ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

LINDA BELL v. ICA/ MARICOPA COUNTY/ PINNACLE RISK MGT.
CV-14-0095-PR

PARTIES:

Petitioner: Linda Bell

Respondents: Maricopa County and Pinnacle Risk Management

Amicus Curiae: Arizona Association of Lawyers for Injured Workers

FACTS:

Bell was injured at her job at the Maricopa County Public Defender's Office when a maintenance employee working on a light fixture received a shock and fell on Bell. The accident injured Bell's neck, right shoulder, back, both knees, and the back of her head. When Bell returned to work the next day, her supervisor sent her to seek medical attention. The doctor diagnosed her with sprains and strains, told her to seek physical therapy, and return to work. Bell was not placed on no-work status at that time.

According to Bell, from February 25, 2010, through July 7, 2011, she missed various days of work to attend medical appointments and to receive treatment for her injuries. The total time she missed added up to substantially more than seven days' worth of time. Bell used sick leave and vacation time to avoid a loss of income. Bell was finally placed on no-work status on July 8, 2011, when she required surgery on her right shoulder.

In 2012, Bell made a request for a hearing under A.R.S. § 23-1061(J) on the issue of her entitlement to temporary partial disability benefits for the period of February 25, 2010, through July 7, 2011, for repayment of the sick leave and vacation time she lost due to medical treatment. After an evidentiary hearing, the Administrative Law Judge (ALJ) denied Bell's request for temporary partial disability benefits, finding that "[a]pplicant has not submitted any medical evidence to show that she was taken off work during the time period for which temporary compensation benefits are requested. She testified that she did not miss any period of time over one week." The ALJ also found that A.R.S. § 23-1062(B) "provides that unless the employee's injury causes total disability for more than seven days, no compensation is payable."

Bell sought administrative review and the ALJ affirmed the award. Bell filed a statutory special action contesting the ALJ's award.

The court of appeals affirmed the award and decision. The court concluded that the waiting period created by A.R.S. § 23-1062(B) must be satisfied by temporary total disability rather than

temporary partial disability. The language imposing the required waiting period follows closely after the reference to "temporary total disability." The court of appeals' conclusion was based on a "plain and natural reading" of the provision and the absence of any reference to partial disability in the other subsections or the title of § 23-1062.

The court of appeals also concluded that the § 23–1062(B) waiting period must be satisfied by temporary total disability on consecutive working days. The statute uses the phrases "the first seven days after the injury" and "the period of seven days." The use of the word "period" to refer back to the phrase "the first seven days" underscores that the seven days refers to one continuous segment of time. The court of appeals also found support for its interpretation of the statute in *Tartaglia v. Indus. Comm'n*, 177 Ariz. 199, 201, 866 P.2d 867, 869 (1994). In *Tartaglia*, the Arizona Supreme Court found that "seven days" means "one week." The court found nothing in the language of the statute to support the idea that the waiting period may be satisfied by accumulating days missed from work over time.

ISSUES:

The Court granted review of issues 1 and 3:

> 1. Whether the "waiting period" of §23-1062(B) precludes a claim for temporary partial disability compensation without prior total disability?
>
> 3. Whether consecutive days of lost time from work were required to prove entitlement to temporary partial disability compensation?

STATUTORY PROVISION:

A.R.S. § 23-1062(B) provides:

> B. The first installment of compensation is to be paid no later than the twenty-first day after written notification by the commission to the carrier of the filing of a claim except where the right to compensation is denied. Thereafter, compensation shall be paid at least once each two weeks during the period of temporary total disability and at least monthly thereafter. Compensation shall not be paid for the first seven days after the injury. If the incapacity extends beyond the period of seven days, compensation shall begin on the eighth day after the injury, but if the disability continues for one week beyond such seven days, compensation shall be computed from the date of the injury.

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