

**Fifth Circuit Court of Appeal
State of Louisiana**

No. 26-C-174

**PETER MIRE
VERSUS
JEFFERSON PARISH**

**IN RE JEFFERSON PARISH
APPLYING FOR SUPERVISORY WRIT FROM THE OFFICE OF WORKERS' COMPENSATION,
DISTRICT 7, PARISH OF WORKMENS COMP, STATE OF LOUISIANA, DIRECTED TO THE
HONORABLE SHANNON BRUNO BISHOP, No. 25-231**

TRUE COPY

June 03, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and Stephen J. Windhorst

WRIT DENIED

Relator, Jefferson Parish, seeks review of the Office of Workers' Compensation, District 7 judgment issued February 25, 2026 partially granting its motion for summary judgment regarding Plaintiff's, Peter Mire, benefits. For the following reasons, we deny the writ.

Mr. Mire fell into a hole during the course and scope of his employment in June 2014. The Parish accepted his worker's compensation claim and paid him medical treatment and indemnity benefits. In January 2024, Mr. Mire's temporary total disability benefits ("TTD") were converted into supplemental earning benefits ("SEB"), but the amount he received, \$732.24 every two weeks, remained the same. In May 2024, after several rounds of vocational

rehabilitation efforts, the SEB payments were reduced to \$199.77/month. The amount of the new monthly payment was calculated by deducting the wage of lowest paying sedentary job the January 2024 Functional Capacity Evaluation (FCE) found Mr. Mire could perform. On June 25, 2024, the Parish terminated Mr. Mire's SEB as he had received 520 weeks' worth of benefits.

On January 6, 2025, Mr. Mire filed a Disputed Claim for Compensation (Form 1008). The Parish responded by filing a Motion for Summary Judgment urging the termination of benefits was proper pursuant to La. R.S. 23:1221(3)(d) and Mr. Mire's case should be dismissed. Mr. Mire's opposition to the motion for summary judgment included argument that he was permanently and totally disabled (PTD) and that he should continue to receive indemnity benefits in addition to medical benefits. After trial, the OWC granted partial summary judgment in favor of the Parish on the issue of termination but denied summary judgment on the issue of PTD benefits, finding that there were genuine issues of material fact regarding whether Mr. Mire was permanently and totally disabled. Mr. Mire subsequently amended his 1008 claim to include a claim for PTD.

In its application, the Parish avers 1) Mr. Mire is not permitted to apply for PTD after receiving 520 weeks of SEB; 2) allowing Mr. Mire's claim for PTD benefits to proceed after the cessation of SEB undermines the indemnity scheme set up by the legislature; and 3) although Mr. Mire is not permanently and totally disabled, that determination should not have affected the court granting it summary judgment on its motion.

The right to supplemental earning benefits shall in no event exceed a maximum of 520 weeks. *See* La. R.S. 23:1221(3)(d).

Permanent total disability can be received during the period of such disability if the employee is not engaged in any employment or self-employment. La. R.S. 23:1221(2)(a)-(b).

“The finding of disability within the framework of the workers’ compensation law is a legal rather than a purely medical determination.” *Johnson v. East Baton Rouge Parish School Bd.*, 06-1010 (La. App. 1 Cir. 3/28/07), 961 So.2d 388, 390. Therefore, the question of disability must be determined by reference to the totality of the evidence, including both lay and medical testimony. *Id.* An employee seeking to recover indemnity benefits for a temporary or permanent total disability must prove by clear and convincing evidence that he is physically unable to engage in any employment. La. R.S. 23:1221(1)(c) and (2)(c); *Medina v. Thyssenkrupp Safeway, Inc.*, 13-42 (La. App. 5 Cir. 6/27/13); 121 So.3d 160, 163. To prove a matter by clear and convincing evidence means to demonstrate that the existence of a disputed fact is highly probable, in other words, much more probable than not. *Aucoin v. CNA*, 12-0144 (La. App. 1 Cir. 9/21/12), 111 So.3d 31, 36–37. The claimant’s subjective belief that he cannot work does not satisfy the statutory burden of proof. *Id.*, citing *Paul v. Gipson*, 614 So.2d 1275, 1278 (La. App. 2d Cir. 1993).

La. R.S. 23:1209 provides in pertinent part:

A. In case of personal injury, including death resulting therefrom, all claims for payments shall be forever barred unless within one year after the accident or death the parties have agreed upon the payments to be made under this Chapter, or unless within one year after the accident a formal claim has been filed

as provided in Subsection B of this Section and in this Chapter. *Where such payments have been made in any case, the limitation shall not take effect until the expiration of one year from the time of making the last payment, except that in cases of benefits payable pursuant to R.S. 23:1221(3) this limitation shall not take effect until three years from the time of making the last payment of benefits pursuant to R.S. 23:1221(1), (2), (3), or (4).*

Edler v. City of New Iberia, 03-1036, p. 9 (La. App. 3 Cir. 2/4/04), 865 So.2d 1015, 1022, *writ denied*, 04-0574 (La. 4/23/04), 870 So.2d 304.

(Emphasis in original).

On the showing made, upon *de novo* review, we find that the district court correctly determined Mr. Mire may qualify and apply for PTD, as he has timely applied for those additional benefits under La. R.S. 23:1209. The district court terminated SEB payments on June 25, 2024; Mr. Mire filed his Form 1008 on January 6, 2025, less than a year later; thus, he was permitted to apply for PTD after his SEB payments ended. Further, we find medical opinions that he can perform sedentary work and the identification and availability of such physician-approved positions do not preclude a finding that Mr. Mire is permanently and totally disabled. *See Duplessis v. Tulane Univ. Med. Ctr.*, 10-0267, p. 7 (La. App. 4 Cir. 8/25/10), 47 So.3d 992, 997; *Edler v. City of New Iberia*, 03-1036, p. 7 (La. App. 3 Cir. 2/4/04), 865 So.2d 1015, 1021, *writ denied*, 04-0574 (La. 4/23/04); 870 So.2d 304.

Therefore, we conclude genuine issues of material fact remain regarding whether Mr. Mire can engage in any kind of employment. Further, Mr. Mire's affidavit is competent evidence to oppose the motion for summary judgment, and in "considering a motion for summary judgment, 'factual inferences reasonably drawn from the evidence must

be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor.” *First Heritage Credit of Louisiana, LLC v. Griffin*, 23-034 (La. App. 3 Cir. 10/18/23), 372 So.3d 456, 461, quoting *Willis v. Medders*, 00-2507, p. 2 (La. 12/8/00), 775 So.2d 1049, 1050; See also La. C.C.P. art. 966. Lastly, we agree with Relator's assertion that the determination of whether Mr. Mire is permanently and totally disabled does not preclude granting its motion for summary judgment. However, the Court also found genuine issues of material fact also remain regarding whether Mr. Mire's SEB payments were properly reduced and terminated. See *Mire v. Jefferson Parish*, 26-171(La. App. 5 Cir. 6/1/2026).

Accordingly, the writ application is denied.

Gretna, Louisiana, this 3rd day of June, 2026.

MEJ
JGG
SJW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **06/03/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-174

E-NOTIFIED

Office of Workers' Compensation, District 7 (Clerk)
Hon. Shannon Bruno Bishop (DISTRICT JUDGE)
Michael F. Nolan, Jr. (Relator)

MAILED

Graham Brian (Respondent)
Attorney at Law
3045 Ridgelake Drive
Suite 100
Metairie, LA 70002