

NJ Supreme Court Holds That Volunteer Firefighter Is Entitled To Workers' Compensation Temporary Disability Benefits

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In Kocanowski v. Township of Bridgewater, the New Jersey Supreme Court was asked to consider whether volunteer firefighters have to be employed in order to receive workers' compensation temporary disability benefits. The workers' compensation judge and the Appellate Division both held that a volunteer firefighter was not entitled to temporary disability benefits because she was not employed at the time of her accident.

Jennifer Kocanowski served as a volunteer firefighter for the Township of Bridgewater for fifteen years. During most of these years she had outside paid employment as a nanny and home health aide. In 2013 she left her outside employment to take care of ill family members. In July 2014 she returned to volunteer firefighting but did resume any outside employment. On March 6, 2015 while Ms. Kocanowski was responding to a fire she slipped on ice and suffered fractures to her lower leg and foot and sustained a torn meniscus in her knee. After two surgeries she was unable to return to volunteer firefighting and her previous outside employment. Ms. Kocanowski filed a workers' compensation claim petition against the Township of Bridgewater and requested that the judge assigned to her case award her temporary disability benefits based upon her inability to work.

Before rendering a decision, the workers' compensation judge considered N.J.S.A. 34:15-75. This statute states that compensation for a volunteer fireman or emergency management volunteer shall be based upon a weekly salary or compensation conclusively presumed to be received by such person in an amount sufficient to entitle him [or her] to receive the maximum compensation. The workers' compensation judge interpreted the statute to mean that Ms. Kocanowski had to have an outside job in which she earned money in order to qualify for temporary disability. If Ms. Kocanowski was employed she would have received "maximum compensation" which in 2015 was \$855.00 per week. Ms. Kocanowski appealed her denial of workers' compensation temporary disability benefits to the

Appellate Division. The Appellate Division affirmed the workers' compensation judge's decision by agreeing that pre-injury outside employment is a necessary requirement in order for volunteer firefighters to be awarded temporary disability benefits.

The Supreme Court found that the language of N.J.S.A. 34:15-75 was unclear and, as a result, legislative history had to be considered. The Court noted that the Workers' Compensation Act is remedial legislation and should be given liberal construction "in order that its beneficent purposes may be accomplished." The Court determined that before the statute was amended in 1952 there was a provision in the statute that stated that unemployed volunteer firefighters' compensation should be based upon their salary when they were last employed. The Court also set forth how important volunteer firefighters are in New Jersey. The investigation and legislative history revealed that the Legislature "intended to increase temporary disability coverage for volunteer firefighters injured in the course of performing their duties...and not create new barriers to coverage."

The Supreme Court ruled on February 19, 2019 that N.J.S.A. 34:15-75 authorizes all injured volunteer firefighters to receive the maximum compensation permitted, regardless of their outside employment at the time of the injury.

This decision shows how an unfair result was remedied by the Supreme Court. As the Court stated in their decision if a volunteer firefighter works as a newspaper delivery person earning \$5 per week and was injured as a firefighter they would receive \$855 per week for the time they couldn't work but an unemployed injured firefighter receives nothing. The Kocanowski decision now makes an unfair result fair.