



**TENNESSEE BUREAU OF WORKERS' COMPENSATION  
IN THE COURT OF WORKERS' COMPENSATION CLAIMS  
AT CHATTANOOGA**

<b>Bibiane Francoeur,</b>	)	<b>Docket No.: 2024-10-1841</b>
<b>Employee,</b>	)	
<b>v.</b>	)	
<b>Amerimed Medical Solutions, LLC,</b>	)	<b>State File No.: 2194-2024</b>
<b>Employer,</b>	)	
<b>And</b>	)	
<b>Old Republic Insurance Company,</b>	)	<b>Judge Audrey Headrick</b>
<b>Carrier.</b>	)	

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**EXPEDITED HEARING ORDER**  
***(DECISION ON THE RECORD)***

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Ms. Francoeur asked that Amerimed pay temporary disability benefits because the treating physician restricted her from driving.<sup>1</sup> Amerimed accepted her claim but denied temporary benefits because it offered her a position within her restrictions. For the following reasons, the Court orders Amerimed to pay temporary disability benefits.

**Claim History**

On January 9, 2024, Ms. Francoeur injured her feet when a resident ran over them with an electric wheelchair. She later treated with orthopedist Dr. Michael Tompkins, who diagnosed crush injuries to both feet and left-lower extremity complex regional pain syndrome.

Dr. Tompkins took Ms. Francoeur off work from February 27 until May 9, when he restricted her to a “sitting job with [left] foot/leg elevated” and “no driving.” Amerimed paid her temporary total disability benefits from February 27 through May 7 at the weekly compensation rate of \$608.58.

By letter dated May 13, Amerimed notified Ms. Francoeur that it had a position

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<sup>1</sup> Ms. Francoeur also requested ongoing medical treatment. However, Amerimed has not denied any medical treatment. Further, she is scheduled to see a pain management physician on August 22.

available within her restrictions but did not include transportation to work. Ms. Francoeur testified by affidavit that she was unable to attempt the position because she had no transportation to work.

Amerimed terminated her temporary disability benefits, and it argued Ms. Francoeur is not entitled to temporary total disability benefits because driving is not an essential function of her job. It stated the position offered to her did not require driving and accommodated her restriction of seated work with her leg elevated. It relied on *Simpson v. Satterfield*, 564, S.W.2d 953, 955 (Tenn. 1978), which held that “temporary total disability benefits are terminated either by the ability to return to work or attainment of maximum recovery.” Amerimed stated it properly terminated Ms. Francoeur’s temporary total disability benefits based on her ability to return to work.

Amerimed also argued she is not entitled to total disability benefits because it neither offered transportation to or from work for its employees nor paid for travel time or mileage. It asserted it always required Ms. Francoeur to find transportation to work and, by analogy, argued the present circumstances are no different than if her “car had broken down.”

While disputing entitlement to temporary disability benefits, Amerimed agreed to provide Ms. Francoeur transportation to her medical appointments while her no-driving restriction remains.

### **Findings of Fact and Conclusions of Law**

Ms. Francoeur must prove a likelihood of prevailing at a hearing on the merits that she is entitled to the requested benefits. Tenn. Code Ann. § 50-6-239(c)(6) (2023); *McCord v. Advantage Human Resourcing*, 2015 TN Wrk. Comp. App. Bd. LEXIS 6, at \*7-8, 9 (Mar. 27, 2015).

To receive temporary total disability benefits, Ms. Francoeur must show: (1) a disability from working as the result of a compensable injury; (2) a causal connection between the injury and the inability to work; and (3) the duration of the period of disability. *Jones v. Crencor Leasing and Sales*, 2015 TN Wrk. Comp. App. Bd. LEXIS 48, at \*7 (Dec. 11, 2015). For temporary partial disability benefits, she must show that Dr. Tompkins returned her to work with restrictions that Amerimed either could not or would not accommodate. *Id.* at \*7-8.

Ms. Francoeur sought temporary disability benefits from May 8, 2024, forward. Dr. Tompkins took Ms. Francoeur completely off work until May 9. Amerimed paid her temporary total disability benefits through May 7. Therefore, the Court holds she is entitled to temporary total disability benefits for May 8.

Ms. Francoeur is not entitled to temporary total disability after May 8, since Dr. Tompkins assigned restrictions on May 9; however, she may be entitled to temporary partial disability benefits. Ms. Francoeur's entitlement to those benefits hinges on whether she made a "meaningful return to work." *Dennis v. Polymer Components*, 2016 TN Wrk Comp. App. Bd. LEXIS 47, at \*11 (Sept. 27, 2016). Thus, the Court must determine "the reasonableness of the employer in attempting to return the employee to work and the reasonableness of the employee in failing to return to work." *Id.*

Here, Dr. Tompkins restricted Ms. Francoeur on May 9 to a "sitting job with her foot/leg elevated" and "no driving." He diagnosed crush injuries to both feet and left-lower extremity complex regional pain syndrome because a patient in a wheelchair ran over her feet. In a May 13 letter, Amerimed offered Ms. Francoeur a position that purportedly accommodated her restrictions, yet it denied transportation despite the no-driving restriction.

The Court disagrees with Amerimed's analogy of Ms. Francoeur's no-driving work restriction being equivalent to her car breaking down. Traditionally, most employees must arrange transportation to and from work. However, a work injury resulting in a no-driving restriction changes the obligations of an employer.

Considering the reasonableness of both parties, the Court finds that Ms. Francoeur is entitled to temporary partial disability benefits. The Court holds Amerimed's return-to-work offer unreasonable, as it only accommodated part of the restrictions. Only an offer that also provided transportation would completely comply with the restrictions.

Amerimed disregarded the no-driving restriction, despite Ms. Francoeur's assertion that she had no other way to get to work. However, it agreed to provide transportation to medical appointments while her no-driving restriction remains. An employee is entitled to medical transportation if it is necessary to enable her to obtain reasonably required medical services. *Washington v. UPS*, 2020 TN Wrk. Comp. App. Bd. LEXIS 14, at \*4 (Apr. 8, 2020). Likewise, a reasonable offer to return Ms. Francoeur to work must include transportation while the no-driving restriction is in place. Therefore, Amerimed must pay Ms. Francoeur ongoing temporary partial disability benefits from May 9, forward.

**IT IS, THEREFORE, ORDERED** as follows:

1. Amerimed shall pay past-due temporary partial disability benefits in the amount of \$7,042.14 for May 9, 2024, to July 29, 2024. Amerimed shall also pay Ms. Francoeur ongoing benefits until she is no longer eligible for them.
2. Amerimed shall pay past-due temporary total disability benefits in the amount of \$86.94 for May 8, 2024.

3. The parties shall appear for a Status Hearing on Thursday, September 26, 2024, at 1:00 p.m. Eastern Time. They must call 423-634-0164 or 855-383-0001 to participate. Failure to call might result in a determination of the issues without the party's participation.
4. Unless interlocutory appeal of this Expedited Hearing Order is filed, compliance with this order must occur by seven business days of entry of this Order as required by Tennessee Code Annotated section 50-6-239(d)(3). The Insurer or Self-Insured Employer must submit confirmation of compliance by email to WCCompliance.Program@tn.gov by the compliance deadline. Failure to do so may result in a penalty assessment for non-compliance.
5. For compliance questions, please contact the Workers' Compensation Compliance Unit by email at WCCompliance.Program@tn.gov.

**ENTERED July 29, 2024.**

*Audrey A. Headrick*  
\_\_\_\_\_  
**JUDGE AUDREY A. HEADRICK**  
**Court of Workers' Compensation Claims**

## **APPENDIX**

### Exhibits:

1. Affidavit of Ms. Francoeur
  - a. Panel
  - b. Wage Statement
  - c. May 3, 2024 email communication from Amerimed to Brad Frank
  - d. May 13, 2024 letter from Michelle Burnham at Sunrise to Ms. Francoeur
2. Medical records of Dr. Michael Tompkins filed on June 18, 2024
  - a. Panel selection
  - b. Medical records
  - c. Work restrictions
3. Written Stipulation

### Technical record:

1. Petition for Benefit Determination
2. Dispute Certification Notice
3. Request for Expedited Hearing
4. Employee's Pre-Hearing Brief
5. Employer's Objection to Employee's Request for a Decision on the Record
6. Employee's Response to Employer's Objection to Employee's Request for a Decision on the Record
7. Docketing Notice
8. Employer's Pre-Hearing Statement

**CERTIFICATE OF SERVICE**

I certify that a copy of this Expedited Hearing Order was sent as indicated on July 29, 2024.

Name	Mail	Email	Service sent to:
Peter Frech, Employee's Attorney		X	pfrech@forthepeople.com lyates@forthepeople.com
Richard R. Clark, Jr., Emily White, Employer's Attorneys		X X	rclark@eraclides.com ewhite@eraclides.com

/s/Penny Shrum                      w/permission JD

**PENNY SHRUM, COURT CLERK**

WC.CourtClerk@tn.gov



### Right to Appeal:

If you disagree with the Court's Order, you may appeal to the Workers' Compensation Appeals Board. To do so, you must:

1. Complete the enclosed form entitled "Notice of Appeal" and file it with the Clerk of the Court of Workers' Compensation Claims before the expiration of the deadline.
  - If the order being appealed is "expedited" (also called "interlocutory"), or if the order does not dispose of the case in its entirety, the notice of appeal *must* be filed *within seven (7) business days* of the date the order was filed.
  - If the order being appealed is a "Compensation Order," or if it resolves all issues in the case, the notice of appeal *must* be filed *within thirty (30) calendar days* of the date the Compensation Order was filed.

When filing the Notice of Appeal, you must serve a copy on the opposing party (or attorney, if represented).

2. You must pay, via check, money order, or credit card, a **\$75.00 filing fee** *within ten calendar days* after filing the Notice of Appeal. Payments can be made in-person at any Bureau office or by U.S. mail, hand-delivery, or other delivery service. In the alternative, you may file an Affidavit of Indigency (form available on the Bureau's website or any Bureau office) seeking a waiver of the filing fee. You must file the fully-completed Affidavit of Indigency *within ten calendar days* of filing the Notice of Appeal. **Failure to timely pay the filing fee or file the Affidavit of Indigency will result in dismissal of your appeal.**
3. You are responsible for ensuring a complete record is presented on appeal. If no court reporter was present at the hearing, you may request from the Court Clerk the audio recording of the hearing for a \$25.00 fee. If you choose to submit a transcript as part of your appeal, which the Appeals Board has emphasized is important for a meaningful review of the case, a licensed court reporter must prepare the transcript, and you must file it with the Court Clerk. The Court Clerk will prepare the record for submission to the Appeals Board, and you will receive notice once it has been submitted. For deadlines related to the filing of transcripts, statements of the evidence, and briefs on appeal, see the applicable rules on the Bureau's website at <https://www.tn.gov/wcappealsboard>. (Click the "Read Rules" button.)
4. After the Workers' Compensation Judge approves the record and the Court Clerk transmits it to the Appeals Board, a docketing notice will be sent to the parties.

**If neither party timely files an appeal with the Appeals Board, the Court Order becomes enforceable. See Tenn. Code Ann. § 50-6-239(d)(3) (expedited/interlocutory orders) and Tenn. Code Ann. § 50-6-239(c)(7) (compensation orders).**

*For self-represented litigants: Help from an Ombudsman is available at 800-332-2667.*



## NOTICE OF APPEAL

Tennessee Bureau of Workers' Compensation

[www.tn.gov/workforce/injuries-at-work/](http://www.tn.gov/workforce/injuries-at-work/)

wc.courtclerk@tn.gov | 1-800-332-2667

Docket No.: \_\_\_\_\_

State File No.: \_\_\_\_\_

Date of Injury: \_\_\_\_\_

\_\_\_\_\_  
Employee

v.

\_\_\_\_\_  
Employer

Notice is given that \_\_\_\_\_  
*[List name(s) of all appealing party(ies). Use separate sheet if necessary.]*

appeals the following order(s) of the Tennessee Court of Workers' Compensation Claims to the Workers' Compensation Appeals Board (check one or more applicable boxes and include the date file-stamped on the first page of the order(s) being appealed):

☐ Expedited Hearing Order filed on \_\_\_\_\_ ☐ Motion Order filed on \_\_\_\_\_

☐ Compensation Order filed on \_\_\_\_\_ ☐ Other Order filed on \_\_\_\_\_

issued by Judge \_\_\_\_\_.

### Statement of the Issues on Appeal

Provide a short and plain statement of the issues on appeal or basis for relief on appeal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Parties

Appellant(s) (Requesting Party): \_\_\_\_\_ ☐ Employer ☐ Employee

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Attorney's Name: \_\_\_\_\_ BPR#: \_\_\_\_\_

Attorney's Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

*\* Attach an additional sheet for each additional Appellant \**



Employee Name: \_\_\_\_\_ Docket No.: \_\_\_\_\_ Date of Inj.: \_\_\_\_\_

**Appellee(s) (Opposing Party):** \_\_\_\_\_ ☐ Employer ☐ Employee

Appellee's Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Attorney's Name: \_\_\_\_\_ BPR#: \_\_\_\_\_

Attorney's Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

*\* Attach an additional sheet for each additional Appellee \**

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, certify that I have forwarded a true and exact copy of this Notice of Appeal by First Class mail, postage prepaid, or in any manner as described in Tennessee Compilation Rules & Regulations, Chapter 0800-02-21, to all parties and/or their attorneys in this case on this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
*[Signature of appellant or attorney for appellant]*