

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2009 MTWCC 33

WCC No. 2009-2236

WILLIAM SHORT

Petitioner

vs.

J.H. KELLY HOLDINGS, LLC

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Petitioner William Short petitioned the Court for a determination of the appropriate labor market for purposes of terminating temporary total disability benefits pursuant to § 39-71-609, MCA. Petitioner was a permanent resident of Shoreline, Washington, at the time he was injured. Petitioner's injury occurred at a temporary work assignment as a millwright in Missoula, Montana. Shortly after Petitioner's injury, he moved to Clark Fork, Idaho. A vocational rehabilitation provider developed several job analyses utilizing the Montana and Shoreline, Washington, labor markets. Petitioner's treating physician approved six of these alternative job analyses, and Respondent J.H. Kelly Holdings, LLC, terminated Petitioner's TTD benefits based on the treating physician's approvals. Petitioner argues that Clark Fork, Idaho, is his labor market because he currently resides and has sought employment there. Petitioner also petitioned the Court for a determination of whether he is permanently totally disabled.

Held: In determining the appropriate labor market for purposes of terminating TTD benefits pursuant to § 39-71-609, MCA, the Court employs a fact-driven analysis. In this case, Petitioner permanently resided in Shoreline, Washington, from 1998 through the time of his injury. Petitioner accepted millwright jobs throughout the Pacific Northwest, but returned to Shoreline as his residential base between 2003 and the time of his injury. At the time of his injury, Petitioner worked in Montana only on a temporary basis. After his injury, Petitioner returned to Shoreline, and testified that he would have stayed there for his recovery had he been able to locate a treating physician in that region. Although Petitioner testified that he could not locate a treating physician in Shoreline willing to accept Montana workers' compensation insurance, he also testified that he moved from Shoreline to Clark

Fork was because he knew other millwrights living there and envisioned working as a millwright again after recovering from his injury. Based on these factors, Shoreline, Washington is the appropriate labor market for purposes of terminating Petitioner's TTD benefits. Regarding Petitioner's PTD status, Petitioner's treating physician restricted him to medium duty work and a fifty-pound lifting restriction. The treating physician approved six job analyses that complied with the approved restrictions. A vocational rehabilitation provider testified that Petitioner had a reasonable prospect of performing all of these approved jobs. Therefore, Petitioner failed to prove that he is permanently and totally disabled.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-609. Although the term "appropriate labor market" is not specifically found in the criteria set forth in *Coles v. Seven Eleven Stores*, later codified in § 39-71-609, MCA, the Montana Supreme Court recognized when it affirmed this Court's decision in *Coles* that "[d]isability has non-medical as well as medical components."

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-609. The Court must employ a fact-driven analysis in determining a petitioner's appropriate labor market for purposes of developing alternative job analyses pursuant to § 39-71-609, MCA. In this case the Court considered a number of factors to conclude that Shoreline, Washington, is the appropriate labor market including: (1) the petitioner permanently resided in Shoreline, Washington, from 1998 through the time of his injury in 2005; (2) the petitioner accepted millwright jobs throughout the Pacific Northwest, but returned to Shoreline as his residential base between 2003 and the time of his injury; (3) the petitioner worked in Montana only on a temporary basis, returned to Shoreline after his injury and testified that he would have stayed there for his recovery had he been able to locate a treating physician in the area; and (3) the petitioner moved from Shoreline to Clark Fork, Idaho, because he knew other millwrights living there and envisioned working as a millwright again after recovering from his injury.

Benefits: Termination of Benefits. The Court must employ a fact-driven analysis in determining a petitioner's appropriate labor market for purposes of developing alternative job analyses pursuant to § 39-71-609, MCA. In this case the Court considered a number of factors to conclude that Shoreline, Washington, is the appropriate labor market including: (1) the petitioner permanently resided in Shoreline, Washington, from 1998 through the time of his injury in 2005; (2) the petitioner accepted millwright jobs throughout the

Pacific Northwest, but returned to Shoreline as his residential base between 2003 and the time of his injury; (3) the petitioner worked in Montana only on a temporary basis, returned to Shoreline after his injury and testified that he would have stayed there for his recovery had he been able to locate a treating physician in the area; and (3) the petitioner moved from Shoreline to Clark Fork, Idaho, because he knew other millwrights living there and envisioned working as a millwright again after recovering from his injury.

Vocational-Return to Work Matters: Labor Market. The Court must employ a fact-driven analysis in determining a petitioner's appropriate labor market for purposes of developing alternative job analyses pursuant to § 39-71-609, MCA. In this case the Court considered a number of factors to conclude that Shoreline, Washington, is the appropriate labor market including: (1) the petitioner permanently resided in Shoreline, Washington, from 1998 through the time of his injury in 2005; (2) the petitioner accepted millwright jobs throughout the Pacific Northwest, but returned to Shoreline as his residential base between 2003 and the time of his injury; (3) the petitioner worked in Montana only on a temporary basis, returned to Shoreline after his injury and testified that he would have stayed there for his recovery had he been able to locate a treating physician in the area; and (3) the petitioner moved from Shoreline to Clark Fork, Idaho, because he knew other millwrights living there and envisioned working as a millwright again after recovering from his injury.

Vocational-Return to Work Matters: Job Analysis. Where an employee was injured while working as a millwright and had previously demonstrated a willingness to travel for this type of employment, his labor market would be the states where he had previously worked. However, it makes little sense to use a millwright's multi-state labor market in developing *alternative* job analyses. Although it would be reasonable to expect the employee to travel in the same manner as he had before his injury if he returned to his time-of-injury job, it is not reasonable to expect him to travel as an itinerant bowling attendant.

¶ 1 The trial in this matter was held on June 11, 2009, in Missoula, Montana. Petitioner William Short was present and represented by Leslae J.E. Dalpiaz. Respondent J.H. Kelly Holdings, LLC, was represented by Ronald W. Atwood.

¶ 2 Exhibits: Exhibits 1 through 22 were admitted without objection.

¶ 3 Witnesses and Depositions: William Short, Kathy Kleinkopf, Eli Harman, and Jerry Davis were sworn and testified at trial.

¶ 4 Issues Presented: The Pretrial Order states the following contested issues of law:

¶ 4a What is the appropriate labor market for purposes of terminating temporary total disability benefits pursuant to § 39-71-609, MCA.

¶ 4b Whether William Short is permanently and totally disabled from performing competitively in his labor market.¹

Uncontested Facts²

¶ 5 William Short (Short) suffered an industrial injury on September 20, 2005, while he was employed by J.H. Kelly Holdings, LLC (J.H. Kelly).

¶ 6 The insurer accepted Short's claim and paid benefits.

¶ 7 No dispute exists regarding medical treatment, impairment, or permanent partial disability benefits.

¶ 8 Short reached maximum medical improvement (MMI) on October 29, 2008.

¶ 9 Short's treating physician released him to return to work on October 29, 2008.

¶ 10 The insurer terminated temporary total benefits (TTD) on October 28, 2008, based on the approved jobs in the Montana labor market.

FINDINGS OF FACT

¶ 11 Short testified at trial and I find his testimony to be credible.

¶ 12 Short obtained his high school diploma in 1965 and an associate's degree in civil engineering in 1974.³

¶ 13 Short lived with his sister in Shoreline, Washington between 1998 and 2005. Shoreline is a suburb of Seattle. Short paid rent to his sister off and on during the years

¹ Pretrial Order at 2.

² *Id.*

³ Trial Test.

he lived with her. Short used his sister's Shoreline address as his own permanent address at the time of his industrial injury.⁴

¶ 14 In 2005, Short belonged to the Millwright's Union, Local 204, in Renton, Washington. He received a dispatch from the Missoula local for a temporary millwright job for J.H. Kelly. The assignment involved a job at Stone Container facility that was only slated to last a few weeks.⁵

¶ 15 Short had previously worked for J.H. Kelly on three other occasions, including a job in Idaho Falls which lasted approximately eleven months.⁶

¶ 16 Short was injured on the first or second day of his employment with J.H. Kelly in Missoula. After his injury, Short ceased working for J.H. Kelly as a millwright, but continued on the job by performing light-duty work.⁷

¶ 17 Short returned to Shoreline, Washington, after his injury. He made several unsuccessful attempts to locate a treating physician in Washington and Idaho, but could not locate one willing to accept Montana workers' compensation patients. Short testified that he did not contact Intermountain Claims, the adjusting firm handling his claim, for help with identifying a treating physician because he was unable to consistently contact any adjuster familiar with his claim who would return his phone calls. Short eventually located a treating physician in Plains, Montana. Short testified that if he had located a treating physician in the Seattle area that would accept Montana workers' compensation payments, he would have probably stayed at his sister's house in Shoreline for the duration of his recovery.⁸

¶ 18 Short moved to Clark Fork, Idaho, shortly after his injury. He has resided there for three and a half years. Short testified that he moved to Clark Fork because he had friends living there who were also employed as millwrights, and he envisioned that he would one day work again as a millwright after recovering from his injury.⁹

⁴ Trial Test.

⁵ Trial Test.

⁶ Trial Test.

⁷ Trial Test.

⁸ Trial Test.

⁹ Trial Test.

¶ 19 Clark Fork's population is approximately five hundred thirty. It is located twenty-five miles from Sandpoint, Idaho.¹⁰

¶ 20 In the last few years since his injury, Short has stayed busy building various items for friends. Among the items Short has built are picnic tables, cedar chests, wishing wells, and gun cases. Short did not complete these projects for the purpose of producing a profit.¹¹

¶ 21 Short has applied for employment at the following locations in Clark Fork: Hays Chevron; Cavanaugh Construction; Clark Fork Feed & Garden; Clark Fork Beverage; Evergreen Supply; Dooley Metal Works; Lawn & Tree Service; and American Heritage Wildlife Foundation, Inc.¹² Short did not apply for any jobs in Sandpoint, or in Hayden Lake, Idaho, which is approximately sixty miles from Clark Fork.

¶ 22 Short was employed as a fiberoptics inspector between 1996 and 2003. While employed in the fiberoptics field, Short traveled to California, North Carolina, Nebraska, Alaska, Oregon, Utah, and Nevada. He worked in Alaska for approximately seven months, and North Carolina for ten months.¹³

¶ 23 Prior to working in fiberoptics in 1996, Short worked as a millwright. In 2003, Short returned to millwright work and continued in this line of work until the time of his 2005 injury. Between 2003 and 2005, Short worked as a millwright in five different states: Montana, Idaho, Utah, Oregon, and Washington.¹⁴

¶ 24 Dr. Larry R. Stayner practices medicine in Plains, Montana, and is Short's treating physician. Dr. Stayner placed Short at MMI in October 2008, and gave Short an 8% whole person impairment rating.¹⁵

¶ 25 Kathy Kleinkopf (Kleinkopf) testified at trial and I find her testimony to be credible.

¹⁰ Trial Test.

¹¹ Trial Test.

¹² Ex. 22.

¹³ Trial Test.

¹⁴ Trial Test.

¹⁵ Ex. 1.

¶ 26 Kleinkopf is a nationally certified vocation rehabilitation counselor and has worked in that field since 1983.¹⁶

¶ 27 Though Kleinkopf did not provide vocational rehabilitation services in the present case, she testified that when she typically receives a referral for an injured employee, she conducts an interview and talks to the client about potential vocational goals. She also performs a transferable-skills analysis to determine possible employment options. As part of this analysis, she considers a worker's medical situation, age, education, work history, and background.¹⁷

¶ 28 Kleinkopf opined that if she were to choose the appropriate labor market for Short in the present case, she would choose the labor market in which he resides. In her experience, when an injured worker relocates from one labor market to another, the counselor should utilize the labor market in the new location.¹⁸

¶ 29 In Kleinkopf's opinion, Short had a national labor market when he worked as a millwright. She noted that his access to the labor market changed, however, when he could no longer perform millwright work. She concluded that his preclusion from returning to work as a millwright altered his labor market.¹⁹

¶ 30 Kleinkopf testified that once an injured employee's physician approves or disapproves job analyses, the vocational rehabilitation provider then uses the approved jobs as guides for locating employment because the analyses are representative of the kinds of employment a person can perform. Kleinkopf views the analyses as representing identifiable goals in her development of a placement plan.²⁰

¶ 31 Jerry Davis (Davis) testified at trial and I find his testimony to be credible.

¶ 32 Davis is a certified vocational rehabilitation consultant and has worked in that field since 1985. Intermountain Claims retained Davis to provide a vocational eligibility assessment regarding Short's claim. In conducting this assessment, Davis met with Short on two occasions.²¹

¹⁶ Trial Test.

¹⁷ Trial Test.

¹⁸ Trial Test.

¹⁹ Trial Test.

²⁰ Trial Test.

²¹ Trial Test.

¶ 33 On October 28, 2008, Short completed a functional capacity evaluation (FCE) with physical therapist Rob Gillespie (Gillespie). Based on Short's FCE results, Gillespie opined that he should be restricted to medium-duty work with a fifty-pound lifting restriction.²² Dr. Stayner agreed with Gillespie's medium-duty assessment and lifting restriction.²³

¶ 34 Davis developed job analyses and sent them to Gillespie. The analyzed jobs included: production assembler, bowling attendant, customer service representative, courtesy shuttle driver, front desk clerk, dental instrument component preparer, line locator, and certified welding inspector. Gillespie unconditionally approved all the jobs, except the line locator and certified welding inspector, which he conditionally approved. Dr. Stayner agreed with Gillespie's assessments.²⁴

¶ 35 Based on Dr. Stayner's job approvals, Davis conducted a labor market survey regarding the six unconditionally approved jobs within Montana. Davis opined that Montana contained sufficient jobs and Short could obtain one if he conducted a diligent search.²⁵

¶ 36 Davis opined that Short's labor market is the entire Western United States where Short has previously been employed. Davis also testified that the Seattle area would be an appropriate labor market to use to conduct a labor market survey because Short had worked and lived in that area for much of his life and had used it as a base of operations. Davis contacted Bradley Simpson (Simpson), a vocational consultant in the Seattle region, to conduct a labor market survey utilizing the same job descriptions that Dr. Stayner had approved. Based on Simpson's survey, Davis opined that a sufficient quantity of approved jobs exists in the Seattle region and Short could obtain one with a diligent search.²⁶

¶ 37 Davis also identified jobs in the Clark Fork, Idaho, region, including jobs in Sandpoint and Bonner's Ferry, using the same physician-approved job analyses that were developed for Missoula and Shoreline. Davis opined at trial that Short might find employment in

²² Ex. 3 at 3.

²³ Trial Test.

²⁴ Ex. 20.

²⁵ Trial Test.

²⁶ Trial Test.

Sandpoint, but that it would be difficult for him to obtain a job in Clark Fork's small labor market.²⁷

¶ 38 Davis testified that he distinguishes between identifying a labor market for purposes of establishing employability and identifying a labor market for purposes of employment placement services.²⁸

¶ 39 Davis opined that Short is not permanently totally disabled because he has a reasonable prospect of physically performing regular employment.²⁹

CONCLUSIONS OF LAW

¶ 40 This case is governed by the 2005 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Short's industrial accident.³⁰

¶ 41 Short bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.³¹

Issue 1: What is the appropriate labor market for purposes of terminating temporary total disability benefits pursuant to § 39-71-609, MCA?

¶ 42 Section 39-71-609, MCA, reads, in pertinent part:

- (2) Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity. . . . prior to converting temporary total disability benefits or temporary partial disability benefits to permanent partial disability benefits [the insurer]
 - (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;

²⁷ Trial Test.

²⁸ Trial Test.

²⁹ Trial Test.

³⁰ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

³¹ *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

(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.

¶ 43 Although the parties have framed this issue as seeking a determination of what is the "appropriate labor market" for purposes of terminating TTD benefits pursuant to § 39-71-609, MCA, the criteria of an "appropriate labor market" is not specifically found in the statute. That being noted, § 39-71-609(2), MCA, codifies the four criteria set forth by this Court in *Coles v. Seven Eleven Stores*, which the Montana Supreme Court affirmed.³² Although the third criteria set forth at § 39-71-609(2)(c), MCA, does not explicitly state that a job analysis prepared by a vocational rehabilitation provider must consider an "appropriate labor market," the Montana Supreme Court recognized when it affirmed this Court's decision in *Coles* that "[d]isability has non-medical as well as medical components."³³ Towards that end, the Court noted:

To establish the existence of no reasonable prospect of employment in the normal labor market, a claimant must introduce substantial credible evidence of (1) what jobs constitute his normal labor market, and (2) a complete inability to perform the employment and duties associated with those jobs because of his work-related injury.³⁴

¶ 44 This Court has previously considered geography in determining what constitutes a "normal labor market" for purposes of analyzing permanent total disability (PTD).³⁵ Moreover, this Court previously recognized in *Campbell v. Montana Contractor Compensation Fund* that a "geographical job market is inherent when considering what [a]

³² *Coles v. Seven Eleven Stores*, 217 Mont. 343, 704 P.2d 1048 (1985).

³³ *Coles* at 347, 704 P.2d at 1051.

³⁴ *Id.*

³⁵ See *Czerniecki v. School District #2 and State Comp. Ins. Fund*, 1985 WL 57242, in which Hearing Examiner Larry W. Jones found that "Billings, Montana, is the claimant's normal, **geographic** labor market." (Finding of Fact No. 20.) (Emphasis added.) The Court then concluded that the claimant was permanently totally disabled until "she has a reasonable prospect of finding regular employment in a clerical job in the Billings, Montana, competitive labor market." (Conclusion of Law No. 3.)

claimant is capable of earning.”³⁶ This conclusion is consistent with the Montana Supreme Court’s recognition in *Graham v. Tree Farmers, Inc.*³⁷ that:

A labor market, within the meaning of our statute is that place where there is a market for the type of services which [the worker] offers within a **geographical** area in which he offers them.³⁸

¶ 45 I recognize that both *Campbell* and *Graham* addressed the claimant’s earning capacity for purposes of assessing wage loss, whereas the present case involves a determination of whether the claimant remains temporarily totally disabled pursuant to § 39-71-609, MCA. However, it makes little sense that the Court would consider geography when determining what a claimant is capable of earning, but disregard geography in the context of terminating TTD benefits. I therefore conclude that geographical limitations must be considered in determining the appropriate labor market for purposes of terminating TTD benefits pursuant to § 39-71-609, MCA. In that regard, both *Campbell* and *Graham*, as well as this Court’s decision in *Gates v. Liberty Northwest Ins. Co.*,³⁹ and *Skiff v. Montana State Fund*,⁴⁰ provide some guidance.

¶ 46 In *Gates*, the insurer asked the Court to “adopt a bright-line geographical criteria concerning local job markets.”⁴¹ Although the Court recognized that “a fixed-mile, bright-line rule might lead to certainty for the insurer,” the Court found such a bright-line was not possible because of “countervailing considerations.”⁴² As examples of those countervailing considerations, the Court noted that a city or town where jobs are available might be within the established radius but on the other side of an often impassable mountain pass or the claimant might not be able to afford reliable transportation.⁴³ The Court ultimately

³⁶ *Campbell v. Montana Contractor Compens.Fund*, 2003 MTWCC 58, at ¶ 49.

³⁷ *Graham v. Tree Farmers, Inc.*, 142 Mont. 483, 385 P.2d 83 (1963).

³⁸ *Graham* at 496, 385 P.2d at 89. (Emphasis added.)

³⁹ *Gates v. Liberty Northwest Ins. Co.*, 1995 MTWCC 114A.

⁴⁰ *Skiff v. Montana State Fund*, 2009 MTWCC 8

⁴¹ *Gates* at 2.

⁴² *Id.*

⁴³ *Id.*

concluded that a factual finding determined the appropriate geographical labor market in that case.⁴⁴

¶ 47 In *Skiff*, this Court considered whether the insurer failed to offer or propose a reasonable plan for the claimant's (Skiff's) vocational retraining. Skiff resided in Malta, but was injured while working in Havre. Relying on *Campbell*, the insurer argued at trial Havre was Skiff's job market. This Court rejected that argument and stated:

While it is true that [Skiff] was injured in Havre, [he] resides in Malta. The evidence in this case demonstrates that [Skiff's] work in Havre was exceptional, and that for the vast majority of his employment history, he worked in or very near Malta, and he had given notice to his employer that he was leaving the Havre job in order to take a job closer to home. [Skiff] had in fact begun his employment with this employer on a job site within a couple of miles of Malta, and he had only worked in Havre for a few months when the Malta job was finished. Therefore, I conclude that Petitioner's labor market is in or near Malta.⁴⁵

¶ 48 Short argued at trial that the appropriate labor market for purposes of terminating his TTD benefits is Clark Fork, Idaho, because he currently resides and has sought employment there. However, were I to limit the determination of what constitutes an appropriate labor market based solely on these factors, this would effectively allow a claimant to unilaterally disable himself by moving to a remote location with limited job opportunities after his injury. I am not suggesting that this motivated Short's move from Shoreline to Clark Fork. I would be remiss, however, were I not to consider all the circumstances involved in Short's move. Therefore, as the Court did in both *Gates* and *Skiff*, I must employ a fact-driven analysis in determining the appropriate labor market in this case.

¶ 49 Had Short been released to return to work in his time-of-injury job as a millwright, his labor market would be the states where he had worked previously as a millwright since Short had demonstrated a willingness to travel for this type of employment prior to his injury. However, it makes little sense to use a millwright's multi-state labor market in developing the **alternative** job analyses for such positions as assembler, bowling attendant, customer service representative, courtesy shuttle driver, front desk clerk, and dental instrument component preparer. Although it would be reasonable to expect Short to travel in the same manner as he had before his injury if he returned to his time-of-injury

⁴⁴ *Id.*

⁴⁵ *Skiff* at ¶ 105.

job, it is not reasonable to expect him to travel throughout the Pacific and Inland Northwest as an itinerant bowling attendant.

¶ 50 In determining the appropriate labor market for purposes of developing alternative job analyses in the present case, I have considered a number of factors. Short permanently resided in Shoreline, Washington, from 1998 through the time of his injury in 2005. Short accepted millwright jobs throughout the Pacific Northwest, but returned to Shoreline as his residential base between 2003 and the time of his injury in 2005. At the time of his injury, Short worked in Montana only on a temporary basis. After his injury, Short returned to Shoreline, and testified that he would have stayed there for his recovery had he been able to locate a treating physician in that region. Although Short testified that he could not locate a treating physician in Shoreline to accept Montana workers' compensation insurance, he also testified that he moved from Shoreline to Clark Fork because he knew other millwrights living there and envisioned working as a millwright again after recovering from his injury. These factors lead me to conclude that Shoreline, Washington, is the appropriate labor market for purposes of determining whether Short's TTD benefits may be terminated pursuant to § 39-71-609, MCA.

Issue 2: Whether Short is permanently and totally disabled from performing competitively in his labor market.

¶ 51 Section 39-71-116(25), MCA, defines PTD as follows:

. . . a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.⁴⁶

¶ 52 The evidence in this case establishes that Short does not meet the definition of PTD. Dr. Stayner, Short's treating physician, restricted Short to medium-duty work and a fifty-pound lifting restriction. Dr. Stayner approved six job analyses that complied with these approved restrictions. Davis's uncontroverted testimony was that Short had a reasonable prospect of performing all of these approved jobs. For these reasons, I conclude that Short has failed to prove that he is permanently and totally disabled.

⁴⁶ Section 39-71-116(25), MCA.

JUDGMENT

¶ 53 Short's labor market for purposes of terminating temporary total disability benefits pursuant to § 39-71-609, MCA, is Shoreline, Washington.

¶ 54 Short is not permanently and totally disabled from performing competitively in his labor market.

¶ 55 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED in Helena, Montana, this 24th day of September, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Leslae J.E. Dalpiaz
Ronald W. Atwood
Submitted: June 11, 2009