

[247] *Id.,* ¶ 27.

[248] *Id.,* ¶ 34.

[249] *Id.* (noting that the 2001 Legislature reimposed the *Coles* requirements, 2001 Mont. Laws ch. 174, §§ 1–2).

[250] *Daulton I*, ¶¶ 35–39.

[251] *Daulton I*, ¶ 31; Doc. 7 n.20.

[252] *Daulton I*, ¶¶ 31, 41–42; Doc. 14 at 10.

[253] *Daulton I*, ¶ 31; Doc. 11 at 6.

[254] *Daulton I*, ¶ 31.

¶ 142 Workers' Compensation law must always be read in light of which version of the statute is being applied by the Court. *Daulton* construed the 1997 version of § 39-71-609, MCA, before the 2001 amendments added the conversion criteria now in § 39-71-609(2)(a)–(d), MCA,. The 1997 version did not contain the conversion language, which is central to the issue in the instant case. As such, it is of limited persuasive value.

¶ 143 The facts in *Daulton* are very different. Daulton was at MMI, Petitioner was not. Her TTD ended under § 39-71-701(1)(a), MCA, not § 39-71-701(4), MCA. *Daulton* does not construe § 39-71-701(4), MCA, the "same employer" language, or refusal of an offered job.

***Daulton II*, 2001 MTWCC 37A**

¶ 144 On reconsideration, Daulton raised three points.

¶ 145 She argued that (1) the third *Coles* criterion was not met because, based on her own testimony, she could not physically perform the approved job; (2) she was not at MMI because her left shoulder was getting worse; and (3) there were no jobs she could perform.[255]

¶ 146 The Court summarily disposed of these arguments. First, it is the place of the physician to determine if the claimant can perform the job, not a de novo finding by the Court.[256]

¶ 147 Second, the physician's determination of MMI is controlling, the claimant's testimony that her condition is getting worse is not sufficient to rebut the physician's determination.[257]

¶ 148 Neither party cites *Daulton II*, and justifiably so, as it adds only a small amount to the analysis before the Court. Daulton's testimony that she could not do the identified job was not sufficient. This is persuasive when considering Petitioner's assertion in the instant case that he could not perform the parts assistant job, without ever actually trying the job.

¶ 149 *Daulton I* and II arose at MMI, under the previous 1997 statute, and applied the *Coles* framework in the alternative. It does not construe § 39-71-701(4), MCA, the "same employer" language, or pre-MMI termination.[258]

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[255] *Daulton II*, ¶¶ 2–4.

[256] *Id.,* ¶ 2.

[257] *Id.,* ¶ 3.

[258] *Daulton I*, ¶¶ 26–27, 30–34; *Daulton II*, ¶¶ 2–3.

***National Union Fire Insurance Company of Pittsburgh v. Rainey*, 2021 MTWCC 10 (*Rainey*).**

¶ 150 This was an appeal of a DLI order awarding interim benefits under § 39-71-610, MCA. The burden was on the claimant only to present a strong prima facie case.[259] This was decided under the 2017 version of the workers' compensation act.[260] This was a decision on interim benefits, and not a decision on the merits.

¶ 151 Rainey, a road-paving laborer, broke his ankle in October 2018. After surgeries and two full-duty releases, his time-of-injury employer "would not rehire him"; he tried a job with another company and could not do it.[261] He was later restricted to light duty and was not at MMI.[262]

¶ 152 A December 21, 2020, Medical Status Form had the "Released to Full Duty" box checked, with no restrictions and no MMI box checked.[263] The adjuster thought it was probably a mistake; the vocational provider declined to send the time-of-injury JA to the doctor.[264] A new adjuster nonetheless terminated TTD on February 26, 2021, solely on that form, without seeking clarification and without complying with § 39-71-609(2)(a)–(d), MCA.[265] The Court found the full-duty release was likely a mistake.[266]

¶ 153 The Court held §§ 39-71-701 and -609, MCA, are read together.[267] "For claimants who have been eligible for and receiving TTD benefits, § 39-71-609(2), MCA, governs the termination of the claimant's TTD benefits and, when applicable, the conversion of the claimant's TTD benefits to PPD benefits."[268]

¶ 154 The Court held Rainey had presented a strong prima facie case[269]

¶ 155 Even assuming the full duty release was not a mistake, a general release to "some unknown job" is not a release "in some capacity" under the first sentence of § 39-71-609(2), MCA. The Court read *Schoeneman I* as holding "that a physician must approve an actual job for which the claimant is qualified before an insurer can terminate the

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[259] *Rainey*, ¶¶ 5–6, 44.

[260] *Id.,* ¶ 43.

[261] *Id.,* ¶¶ 9–20.

[262] *Id.,* ¶¶ 21–24, 56.

[263] *Id.,* ¶ 29.

[264] *Id.,* ¶¶ 31–34.

[265] *Id.,* ¶¶ 37–38.

[266] *Id.,* ¶ 35.

[267] *Id.,* ¶ 47 n.10 (citing *Daulton I*, ¶ 31).

[268] *Id.,* ¶ 48.

[269] *Id.,* ¶ 49.

claimant's TTD benefits under the first sentence of § 39-71-609(2), MCA",[270] and held: "there is no evidence that any job exists that Rainey may perform" and the physician had "not approved an actual job."[271] The Court did not cite *Schoeneman II* (2007 MTWCC 46).

¶ 156 The Court reasoned, "because his time-of-injury employer ended his employment," the insurer "most likely will not be able to terminate his TTD benefits until Rainey reaches MMI"; at MMI, the *Coles* criteria apply if there is impairment.[272] The Court included footnote 26: "If Rainey was still working for his time-of-injury employer, and if Rainey's treating physician released him to work in an available position for that employer that paid an equivalent or higher wage," the insurer "could suspend his TTD benefits before he reached MMI under § 39-71-701(4), MCA."

¶ 157 Petitioner relies heavily on *Rainey*. He cites it for three propositions: that § 39-71-609, MCA, governs TTD termination;[273] that a pre-MMI release requires a physician-approved actual job, under a three-path reading of § 39-71-609(2), MCA;[274] and that termination by the employer forecloses a pre-MMI termination of TTD benefits, so the worker must still be employed for a job to be "available."[275] Respondent argues that *Rainey* is distinguishable because it involved a full-duty release and is a § 39-71-609(2), MCA, full-duty case, and that H.B. 197 superseded it.[276] Petitioner replies that H.B. 197 reached only full-duty releases.[277]

¶ 158 *Rainey* was a § 39-71-610, MCA, interim-benefits appeal decided on a prima facie standard, like *Clark*. Its statements are findings of a strong prima facie case, not a summary judgment ruling on undisputed facts.

¶ 159 What drove the result in *Rainey* is absent in the case at bar. The operative facts in *Rainey* were a mistaken check-box release, no restrictions on the form, no job of any kind available, and an employer that would not rehire.

¶ 160 Contrast that with the current fact pattern. Petitioner had a clear release with specific, measurable restrictions from his treating provider, an identified position written to fit them, the same wage and benefits, and 14 days' notice. Petitioner had a job

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[270] *Id.,* ¶ 51.

[271] *Id.,* ¶ 53.

[272] *Id.,* ¶ 57.

[273] *Id.,* ¶¶ 47–48; Doc. 7 n.20; Doc. 14 nn.44–45.

[274] *Rainey*, ¶¶ 51–57; Doc. 7 at 8–9.

[275] *Rainey*, ¶ 57.

[276] *Rainey*, ¶ 55; Doc. 11 at 6–7.

[277] Doc. 14 at 9.

available, accommodating his restrictions, at full wage and benefits. The facts are very different from *Rainey*.

¶ 161 If there was only *Schoeneman I*, *Rainey* would provide more support for Petitioner's argument. But, there is *Schoeneman II*. In *Schoeneman II*, the Court explained that it "did not conclude that a pre-MMI approval of a job analysis was required" and left open what evidence suffices.[278] *Rainey* did not cite *Schoeneman II*. *Rainey*'s holding rests on the absence of any job; it is not a holding on what physician approval § 39-71-701(4), MCA, requires, which *Clark* addresses.[279]

¶ 162 *Clark* is a 2018 case, and is fully discussed at ¶ 39, et seq., supra. Relevant to the specific issue being discussed here, *Clark* did not require a treating physician to approve a job analysis or job description under § 39-71-701(4), MCA.[280]

¶ 163 Rather, *Clark* describes two ways to satisfy the release requirement of § 39-71-701(4), MCA. The physician may approve the actual job, provided the physician has "sufficient information about the position for this Court to conclude that the physician actually approved it."[281] Or, "[i]f the treating physician does not approve an actual job, he must give specific restrictions that clearly describe what a worker can and cannot do in the worker's modified duty."[282]

¶ 164 In the case at bar, Petitioner's case falls under the second path. The insurer in *Clark* failed because the restrictions ("light duty driving," "local" work, work "within the region") were too vague for the Court to tell whether either job fell within them.[283]

¶ 165 Here, Lewis released Petitioner to modified duty on June 6, 2025, and again on July 11, 2025, with restrictions that were specific and measurable: lifting up to 10 pounds only occasionally; occasional pushing, pulling, and bending; no climbing; and alternating between sitting, standing, and walking as needed.[284]

¶ 166 Petitioner does not argue that these restrictions are ambiguous, invoking the *Clark* analysis, instead he argues that Hoven would not honor them. Hoven's written description of the Parts Assistant/Receptionist position lists greeting customers, answering phones, routing messages, clerical work, distributing mail, and organizing parts inventory.[285] The offer letter stated that all restrictions would be accommodated.

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[278] *Schoeneman II*, ¶ 10.

[279] *Clark*, ¶¶ 28–29.

[280] *Clark*, ¶ 28.

[281] *Id.,* ¶ 28.

[282] *Id.,* ¶ 29.

[283] *Id.,* ¶¶ 27, 29.

[284] Doc. 5, Exs. B, F; Doc. 7, Ex. D at 4–5.

[285] Doc. 5, Ex. G (TIC-JR 000801).

The Court can compare those duties with Lewis's restrictions and determine that the position falls within them. That is the comparison *Clark* could not make. Under the interpretation applied to § 39-71-701(4), MCA, in *Clark*, the release requirement of § 39-71-701(4), MCA, is satisfied.

¶ 167 It is important to keep in mind *Rainey* was decided under the 2017 statute. New § 39-71-609(3), MCA, reaches only full-duty releases, and § 39-71-609(2), MCA, is unchanged, so H.B. 197 neither supersedes nor revives *Rainey* on these facts.[286] Respondent's supersession argument is overstated. *Rainey* is distinguishable based on the very different factual presentation.

3. Discussion

¶ 168 Section 39-71-609(1), MCA, requires 14 days' written notice before an insurer terminates all biweekly compensation benefits. Respondent gave that notice on July 30, 2025.

¶ 169 Section 39-71-609(2), MCA, is read as a whole.[287] Read as a whole, it addresses the termination of TTD benefits upon a release to return to work in some capacity and the steps an insurer must take "prior to converting temporary total disability benefits or temporary partial disability benefits to permanent partial disability benefits."[288] Those steps, set out in § 39-71-609(2)(a)–(d), MCA, and often referred to as the "*Coles* criteria," govern a conversion of benefits.

¶ 170 This case does not involve a conversion. Respondent did not convert Petitioner's benefits; it terminated TTD benefits under § 39-71-701(4), MCA, which is an independent basis for terminating TTD benefits before MMI.[289] Section 39-71-609(2), MCA, therefore does not govern this termination. Nor does § 39-71-609(2), MCA, require a physician to approve a job analysis before pre-MMI TTD benefits end.[290] Even if § 39-71-609(2), MCA, applied, its requirement that the worker be "released to return to work in some capacity," meaning capacity to work "in the practical sense and not merely the hypothetical sense,"[291] is satisfied, as discussed in Section XII.C.3.

¶ 171 Section 39-71-609(3), MCA, is the heart of the new language the Legislature added in 2025. This subsection addresses claimants released to full duty. Petitioner was never released to full duty, and this subsection does not apply.

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[286] See ¶ 184.

[287] *Schoeneman II*, ¶ 8.

[288] § 39-71-609(2), MCA.

[289] *Rainey*, ¶ 57 n.26.

[290] *Schoeneman II*, ¶ 10.

[291] *Schoeneman I*, ¶ 45.

B. Whether § 39-71-609(2), MCA, Reaches a Pre-MMI Termination

1. Petitioner's Argument

¶ 172 Petitioner argues that § 39-71-609(2), MCA, governs any termination of TTD benefits, not just conversion to permanent partial disability benefits.[292] He argues that *Daulton* applied § 39-71-609, MCA, to a TTD termination with no permanent partial disability issue.[293]

2. Respondent's Argument

¶ 173 Respondent argues that Petitioner is not at MMI, was not released to full duty, and was not converted to permanent partial disability benefits, so § 39-71-609(2), MCA, is inapplicable.[294] It argues that refusal cases under § 39-71-701(4), MCA, do not apply § 39-71-609(2), MCA, or require approval of a job analysis.[295]

3. Discussion

¶ 174 Petitioner relies on *Rainey*, which states that "[f]or claimants who have been eligible for and receiving TTD benefits, § 39-71-609(2), MCA, governs the termination of the claimant's TTD benefits and, when applicable, the conversion of the claimant's TTD benefits to PPD benefits."[296] Read in isolation, that sentence supports Petitioner. But *Rainey* must be read in context. The insurer there terminated TTD benefits under § 39-71-609(2), MCA, based on a Medical Status Form that purported to release the claimant to full duty, and the issue presented was "whether National Union had the right to terminate Rainey's TTD benefits under § 39-71-609(2), MCA, based solely on the Medical Status Form purporting to release him to full duty."[297] *Schoeneman I* is the same: the insurer terminated on a generic release under the first sentence of § 39-71-609(2), MCA.[298] Neither case decided whether § 39-71-609(2), MCA, is the only route by which pre-MMI TTD benefits may end.

¶ 175 *Rainey* itself recognizes that it is not. It explains that if the claimant "was still working for his time-of-injury employer, and if Rainey's treating physician released him to work in an available position for that employer that paid an equivalent or higher wage than

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[292] *Daulton I,* ¶¶ 31, 41–42; *Rainey*, ¶ 48; *Schoeneman I*, ¶¶ 45–46; Doc. 14 at 10.

[293] *Daulton I,* ¶¶ 31, 41–42; Doc. 14 at 10.

[294] Doc. 11 at 6–7.

[295] *Clark*, ¶ 28; *Larson*, ¶ 25; *Sears II*, ¶ 5; Doc. 11 at 7.

[296] *Rainey*, ¶ 48.

[297] *Id.,* ¶ 55.

[298] *Schoeneman I*, ¶¶ 23–24, 45.

he received at the time of his injury, National Union could suspend his TTD benefits before he reached MMI under § 39-71-701(4), MCA."[299]

¶ 176 Rainey identifies other routes as well: § 39-71-701(7), MCA, if the claimant starts working, and § 39-71-1106(1), MCA, if the claimant is uncooperative with his treating physician.[300] None of these routes runs through § 39-71-609(2), MCA, or its conversion criteria. *Daulton*, on which *Rainey* relies for reading §§ 39-71-609 and -701, MCA, together, does not hold otherwise; it arose at MMI under the 1997 statute.[301]

¶ 177 Here, Respondent did not invoke § 39-71-609(2), MCA. It terminated Petitioner's TTD benefits under § 39-71-701(4), MCA, after Petitioner declined a modified position with his time-of-injury employer at the same wage, and it gave the 14 days' written notice § 39-71-609(1), MCA, requires. That is the route *Rainey* describes.[302] Section 39-71-609(2), MCA, therefore does not govern this termination. Whether a former employer may offer the position after ending the employment relationship is addressed in Section VII.

C. What § 39-71-609, MCA, Requires Before Ending Pre-MMI TTD Benefits

1. Petitioner's Argument

¶ 178 Petitioner argues that a pre-MMI release "in some capacity" requires physician approval of an actual job.[303] He argues that *Rainey* divides § 39-71-609(2), MCA, into three paths based on MMI and impairment.[304] He argues that *Rainey* supports the principle that the worker must still be employed for a job to be available.[305] And he argues that, without a physician-approved job, his TTD benefits were not lawfully terminated.[306]

2. Respondent's Argument

¶ 179 Respondent argues that no physician approval of a job description was required before terminating benefits under § 39-71-701(4), MCA.[307]

3. Discussion

¶ 180 Before an insurer ends pre-MMI TTD benefits under § 39-71-701(4), MCA, § 39-71-609, MCA, requires only the 14 days' written notice in subsection (1), which

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[299] *Rainey*, ¶ 57 n.26.

[300] *Id.,* ¶ 57 n.27.

[301] *Rainey*, ¶ 47 n.10; *see* Section XII.A, ¶¶ 140–143.

[302] *Rainey*, ¶ 57 n.26.

[303] *Schoeneman I*, ¶ 45; *Rainey*, ¶¶ 51–53; Doc. 7 at 8–9; Doc. 14 at 9–11.

[304] *Rainey*, ¶¶ 51–57; Doc. 7 at 8–9.

[305] Doc. 7 at 9.

[306] Doc. 7 at 9; Doc. 14 at 11.

[307] Doc. 11 at 7.

Respondent gave on July 30, 2025.[308] The conversion criteria in § 39-71-609(2)(a)–(d), MCA, do not apply,[309] and no physician approval of a job analysis is required before pre-MMI TTD benefits end.[310] The release requirement is satisfied under *Clark*'s second path.[311] Petitioner's capacity to work was practical, not hypothetical.[312]

D. Effect of H.B. 197 (2025)

1. Petitioner's Argument

¶ 181 Petitioner argues that new § 39-71-609(3), MCA, reaches only full-duty releases, so *Rainey* still governs releases to modified duty.[313]

2. Respondent's Argument

¶ 182 Respondent argues that § 39-71-609, MCA, is procedural, so the 2025 version applies and supersedes *Rainey*.[314] Respondent quotes *Sears*: "Section 39-71-609, MCA, is procedural."[315]

3. Discussion

¶ 183 Substantive rights are fixed by the statutes in effect on the date of injury.[316] Legislation affecting only procedure, not substantive rights, is outside § 1-2-109, MCA, and applies to pending matters.[317] *Sears II applied Sky Country* and *Weiss* to hold that § 39-71-609(2), MCA (1995), is "procedural in nature."[318]

¶ 184 This discussion is not relevant to the resolution of this case. Section 39-71-609(3), MCA, reaches only full-duty releases, § 39-71-609(2), MCA, is unchanged, and § 39-71-701(4), MCA, has not been amended since 2001. The 2025 amendments do not change the analysis under the presented facts.

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[308] *See* ¶ 168.

[309] *See* ¶¶ 169–170, 174–177.

[310] *Schoeneman II*, ¶ 10.

[311] *See* ¶¶ 162–166.

[312] *Schoeneman I*, ¶ 45.

[313] § 39-71-609(3), MCA (2025); Doc. 14 at 9.

[314] *Weiss v. State*, 219 Mont. 447, 449, 712 P.2d 1315, 1316 (1986); Doc. 11 at 7.

[315] *Sears I*, Discussion pt. II; Doc. 11 at 7.

[316] *Buckman*, 224 Mont. at 321, 730 P.2d at 382.

[317] *Sky Country*, 239 Mont. at 379, 780 P.2d at 1137 (citing *Weiss*, 219 Mont. at 449).

[318] *Sears II,* ¶ 15.

XIII. Public Policy, § 39-71-105(3), MCA

A. Petitioner's Argument

¶ 185 Petitioner argues that the employer violated § 39-71-105(3), MCA, by firing him, and that the policy cannot compel a worker's return to a former employer.[319] He argues that a single sentence cannot be read to contradict the Act's policy.[320] He argues that compelled return would be "servitude," and that "[t]he workers' compensation system is not a serfdom."[321] He argues that an employer is not compelled to rehire a worker who resigns and changes his mind, so the reverse should also hold.[322] And he argues that Respondent's reading rewards termination and punishes injury.[323]

B. Respondent's Argument

¶ 186 Respondent argues that a full-wage modified offer advances the policy of § 39-71-105(3), MCA, and that allowing refusal rewards detachment from the workforce.[324] It argues that § 39-71-701(4), MCA, must be read in harmony with § 39-71-105, MCA.[325] It argues that there was no bad faith or coercion: the termination was for a legitimate business reason, and Hoven asked to be kept apprised.[326] And it argues that nothing in § 39-71-105(3), MCA, creates a right to refuse appropriate work while drawing benefits.[327]

C. Discussion

¶ 187 The explicit policy of the Workers' Compensation Act is to return an injured worker to work as soon as possible after the worker has suffered a work-related injury.[328]

¶ 188 The time-of-injury employer offered a job, within Petitioner's restrictions, at the same wage and benefits. Had Petitioner accepted that job, he would have returned to work, and the public policy would have been fulfilled.

¶ 189 If Respondent's argument is rejected and Petitioner's argument accepted, Petitioner would continue to receive TTD benefits and would not return to the workforce.

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[319] Doc. 7 at 9–10; Doc. 12 at 6.

[320] *Schoeneman I*, ¶ 44; Doc. 7 at 9.

[321] Doc. 12 at 6.

[322] *Id*.

[323] *Id*.

[324] § 39-71-105(1)–(3), MCA; Doc. 5 at 5.

[325] Doc. 5 at 5.

[326] Doc. 15 at 5.

[327] *Id*.

[328] § 39-71-105, MCA.

¶ 190 Petitioner's reciprocity and "serfdom" arguments misread the statute. Section 39-71-701(4), MCA, compels no one to work. Petitioner was free to decline Hoven's offer, just as an employer is free not to rehire a worker who resigns. The statute addresses only the consequence of that choice for wage-loss benefits. When the treating physician has released the worker to a position within his restrictions with the time-of-injury employer at an equivalent wage, and the worker refuses it, the refusal, not the injury, causes the wage loss, and TTD benefits end.[329]

¶ 191 The explicit public policy of the Legislature is fulfilled by adopting Respondent's argument and would be defeated by adopting Petitioner's argument. Respondent is correct.

XIV. Section 39-71-317, MCA, Reemployment Preference

A. Petitioner's Argument

¶ 192 Petitioner argues that the preference is the worker's to exercise and cannot be used to compel reemployment under threat of losing benefits.[330] He argues that he never applied, that the job was not comparable, and that it was created only for this claim.[331] And he argues that no law requires an employer and employee to enter into a new contract.[332]

B. Respondent's Argument

¶ 193 Respondent argues that the preference survives a termination for business reasons and that Hoven's offer honored it.[333] Respondent cites § 39-71-317, MCA, as a preference, not as compulsion.[334]

C. Discussion

¶ 194 The return-to-work preference is a benefit provided to the injured worker, and it is discretionary with the worker. If Hoven had solicited applications for employment, and if Petitioner had applied, the preference would be in play. This statute is inapplicable to the current facts and offers no support to either party's position.

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[329] *Walters*, ¶ 34; *Larson*, ¶ 29.

[330] § 39-71-317(2), MCA; Doc. 7 at 10–11; Doc. 12 at 6–7.

[331] Doc. 12 at 7.

[332] Doc. 7 at 10.

[333] *Walters*, ¶ 37; Doc. 5 at 5–6; Doc. 15 at 6.

[334] Doc. 15 at 6.

XV. Reasonableness and Attorney Fees

A. Petitioner's Argument

¶ 195 Petitioner argues that refusing to apply all of § 39-71-701(4), MCA, is per se unreasonable.[335] The Petition also seeks attorney fees and a penalty under §§ 39-71-611 and -2907, MCA.[336]

B. Respondent's Argument

¶ 196 Respondent argues that it acted reasonably in all regards.[337]

C. Discussion

¶ 197 Because Respondent properly terminated Petitioner's TTD benefits, Petitioner has not prevailed. He is therefore not entitled to attorney fees under § 39-71-611, MCA, or to a penalty under § 39-71-2907, MCA. Respondent's fourth ground for summary judgment, that it acted reasonably, is moot.

ORDER

¶ 198 Respondent's Motion for Summary Judgment is **granted**.

¶ 199 Petitioner's Cross-Motion for Summary Judgment is **denied**.

¶ 200 Pursuant to Workers' Compensation Court Rule 348(2), this Order is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED this 13th day of November, 2026.

(SEAL)

/s/ Lee Bruner
Judge Lee Bruner

c: Megan Miller
Joe C. Maynard

Submitted: February 11, 2026
February 17, 2026

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[335] Doc. 7 at 2.

[336] Doc. 1, ¶ 12.

[337] Doc. 4, ¶ 4; Doc. 3, ¶ 16.