

**FIFTH DIVISION
BROWN, C. J.,
MERCIER, P. J., and EPPS, J.**

NOTICE: Motions for reconsideration must be
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October 26, 2026

In the Court of Appeals of Georgia

A26A0886. LAMAR v. DELTA AIRLINES, INC. et al.

BROWN, Chief Judge.

Pursuant to our grant of his application for discretionary appeal, Jorge Lamar appeals from the superior court’s order affirming the Appellate Division of the State Board of Workers’ Compensation affirmance of the Administrative Law Judge’s ruling that Delta Air Lines, Inc. (“Employer/Insurer”) complied with OCGA § 34-9-104(a) and Board Rule 104(a) when it unilaterally reduced his workers’ compensation benefits. For the following reasons, we reverse the superior court’s order and remand the case with instruction.

In reviewing a workers’ compensation award, both this [C]ourt and the superior court must construe the evidence in the light most favorable to the party prevailing before the appellate division. It is axiomatic that the findings of the State Board of Workers’ Compensation

[(“Board”)], when supported by any evidence, are conclusive and binding, and that neither the superior court nor this [C]ourt has any authority to substitute itself as a fact finding body in lieu of the Board.

MARTA v. Bridges, 276 Ga. App. 220, 220 (623 SE2d 1) (2005). “Questions of law and the application of law to undisputed facts, however, are reviewed de novo.” *City of Atlanta v. Sebastian*, 368 Ga. App. 859, 859(1) (891 SE2d 66) (2023).

So viewed, the record shows that Lamar, a Delta employee, sustained lumbar spine injuries while lifting baggage as part of his job duties. Lamar filed timely notice of the accident and injury to the Employer/Insurer.¹ On September 7, 2022, Lamar began receiving temporary total disability (“TTD”) workers’ compensation income benefits at the rate of \$725 per week, based upon his average weekly wage of \$1,510.30.

On August 14, 2023, Employer/Insurer filed a WC-104 form with the Board in order to notify Lamar that it was converting his TTD benefits to temporary partial disability (“TPD”) benefits. The form stated that Lamar’s authorized treating physician, Dr. Donald Langenbeck at Peachtree Orthopedic Center, had released him

¹ Delta is self-insured with Sedgwick CMS, Inc., as the servicing agent.

to work with restrictions. A medical report completed by Dr. Langenbeck on July 17, 2023 was attached to the form (the “July 17 Medical Report”). The July 17 Medical Report notes that the appointment was a follow-up visit to address both Lamar’s reports of pain in “both lower extremities including the anterior portion of both his thighs equally” and to discuss the results of a CT myelogram of the lumbar spine. It notes that Dr. Langenbeck “reviewed the CT myelogram of the lumbar spine” and concluded that there “is no clear connection between the EMG findings or the CT myelogram findings.” Under a section titled “Physical Exam,” Dr. Langenbeck noted that he observed the following:

Musculoskeletal: Range of motion of the lumbar spine shows mild difficulty with extension. Straight leg raise negative bilaterally. No pain with internal and external rotation of the hip. Neurological: Reflexes trace/4 in the knees, absent in the ankles. Motor exam shows 5/5 strength. Sensation intact.

Dr. Langenbeck stated that, based upon his examination and CT myelogram, his impression was that Lamar had myofascial pain, lumbar facet joint pain, and lumbar radiculitis. He then prescribed a daily medication and instructed Lamar to attend “as many sessions as possible” of “work conditioning physical therapy” for two weeks.

Under a section titled “patient instructions,” the doctor instructed Lamar not to lift more than 15 pounds. Lamar was instructed to return for a follow-up visit in three weeks. The July 17 Medical Report did not specifically state that Dr. Langenbeck released Lamar back to work.

Pursuant to the WC-104 filing, Lamar’s income benefits were converted from TTD to TPD, with TPD benefits continuing at the rate of \$438 per week, effective July 2024. Lamar filed a WC-14 “Notice of Claim” form contesting this change. Lamar argued that the Employer/Insurer’s Form WC-104 was invalid under OCGA § 34-9-104(a)(2) and Board Rule 104(a).

After briefing and a hearing, the ALJ issued an award denying Lamar’s request based on its conclusion that the WC-104 form was valid. The ALJ found that Dr. Langenbeck’s July 17 Medical Report that was attached to the WC-104 form established that Lamar was capable of returning to work because the only restriction placed on him in the report was to lift no more than 15 pounds.

Lamar appealed the ALJ’s findings to the Appellate Division, which adopted the ALJ’s award as its own. Lamar then sought review in the Superior Court of Fulton County. After oral argument, the superior court issued an order affirming the

Appellate Division. This Court granted Lamar's application for discretionary review from that order.

In related enumerations of error, Lamar argues that the WC-104 form submitted by the Employer/Insurer was insufficient to reduce his benefits because the July 17 Medical Report attached to it did not demonstrate that he was capable of performing work with restrictions as required by OCGA § 34-9-104(a)(2) and Ga. Code Ann. Worker's Comp. Rule 104(a). We agree.

Under OCGA § 34-9-104(a)(2), an employer is allowed to "unilaterally reduce an employee's TTD benefits to TPD benefits once the treating physician releases the employee to work with limitations or restrictions." *MARTA v. Thompson*, 326 Ga. App. 631, 633(2) (757 SE2d 228) (2014). OCGA § 34-9-104(a)(2) provides, in pertinent part:

When an injury is not catastrophic, as defined in [OCGA § 34-9-200.1(g)], and the employee is not working, the [B]oard shall determine that a change in condition for the better has occurred and the employee shall be entitled to the payment of benefits for partial disability in accordance with [OCGA § 34-9-262] if it is determined that the employee has been capable of performing work with limitations or restrictions for 52 consecutive weeks. Within 60 days of the employee's release to return to work with restrictions or limitations, the employer

shall provide notice to the employee on a form provided by the [B]oard that will inform the employee that he or she has been released to work with limitations or restrictions, will include an explanation of the limitations or restrictions, and will inform the employee of the general terms of this Code section. ... Whenever an employer seeks to convert an employee from benefits for total disability to benefits for partial disability as provided in this paragraph, such employer may convert the benefits unilaterally by filing a form indicating the reason for the conversion as prescribed by rule of the [B]oard.

In turn, Workers' Compensation Board Rule 104(a) ("Board Rule 104(a)") governs the WC-104 form that must be filed in order to convert TTD benefits to TPD benefits under OCGA § 34-9-104(a)(2). It provides:

To unilaterally convert the employee's income benefits from temporary total disability income benefits to temporary partial disability income benefits under OCGA § 34-9-104(a)(2), the employer/insurer shall file a Form WC-104 with the Board and shall serve the employee and the employee's attorney the Form WC-104 no later than 60 days from the date the employee was released to work with restrictions by the employee's authorized treating physician. In addition, the employer/insurer *shall attach to the Form WC-104 the supporting medical report from employee's authorized treating physician demonstrating the employee is capable of performing work with restrictions.*

Ga. Code Ann. Worker's Comp. Rule 104(a) (emphasis added).

Because the statutory scheme governing workers' compensation is a "humanitarian measure," it should be "liberally construed to effectuate its purpose." *Thompson*, 326 Ga. App. at 633(2). Accordingly, an employer/insurer is required to "strictly comply with OCGA § 34-9-104(a)(2)" before it may "avail itself of the opportunity to unilaterally convert an employee" from TTD to TPD benefits. *Id.* (punctuation omitted). See also *Coker v. Deep S. Surplus of Ga.*, 258 Ga. App. 755, 756 (574 SE2d 815) (2002) ("Because the Workers' Compensation Act is in derogation of common law, its provisions must be strictly construed."); *City of Atlanta v. Sumlin*, 258 Ga. App. 643, 647(3) (574 SE2d 827) (2002) ("[P]ublic policy supports placing the burden of complying with [OCGA § 34-9-104] on the employer, who can avoid any overpayment of benefits by giving 60-day notice."). With this in mind, we find that, construed together, these statutory and regulatory prerequisites show that an employer/insurer may not reduce an employee's income benefits unless it has attached a medical report to Form WC-104 that demonstrates on its face that the "employee is capable of performing work with restrictions." OCGA § 34-9-104(a)(2).

In *Imerys Kaolin v. Blackshear*, 306 Ga. App. 491 (702 SE2d 440) (2010) (physical precedent only), this Court held that an employer could not use a WC-104

form to reduce an employee's benefits when the December 2002 medical release attached to the form relied on an evaluation conducted in August 2002. Id. at 492. In doing so, this Court reasoned that the notice was invalid because it was issued "more than 60 days from the time the restrictions were 'determined.'" Id. at 494(1) (punctuation omitted). This Court concluded that a medical report attached to a WC-104 form must be "based upon a reasonably concurrent examination and determination of the employee's condition, not a mere reaffirmation of an otherwise untimely examination" in order to support a reduction of benefits.² Id. at 494(2) (punctuation omitted). Similarly, in *Sumlin*, 258 Ga. App. 644, 645–46(1), this Court affirmed the ALJ's conclusion that an employer/insurer's WC-104 form did not comply with the requirements of OCGA § 34-9-104(a) and thus could not be used to reduce an employee's benefits when the July 2000 medical report attached to the form simply reaffirmed a prior work release from October 1998.

² Employer/Insurer argues that *Blackshear* is distinguishable because the WC-104 notice and medical report in that case were filed outside the 60-day timeline imposed by OCGA § 34-9-104(a). However, this does not change the fact that the *Blackshear* court construed OCGA § 34-9-104(a) and Board Rule 104(a) to require that the medical report attached to a Form WC-104 must contain results of a "reasonably concurrent examination" and cannot merely restate findings from earlier examinations. 306 Ga. App. at 494(2).

In this case, the ALJ's order held that the July 17 Medical Record shows that Lamar was "capable of performing work with restrictions" because it "indicates what [the doctor] views as the appropriate restrictions on [Lamar's] physical activities, work or otherwise." In support of this finding, the ALJ points to the fact that a different provider, Peachtree Occupational Medicine, had released Lamar to light-duty work with restrictions a year prior as well as Dr. Langenbeck's instruction that Lamar not lift anything heavier than 15 pounds. However, the ALJ's order explicitly recognized that the 15-pound lifting restriction in the July 17 Medical Record was "not a change in [Lamar's] restrictions or work status," but instead was "merely a restatement" of an ongoing restriction that had been imposed upon Lamar at prior appointments.

Accordingly, even when viewed under the "any evidence" standard, there is no evidence to support the ALJ's conclusion that Dr. Langenbeck's July 17 Medical Report was sufficient to demonstrate that Lamar constituted a release back to work. OCGA § 34-9-104(a)(2). The July 17 Medical Report makes no recommendation at all regarding Lamar's ability to return to work. Instead, the July 17 Medical Report is clear that Dr. Langenbeck believed that Lamar needed to complete additional work-

conditioning physical therapy and return for a follow-up visit to prepare for such return. Further, as noted above, the Board and reviewing courts were confined to reviewing Dr. Langenbeck's July 17 examination of Lamar and his medical report based on that examination, and they may not look to reports that were completed or examinations that were conducted more than 60 days before that time. See *Blackshear*, 306 Ga. App. at 494(2); *Sumlin*, 258 Ga. App. at 645-46(1). Thus, the ALJ's reliance upon reports prepared by other medical providers outside the 60-day window was in error. Finally, the 15-pound weight restriction did not constitute evidence that Lamar had been cleared to return to work with restrictions at the time of the July 17 examination. As acknowledged by the ALJ, such finding was a "mere restatement" of a restriction imposed during earlier examinations and medical reports.³ See *Blackshear*, 306 Ga. App. at 494(2). If the 15-pound weight restriction was sufficient to clear Lamar to return to work with restrictions, then the Employer/Insurer should have provided notice of such release after the first time the doctor added such restriction to Lamar's medical records. See OCGA § 34-9-104(a)(2) ("Within 60 days

³ The 15-pound weight restriction is seen in many of Lamar's medical reports prior to June 17, 2023, including in medical reports submitted after examinations in September 2022, October 2022, and June 2023. None of these medical reports cleared Lamar to return to work with restrictions.

of the employee's release to return to work with restrictions or limitations, the employer shall provide notice to the employee on a form provided by the [B]oard that will inform the employee that he or she has been released to work with limitations.''). In the absence of a more specific statement regarding Lamar's job duties and his ability to perform other tasks, the restatement of a restriction upon lifting items heavier than 15 pounds, by itself, does not constitute a release to return to light duty work under the circumstances of this case.

Based upon the above, the judgment of the superior court is reversed and remanded with direction that the case be remanded to the Board for the consideration of whether attorney fees should be awarded pursuant to OCGA § 34-9-108(b)(1) and for issuance of an award consistent with this opinion. See *Reliance Electric Co. v. Brightwell*, 284 Ga. App. 235, 239–40 (643 SE2d 742) (2007).

Judgment reversed and case remanded with direction. Mercier, P. J., and Epps, J., concur.