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Cite as 2010 Ark. App. 842

ARKANSAS COURT OF APPEALS

DIVISIONS I AND IV
No. CA10-745

	Opinion Delivered December 15, 2010
TYSON POULTRY, INC. APPELLANT	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION [NO. F710978]
V.	
FRANCISCO NARVAIZ APPELLEE	REVERSED AND REMANDED

JOHN MAUZY PITTMAN, Judge

The appellee in this appeal from the Arkansas Workers' Compensation Commission, who had previously been injured on the job, was terminated while on light duty after he called his supervisor a "mother-f--king bitch." His claim for temporary-total disability for the remainder of his disability period was denied by the administrative law judge. The Commission reversed on the grounds that termination for misconduct is not a sufficient basis for a finding that the employee refused suitable employment. Appellant argues on appeal that this is not the law. We agree, and we reverse and remand.

The Commission's finding is based on *Superior Industries v. Thomaston*, 72 Ark. App. 7, 32 S.W.3d 52 (2000), where a claimant was terminated for calling coworkers "bitches." We held in *Superior Industries* that the Commission did not err in ruling that the basis for an employee's employment separation is irrelevant in determining eligibility for temporary-total

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disability benefits. Our holding was based on the language of Ark. Code Ann. § 11-9-526 (Repl. 2006), which provides that:

> If any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers' Compensation Commission, the refusal is justifiable.

Employing the doctrine of strict construction applicable to the Workers' Compensation Act, the *Superior Industries* court reasoned that the controlling fact was that the appellant in that case did not refuse employment, but instead accepted the employment and was later terminated not by his choice but at the option of his employer.

We think that the broad construction of the statutory language adopted in *Superior Industries*, implying as it does that no act of misconduct can ever constitute a refusal of employment, was unwarranted: were that the case, a claimant provided with light-duty work could simply stop coming to work, assured that he would continue to receive compensation benefits even if he were terminated. Strict construction of a statute does not mandate a literal interpretation that leads to absurd results where an alternative interpretation better effects the statute's purpose. *Nucor Corp. v. Kilman*, 358 Ark. 107, 186 S.W.3d 720 (2004). We think that there can be instances of nonperformance or insubordination by an employee that would support a finding that an employee effectively refused suitable employment by engaging in misconduct intended to provoke his termination. Consequently, we limit the holding of *Superior Industries* to its facts, and we reverse and remand for further proceedings consistent with this opinion.

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Reversed and remanded.

GRUBER, GLOVER, and BROWN, JJ., agree.

HART and BAKER, JJ., concur.