

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

04-547

RICKY GIBSON

VERSUS

SHAW GLOBAL ENERGY SERVICES

COOKS, J., concurs in part and dissents in part.

After being instructed not to return to work for two weeks, Mr. Gibson's treating physician eventually released him to return to work with "light duty" restrictions. There is nothing in the record to indicate Mr. Gibson was released from her care or had reached maximum medical improvement. A "lumbar strain/sprain" can be a disabling condition; it obviously was in the case of Mr. Gibson because he was only released to perform light duty work. This was not a trial. Mr. Gibson's burden on a motion for summary judgment on the issue of disability only requires him to present prima facie evidence that: (1) He sustained a work-related injury; (2) The injury prevents him from performing his prior work duties. The record contains enough evidence to show that Mr. Gibson was injured on the job - a fact that is not disputed; and he sustained a disabling injury - he could not work for two weeks as instructed by his physician and thereafter could perform only "light duty" work. The employer does not argue that Mr. Gibson's prior job duties met the restrictions imposed on him by his treating physician. The record is devoid of any evidence suggesting that such light duty work was available in the open market which Mr. Gibson could perform and he did not seek such employment or the employer was willing to accommodate Mr. Gibson's medical limitations resulting from his diagnosed condition, i.e., lumbar strain/sprain. Again, I emphasize this was a summary judgment motion; not trial on the merits.

There is a serious dispute relating to the “extent” of Mr. Gibson’s disability. There is sufficient, prima facie evidence to show he sustained an injury that had disabling consequences because he was released to perform only “light duty” work. I respectfully dissent from the majority opinion on this point. In all other respects, I concur with the majority opinion.